

INDEPENDENT REVIEW OF “NC’s”  
EDUCATIONAL RECORD

JUNE 16, 2018

## Table of Contents

Executive Summary .....	3
I. Introduction.....	8
II. Methodology for Review .....	8
III. Legal Requirements for Exceptional Student Education .....	10
Free Appropriate Public Education.....	11
Child Find .....	11
General Education Interventions and Referral for Evaluation.....	11
Initial Evaluation and Reevaluation.....	12
Least Restrictive Environment and Continuum of Services .....	13
Individual Educational Plan (IEP) .....	13
IEP Team and Parent Participation .....	13
Special Considerations.....	14
Present Levels Statement .....	14
Annual Goals .....	14
ESE Services.....	15
Student Progress and Annual Review.....	15
Discipline and Manifestation Determination Reviews .....	15
Functional Behavioral Assessment and Behavior Intervention Plan.....	16
Procedural Safeguards .....	17
Prior Written Notice.....	18
Informed Consent.....	18
Revocation of Consent.....	19
V. Review of NC's Educational Services .....	19
.....	20
.....	23
.....	26
.....	
Conclusion .....	42
VI. Recommendations.....	44
Appendix A. Selected Laws and Regulations.....	47
Appendix B. Enrollment History .....	70

# Executive Summary

In March 2018 Collaborative Educational Network, Inc. was engaged to conduct an independent review of the educational services Broward County Public Schools had provided to “NC,” the alleged perpetrator of the mass shooting at Marjorie Stoneman Douglas High School.



The federal Individuals with Disabilities Education Act (IDEA) and corresponding state statutes and rules provide stringent requirements and expectations for the education of students with disabilities. These regulations provided the framework for this review.

As we considered the district’s actions [redacted] our analysis was based on the information available to school and district staff at that time. The appropriateness of their decisions was assessed based on the student’s then-current status rather than through the lens of hindsight. That said, the resulting recommendations are informed by this tragedy. They seek to identify ways district policies and procedures can provide more flexibility while maintaining the individual protections required by law, and to ensure necessary social/emotional and behavioral supports are available to address the increasingly complex needs of today’s students.

At its core, IDEA requires school districts to provide students with disabilities a free appropriate education (FAPE) in the least restrictive environment (LRE). In addition to substantive requirements that govern various aspects of the student’s educational program, IDEA also provides procedural safeguards to protect students with disabilities and their parents. Briefly stated, key components of the federal law influenced this student’s education services in the following ways:

- Students with disabilities should attend the school they would attend if nondisabled and can only be removed from the general education environment if education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- Educational placement, annual goals, and services for students with disabilities must be determined at least annually by their individual educational plan (IEP) teams based on data reflecting the students’ present levels of academic achievement and functional performance, and not on behaviors or needs exhibited in the past.
- Students with disabilities must continue to receive educational services during any periods of suspension after a threshold of ten days in a school year is met. One way BCPS meets this requirement is to assign students with disabilities to alternative to external suspension (AES) sites in lieu of standard out-of-school suspension (OSS). Unlike OSS in which students are simply sent home, often unattended, in-school suspension (ISS) and AES provide the opportunity for educational benefit within a supervised setting.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **Recommendations**

Throughout this review there was evidence that, with isolated exceptions, the district adhered to procedural and substantive requirements when implementing this student's exceptional education program. Two specific instances were identified, however, in which the IEP team or other ESE staff did not implement required procedures. The following recommendations are proposed to address those specific circumstances.

1. Review and revise as needed the focus of staff development regarding guidelines and procedures for the placement of students in ESE center schools to incorporate training and practice in facilitating emotionally charged meetings and ensure staff have a complete understanding of the requirements as they apply to all possible scenarios.

2. Review and revise as needed the policies, procedures, and staff development implemented to ensure students enrolled in OCLC sites who are suspected of having a disability and needing special education services are referred and evaluated within established timelines.

During the course of this review the evaluators identified factors and/or current practices that would benefit from further consideration. The following are recommendations for improving or enhancing current systems to make them more effective or, looking forward, to positively influence potential outcomes for students who experience some of the same circumstances as NC.

