

927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information

1.0 General Monitoring and Priority Areas

1.1 State monitoring and enforcement: The DOE will monitor the implementation of these regulations, enforce them as provided in these regulations and any other applicable state or federal law, and annually report to the public on performance under these regulations.

1.2 The primary focus of the State's monitoring activities will be on improving educational results and functional outcomes for all children with disabilities; and ensuring that public agencies meet the program requirements under Part B of the Act and these regulations, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

1.3 As a part of its responsibilities under this section, the DOE will use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in 1.4 and the indicators established by the Secretary of the United States Department of Education for the states' performance plans.

1.4 The DOE will monitor LEAs, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

1.4.1 Provision of FAPE in the least restrictive environment.

1.4.2 General supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services.

1.4.3 Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

1.5 *Nothing in this section shall be construed to restrict the DOE from utilizing any other method, activity or authority available to it to monitor and enforce the requirements of Part B of the Act and these regulations.*

(Authority: 20 U.S.C. 1416(a); 14 Del.C. §§ 122 and 3110)

2.0 State and Local Performance Plans and Public Reports

2.1 State performance plan and annual performance reports: The DOE will submit a State performance plan to the United States Department of Education at such times and in such manner and format as required by the Secretary of the United States Department of Education.

2.1.1 The state performance plan will include measurable and rigorous targets for any indicators required by the Secretary of the United States Department of Education for the priority areas in 1.4.

2.1.2 The DOE will make the State's performance plan available through public means, including posting it on DOE's website, distributing it to the media and distributing it through other public agencies within a reasonable time after its federal submission.

2.1.3 The DOE will report annually to the United States Department of Education on the performance of the State under the State's performance plan, in the manner and format required by the United State Secretary of Education.

2.1.3.1 The DOE will post any annual state performance report the DOE submits to the United State's Department of Education on the DOE's website within a reasonable time after its federal submission.

2.1.4 Federal determination review: The Secretary of the United State's Department of Education annually reviews the State's annual performance report, submitted under 2.1.3, and determines whether the State meets the requirements and purposes of Part B of the Act, and if not, the level of assistance and intervention the State requires to meet those requirements and purposes. The DOE will make the Secretary's determination publicly available by posting it on the DOE's website within a reasonable time after its federal submission.

2.2 DOE public reporting of LEA performance.

2.2.1 *LEA Obligations: Each LEA shall use the targets established in the State's performance plan, and the priority areas described in 1.4, to analyze and report on its performance to the*

DOE. The LEA's report shall be submitted in the manner and format required by the DOE.

2.2.2 The DOE will report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan. If the DOE collects performance data through monitoring or sampling, the DOE will include in its report the most recently available performance data on each LEA, and the date the data were obtained.

2.3 Privacy: The DOE will not report to the public or the Secretary of the United States Department of Education any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information. The DOE's obligation under this subsection shall not be construed to create an individual cause of action for its violation.

(Authority: 20 U.S.C. 1416(b); 14 **Del.C.** §§122 and 3110)

3.0 DOE's Review and Determination Regarding LEA Performance

3.1 *The DOE will annually review the performance of LEAs on the targets in the State's performance plan. The DOE's review may include such other data, indicators and monitoring information as it determines appropriate to fully review an LEA's performance under, and compliance with, these regulations.*

3.2 Determination: Based on its annual performance review, the DOE will determine if an LEA:

- 3.2.1 Meets the requirements and purposes of Part B of the Act and these regulations;
- 3.2.2 Needs assistance in implementing the requirements of Part B of the Act and these regulations;
- 3.2.3 Needs intervention in implementing the requirements of Part B of the Act and these regulations; or
- 3.2.4 Needs substantial intervention in implementing the requirements of Part B of the Act and these regulations.

3.3 Notice and opportunity for a hearing.

3.3.1 The DOE will provide reasonable notice and an opportunity for a hearing on any determination that an LEA needs intervention, or needs substantial intervention, in implementing the requirements of Part B of the Act and these regulations.

3.3.2 The hearing described in 3.3.1 will consist of an opportunity to meet with the Associate Secretary of the DOE's Curriculum and Instructional Improvement Branch, or with a designee of the Secretary, to demonstrate why the DOE should not make the determination described in 3.2.