3. Review and revise current training and guidance regarding revocation of consent, with attention to less common situations such as when:
  - an adult student revokes consent for their own services against advice of the parent and continued informal contact with designated school staff could result in the student's decision to reestablish services;
  - a student is known to have social/emotional or behavioral needs and therefore, as a general education student, should have access to the counseling and mental health services available to all students through the district's multi-tiered system of supports; or
  - a parent or adult student orally states their desire to revoke consent but does not submit the request in writing as required, so that staff remain neutral and are able to act without either promoting or hindering the revocation.
4. Review and revise as needed procedures and current guidance documents regarding reentry into ESE after consent has been revoked to more explicitly consider situations such when:
  - there is a history of supporting data indicating that the student has been a high-needs ESE student;
  - IEP team members strongly disagreed with the decision to revoke consent based on the data available at the time of revocation; or
  - there is substantial evidence indicating the student needs ESE services and no recent evidence from the general education record indicating the student no longer has a disability and needs special education services.
5. Review existing data systems to identify redundancies and inefficiencies and determine the most effective way to integrate multiple systems, maximizing accuracy and shareability across users.
6. Establish a protocol for reviewing the records of students transferring to alternative education programs to include discipline and ESE records in addition to course and credit information. The process must be designed to prohibit potentially discriminatory practices while ensuring the receiving program has the educational information needed to provide effective and appropriate placements and services.
7. Establish a protocol for communicating with all relevant staff in a receiving school or program when a student with social/emotional or behavioral needs transitions from an ESE center school or ESE separate class setting in a traditional school building to a less restrictive general education setting. In addition to the annual goals and positive behavioral supports included within an IEP, a behavior intervention plan or similar document that more explicitly

details the actions to be taken in response to student behavior and includes a formal system for monitoring and/or tracking student performance should be considered for transitioning students.

- 8.** Develop an audit process to be implemented for all records that pertain to discipline and safety, including but not limited to consequences and interventions imposed in response to disciplinary infractions and threat assessments. The purpose of the process is three-fold: (1) to determine the extent to which the actions proposed are implemented as stated in the relevant documentation; (2) identify and correct flaws in communication systems that may impede implementation; and (3) hold accountable the staff members responsible for implementation.

## **I. Introduction**

On February 14, 2018, a mass shooting occurred at Marjorie Stoneman Douglas High School. The alleged perpetrator was “NC,” a 19-year-old Broward County Public Schools (BCPS) student. Following this tragedy, Collaborative Educational Network, Inc. was engaged to conduct an independent review of the educational services the student received from BCPS.

We know that educational experiences have a significant influence on the development of young people. Classroom, school, and district staff all play important roles as they are tasked with implementing established policies and procedures. We also understand that other agencies or entities had an impact on the circumstances of this tragic event (e.g., federal, state, and local law enforcement; community mental health agencies; the home environment). That said, the focus of this review is limited to the student’s education.

[REDACTED]

The methodology used to conduct this review is explained below. It is followed by a summary of requirements found in the Individual with Disabilities Education Act (IDEA) and corresponding state laws and rules governing exceptional student education (ESE) programs. An understanding of the legal requirements and constraints imposed on the district is critical for providing context to the analysis that follows.

The review of educational services is presented chronologically, [REDACTED]

[REDACTED] It focuses on the extent to which the district adhered to the federal, state, and local requirements to meet the student’s then-current educational needs at each point in his educational program. As we considered the district’s actions throughout this period, our analysis was based on the information available to school and district staff at that time. The appropriateness of their decisions was assessed based on the student’s then-current status rather than through the lens of hindsight.

Lastly, there are recommendations related to specific district policies or procedures. Some of the recommendations address compliance concerns; others are intended to identify ways current practices could be modified to allow for more flexibility on the part of IEP teams and other school and district staff involved in supporting students in need without sacrificing parent and student rights and protections that exist under current laws.

## **II. Methodology for Review**

Several unique circumstances limited the type and amount of data sources that were available for this review. Normally in a student-specific evaluation such as this, in addition to information available through the student’s educational record and district staff, the parent(s) and the student would be significant sources of information. In this case, due to the student’s arrest and the nature of the charges, the student was not available to provide firsthand information.

Even more importantly, the student’s mother died suddenly on November 1, 2017, less than four months prior to the incident. It also is notable that his father had passed away in August 2004

when the student was not yet six years old. As a consistent and engaged participant in educational decision making throughout the student's educational period, the reviewers relied upon the mother's personal notes to school staff, responses to questionnaires, and other supporting documents within the student's record to gain an understanding of the family's viewpoint.

Lastly, this review covered a period of almost 16 years. District systems for recording and reporting data change over time, and not all records are retained in a student's permanent file. In some cases, multiple systems are used to record and track similar information. Some of the data is collected electronically while other actions are processed through paper forms.

For instance, different aspects of a student's disciplinary record are found in the Discipline Management System (DMS), in TERMS (the district's student information system), or in the form of notes in the student's hard copy discipline file. This can result in discrepancies, or the appearance of discrepancies, in the information that is reported. As an example, when a staff member submits a disciplinary referral, it is entered into the Discipline Management System (DMS) as a "referral." This entry generally includes a description of what occurred, who was involved, where it occurred, and other relevant information. An administrator reviews the referral. If it is accepted, the administrator creates an "event." The event file includes some of the information from the referral, but not the detailed description. Key information from the event file is uploaded into TERMS, which also includes codes indicating the actions that were taken, such as parent contact, referral to the intervention assistance team, or number and type of suspension days assigned.

In cases of suspension, however, it is not uncommon for the type or amount to be changed following a conference with the parent and/or student. When the specific circumstances and mitigating factors are considered, a decision may be made that the needs of the student and the intent of the consequence can best be achieved with fewer days, or with assignment to an alternative to suspension site or to in-school-suspension rather than basic OSS. When this happens, the revised number of days and/or type of suspension assigned may be documented in notes in the student file but not recorded in TERMS. As a result, the number of "referrals" in DMS do not always equal the number of disciplinary "events" for which action is taken, and the actual actions taken may be somewhat different than what was recorded in TERMS. For the purpose of this review, we did not encounter any discrepancies that significantly impacted our analyses.

Utilizing the available resources, the review comprised the activities listed below. Interviews were conducted March 21-23 and April 11-13, 2018.

Review and analysis of the student's educational record

- [REDACTED]
- Thirty-four (34) interviews with administrators, ESE specialists, and the student’s teachers from school programs the student attended during the 2013-14 through 2017-18 school years:

[REDACTED]

- Nine (9) interviews with district ESE administrators and staff responsible for overseeing and/or supporting areas such as emotional/behavior disorders, ESE secondary programs, school counseling/guidance, psychological services, and ESE compliance
- Review of supporting district documents (e.g., Threat Assessment Procedures Manual; informational materials from the PROMISE (Preventing Recidivism through Opportunities, Mentoring, Interventions, Supports & Education) program)

### **III. Legal Requirements for Exceptional Student Education**

In general, public education programs are governed by state requirements (e.g., required content area standards; minimum graduation requirements; participation in the state assessment system; minimum hours of instruction required to earn high school credits), with local school boards given the authority to exercise discretion in areas that are not explicitly addressed through statute. In support of local control, districts also generally allow for flexibility at the school level, enabling school-based administrators to implement practices and programs that meet the needs of their individual schools.

Unlike general education, special education programs for students with disabilities are governed by an extensive collection of federal and state laws and regulations that include very detailed expectations and actions required for implementation. Specifically, the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at Title 34 of the Code of Federal Regulations (CFR) prescribe the procedural and substantive requirements school districts must follow to ensure that students with disabilities “have available to them a free appropriate public education that emphasizes special and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”<sup>1</sup> In Florida, special education is referred to as exceptional student education, or ESE. The terms are used interchangeably throughout this report. The corresponding state requirements for ESE are found in sections 1003.57 – 1003.5716, Florida Statutes (F.S.), and Chapter 6A-6 of the Florida Administrative Code (F.A.C.).

In addition, district school boards must submit their policies and procedures for implementing special education programs (commonly referred to as the SP&P) to the Florida Department of Education (FLDOE) for review and approval. BCPS also provides more detailed information on district procedures to IEP team members and other frontline staff through technical assistance documents and operational guides.

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<sup>1</sup> 34 CFR §300.1

Lastly, both the U.S. Department of Education, Office of Special Education Programs (OSEP) and the FLDOE support district implementation of special education programs through dissemination of non-regulatory guidance and technical assistance documents. OSEP also periodically disseminates policy letters to provide information, guidance and clarification regarding implementation of IDEA through two types of issuances: OSEP Memos and Dear Colleague Letters. These resources, while not purporting to reflect legal requirements, are useful benchmarking tools for comparing district processes and procedures to those intended or expected by applicable governing agencies (i.e., FLDOE at the state level; OSEP at the federal level).