(Authority: 20 U.S.C. 1416(d); 14 **Del.C.** §§122 and 3110)

4.0 Enforcement of Determination Findings

4.1 Needs assistance: If the DOE determines, for two consecutive years, that an LEA needs assistance in implementing the requirements of Part B of the Act and these regulations, the DOE shall take one or more of the following actions:

4.1.1 Advise the LEA of available sources of technical assistance that may help the LEA address the areas in which the LEA needs assistance, which may include assistance from the DOE, other State agencies, Federal agencies, technical assistance providers, and state and federal nonprofit agencies, and require the LEA to work with appropriate entities. Such technical assistance may include:

4.1.1.1 The provision of advice by experts to address the areas in which the LEA needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

4.1.1.2 Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

4.1.1.3 Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

4.1.1.4 Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance, and private providers of scientifically based technical assistance.

4.1.2 *Direct the use of LEA sub grants under Section 611(f) of the Act on the area or areas in which the LEA needs assistance.*

4.1.3 Identify the LEA as a high-risk grantee and impose special conditions on the LEA's sub grant under Part B of the Act.

4.2 Needs intervention: If the DOE determines, for three or more consecutive years, that an LEA needs intervention in implementing the requirements of Part B of the Act and these regulations, the following shall apply:

4.2.1 The DOE may take any of the actions described in 4.1.

4.2.2 The DOE shall take one or more of the following actions:

4.2.2.1 Require the LEA to prepare a corrective action plan or improvement plan if the DOE determines that the LEA should be able to correct the problem within one year.

4.2.2.2 *Require the LEA to enter into a compliance agreement with the DOE if the DOE has reason to believe that the LEA cannot correct the problem within one year. The compliance agreement shall be developed in accordance with the standards in the federal General Education Provisions Act, 20 U.S.C. § 1234f, to the extent practicable. Any hearing held as part of the development of a compliance agreement shall be conducted in accordance with Delaware Department of Education's "Hearing Procedures and Rules" as from time to time amended.*

4.2.2.3 *For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the LEA's sub grant under section 611(f) of the Act, until the DOE determines the LEA has sufficiently addressed the areas in which the LEA needs intervention.*

4.2.2.4 *Seek to recover funds in any manner available under state or federal law. Prior to taking any action to recover funds, DOE will provide reasonable written notice of the proposed action and an opportunity for a hearing to the LEA involved. The hearing shall be conducted in accordance with Delaware Department of Education's "Hearing Procedures and Rules" as from time to time amended.*

4.2.2.5 Withhold, in whole or in part, any further payments to the LEA under Part B of the Act.

4.2.2.6 Refer the matter for any other appropriate enforcement action.

4.3 Needs substantial intervention: Notwithstanding any provision in 4.1 or 4.2 to the contrary, at any time that the DOE determines that an LEA needs substantial intervention in implementing the requirements of Part B of the Act, or that there is a substantial failure to comply with any condition of the LEA's eligibility under Part B of the Act, the DOE shall take one or more of the following actions:

4.3.1 *Seek to recover funds in any manner available under state or federal law. Prior to taking any action to recover funds, DOE will provide reasonable written notice of the proposed action and an opportunity for a hearing to the LEA involved. The hearing shall be conducted in accordance with Delaware Department of Education's "Hearing Procedures and Rules" as from time to time amended.*

4.3.2 Withhold, in whole or in part, any further payments to the LEA under Part B of the Act.

4.3.3 *Refer the case to any other appropriate state or federal agency.*

4.3.4 *Refer the matter for any other appropriate enforcement action.*

(Authority: 20 U.S.C. 1416(e)(1)-(e)(3), (e)(5); 14 Del.C. §§122 and 3110)

5.0 Withholding Funds

5.1 *Opportunity for hearing: Prior to withholding any funds under Part B of the Act, the DOE will provide reasonable written notice of the proposed withholding and an opportunity for a hearing to the LEA involved. The hearing shall be conducted in accordance with Delaware Department of Education's "Hearing Procedures and Rules" as from time to time amended.*

5.2 *Suspension: Pending the outcome of any hearing to withhold payments under 5.1 the DOE may suspend payments to the LEA, suspend the authority of the LEA to obligate funds under Part B of the Act, or both, after the LEA has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.*

5.3 *Nature of withholding: If the DOE determines that it is appropriate to withhold further payments to an LEA, the DOE may determine that:*

5.3.1 *That the withholding will be limited to programs or projects, or portions of*

programs or projects, that affected the DOE's determination in 3.2; or

5.3.2 *That the LEA shall not make further payments under Part B of the Act to specified programs, providers or vendors that caused or were involved in the DOE's determination in 3.2.*

5.3.3 *Until the DOE is satisfied that the condition that caused the initial withholding has been substantially rectified, payments to the LEA under Part B of the Act may be withheld in whole or in part; and payments by the LEA under Part B of the Act shall be limited to programs, providers and vendors whose actions did not cause or were not involved in the DOE's determination in 3.2, as the case may be.*

(Authority: 20 U.S.C. 1416(e)(4), (e)(6); 14 **Del.C.** §3110)

6.0 Reserved

7.0 Reserved

8.0 State Enforcement through Maintenance of Effort

8.1 If the DOE determines that an LEA is not meeting the requirements of Part B of the Act or these regulations, including the targets in the State's performance plan, the LEA is prohibited from reducing the LEA's maintenance of effort under 14 **DE Admin. Code** 924.3.0 for any fiscal year.

8.2 Nothing in this subpart shall be construed to restrict the DOE from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act and these regulations.

(Authority: 20 U.S.C. 1416(f); 20 U.S.C. 1412(a)(11); 14 **Del.C.** §3110)

9.0 Reserved

10.0 Confidentiality of Personally Identifiable Data, Information and Records

10.1 To ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by public agencies pursuant to Part B of the Act, the DOE, each LEA and any other public agency shall comply with applicable provisions of 14 **DE Admin. Code** 251 and 252 and with 11.0 through 26.0.

(Authority: 20 U.S.C. 1417(c); 14 **Del.C.** §§3110 and 4111)

11.0 Definitions as used in 11.0 through 26.0.

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education Records" means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

"Participating Agency" means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c); 14 **Del.C.** §§3110 and 4111)

12.0 DOE Confidentiality Notice to Parents

12.1 The DOE will notify parents about the confidentiality requirements of 14 **DE Admin. Code** 251 and 252, and with 11.0 through 26.0, through any method the DOE determines is adequate to fully inform parents, including posting the information on its website. Such notice shall include:

12.1.1 A description of the extent that the notice is given in the native languages of the various population groups in Delaware;

12.1.2 A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the DOE intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

12.1.3 A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable

information; and

12.1.4 A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

12.2 Before any major identification, location, or evaluation activity, the notice required by 12.1 shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout Delaware of the activity.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

13.0 Rights to Access Educational Records

13.1 Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under these regulations. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to **DE Admin. Code** 926.7.0 or 926.30.0 through 926.32.0 or resolution session pursuant to **DE Admin. Code** 926.10.0, and in no case more than 45 days after the request has been made.

13.2 The right to inspect and review education records under this section includes:

13.2.1 The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

13.2.2 The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

13.2.3 The right to have a representative of the parent inspect and review the records.

13.3 An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State laws governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

14.0 Record of Access to Education Records

14.1 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

15.0 Education Records on More Than One Child

15.1 If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

16.0 List of Types and Locations of Information

16.1 Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

17.0 Fees for Records

17.1 Each participating agency may charge a fee for copies of records that are made for parents under these regulations if the fee does not exceed the actual cost of the records, or effectively prevent the parents from exercising their right to inspect, review and copy the records.

17.2 A participating agency may not charge a fee to search for or to retrieve information under these regulations.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3130 and 4111)

18.0 Amendment of Education Records at Parent's Request

18.1 A parent who believes that information in the education records collected, maintained, or used under these regulations is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

18.2 The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

18.3 If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing in 19.0.
(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

19.0 Opportunity for a Hearing Regarding Records

19.1 The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3130 and 4111)

20.0 Result of Hearing

20.1 If, as a result of a hearing in 19.0, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

20.2 If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

20.3 Any explanation placed in the records of the child under this section shall be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and if the records of the child or the contested portion is disclosed by the agency to any party, the explanation shall also be disclosed to the party.
(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3130 and 4111)

21.0 Hearing Procedures

21.1 A hearing held under 19.0 shall be conducted according to the procedures in federal regulations implementing FERPA at 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

22.0 Consent for Releasing Personally Identifiable Information

22.1 Parental consent shall be obtained before personally identifiable information is disclosed to parties (other than officials of participating agencies in accordance with 22.2, 22.3 and 22.4) unless the information is contained in education records, and the disclosure is authorized without parental consent under federal regulations implementing FERPA at 34 CFR part 99.

22.2 Except as provided in 22.3 and 22.4, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of these regulations.

22.3 Parental consent, or the consent of an eligible child who has reached the age of 18, shall be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with **DE Admin. Code** 925.21.2.2.

22.4 If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

22.5 *Parental Refusal to Release Records. In the event that a parent refuses to provide consent before personally identifiable information is disclosed in situations requiring consent, the parent shall be advised in writing either: (1) that the participating agency acknowledges that refusal and will not disclose the information or forward records; or (2) that the participating agency will exercise its option to request an impartial due process hearing in order to effect the release of records. In the event that the*

participating agency elects to seek a due process hearing, the participating agency shall also provide the parent a copy of the "Special Education: Parents' Guide to Rights and Services" and a Notice of Procedural Safeguards.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

23.0 Other Safeguards

23.1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

23.2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

23.3 All persons collecting or using personally identifiable information shall receive training or instruction regarding 11.0 through 26.0, 14 DE Admin. Code 251 and 252, and the federal regulations implementing FERPA at 34 CFR part 99.

23.4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

24.0 Destruction of Information

24.1 The public agency shall inform parents when personally identifiable information collected, maintained, or used under these regulations is no longer needed to provide educational services to the child.

24.2 The information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

25.0 Children's Privacy and Confidentiality Rights

25.1 Except as otherwise provided in 25.2, when a child with a disability reaches the age of 18, and no guardian has been appointed over the person of the child, all rights and entitlements accorded to parents under these regulations, including the rights of privacy and confidentiality, shall be deemed accorded directly to the child with a disability.

25.2 Under the federal regulations implementing FERPA at 34 CFR 99.3 and 99.5(a), the rights of parents regarding education records are also transferred to a child with a disability at age 18 or when the child is attending an institution of postsecondary education.

25.3 Notwithstanding 25.1 and 25.2, any public notice required under section 615 of the Act shall be provided to both the student and the parents.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 1 Del.C. §701; 14 Del.C. §§3110 and 4111)

26.0 Enforcement of Confidentiality Requirements.

26.1 The DOE may enforce the confidentiality requirements of 10.0 through 25.0, including the imposition of sanctions, through its general supervision and monitoring activities, including 1.0 through 8.0.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3110 and 4111)

27.0 to 39.0 Reserved

40.0 Annual Report of Children Served Report Requirement and Protection of Personally Identifiable Data.

40.1 The DOE annually reports to the Secretary of the United States Department of Education on the information required by section 618 of the Act. The DOE will also publicly report the data required by the Secretary in a manner that does not result in disclosure of data identifiable to individual children.

(Authority: 20 U.S.C. 1418(a); 14 Del.C. §§3110 and 4110)

41.0 to 44.0 Reserved

45.0 Public Agency Duties Regarding Annual Report of Children Served

45.1.1 Comply with the DOE's procedures, instructions and forms in counting the number of children with disabilities receiving special education and related services;

45.1.2 Meet any established timeline or due date for reporting to the DOE under these regulations, including timelines necessary for the DOE's timely report to the United States Department of Education in accordance with 40.0;

45.1.3 Certify to the DOE that an unduplicated and accurate count has been made of its children with disabilities;

45.1.4 Aggregate the data from its count to the extent and in the manner directed by the DOE; and

45.1.5 Ensure that documentation is maintained that enables the LEA and the DOE to audit the accuracy of the count.

(Authority: 20 U.S.C. 1418(a); 14 Del.C. §3110)

46.0 Disproportionality

46.1 General: Each LEA and other public agency shall comply with the DOE's procedures, instructions and forms for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in Delaware and the LEAs of the State with respect to:

46.1.1 The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;

46.1.2 The placement in particular educational settings of these children; and

46.1.3 The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

46.1.4 Review and revision of policies, practices, and procedures: In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with 46.1, the DOE shall:

46.1.4.1 Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.

46.1.4.2 Require any LEA identified in 46.1 to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified 46.1; and

46.1.4.3 Require the LEA to publicly report on the revision of policies, practices, and procedures described 46.1.4.1.

(Authority: 20 U.S.C. 1418(d); 14 Del.C. §3110)