In conducting this review, the authors identified those requirements at the core of exceptional student education that are most relevant and significant to this student's educational experience and historical record. Some are procedural in nature, focusing on specific clearly defined processes that must be followed in a given situation. Others are more substantive in nature, intended to ensure that reasonable and appropriate special education and related services are provided to meet each student's unique needs.

To provide context for the information presented under Section V., Review of Educational Services, the most significant aspects of these components are summarized below.

More detailed information regarding the statutes and regulations used as sources of authority in this report are provided in Appendix A.

### **Free Appropriate Public Education**

Beginning at age three, the school district must make a free appropriate public education, commonly referred to as FAPE, available to all students with disabilities who live within its boundaries.<sup>2</sup> FAPE means special education and related services provided in accordance with an individualized educational plan (IEP) and at no cost to the parent.<sup>3</sup>

### **Child Find**

State and district obligations regarding referral, evaluation, and eligibility determinations for students suspected of having a disability are referred to as the child find mandate. IDEA requires school districts to identify and evaluate children who may have disabilities and need special education and related services.<sup>4</sup> Children with disabilities from birth through age 21 are covered under this requirement. Activities required as part of a district's child find obligation include:

- general education interventions and referral for initial evaluation; and
- a comprehensive initial evaluation to determine eligibility for ESE services and periodic (at least triennial) reevaluation process to determine continued eligibility and assess current educational needs.

### ***General Education Interventions and Referral for Evaluation***

To ensure that students who may need ESE services are identified, Florida's school districts must develop and implement coordinated general education intervention procedures for students who

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<sup>2</sup> 34 CFR §300.101

<sup>3</sup> 34 CFR §300.17

<sup>4</sup> 34 CFR §300.111

need additional academic and behavioral support to succeed in the general education environment. This is accomplished through a multi-tiered system of supports (MTSS) that integrates data-based problem solving and systematic monitoring of students' response to intervention and/or instruction (RtI) data. Each district's MTSS framework provides a continuum of academic and behavioral interventions for all students who need additional support to succeed in the general education environment.<sup>5</sup>

Either the parent or the school district can initiate a referral for evaluation. With a few stated exceptions, prior to referring a student for evaluation the district must implement evidence-based interventions. The school district must seek parental consent for initial evaluation whenever it suspects a student may be a student with a disability. Examples include:

- when a school-based team determines the student's RtI data indicate the interventions are effective but require a level of intensity beyond that available through general education;
- when a school-based team determines the student's RtI data indicate the interventions are effective but the student is not making sufficient progress;
- when a developmental screening indicates a prekindergarten-age child may have a disability; and
- when a parent requests an evaluation and there is evidence the student may have a disability and need ESE services.<sup>6</sup>

Within 30 days of one of these circumstances, the district must request parental consent to conduct an evaluation or provide the parent with written notice explaining its refusal to conduct the evaluation.<sup>7,8</sup>

### ***Initial Evaluation and Reevaluation***

The school district must conduct a full and individual initial evaluation before the initial provision of ESE services to a student with a disability.<sup>9</sup> Informed consent must be obtained from the parent (or adult student) before conducting the evaluation. This consent for evaluation is not to be construed as consent for the provision of ESE services.

The initial evaluation team that comprises a group of qualified professionals. Once a student is eligible for ESE services, the IEP team is responsible for the periodic reevaluation process. As part of any initial evaluation or reevaluation, the IEP team and other qualified professionals, as appropriate, review existing data on the student and determine what additional data are needed to determine if the student has a disability and the educational needs of the student.

Specific evaluation and reevaluation requirements and the eligibility criteria for each category of disability are found in the applicable State Board of Education rules. Rule 6A-6.03016, F.A.C., Exceptional Student Education Eligibility for Students with Emotional/Behavioral Disabilities is provided in the Appendix.

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<sup>5</sup> Rule 6A-6.0331(1), F.A.C.

<sup>6</sup> Rule 6A-6.0331(3)(a), F.A.C.

<sup>7</sup> Rule 6A-6.0331(3)(b), F.A.C.

<sup>8</sup> Rule 6A-6.0331(3)(c), F.A.C.

<sup>9</sup> 34 CFR §300.301

## **Least Restrictive Environment and Continuum of Services**

To the maximum extent appropriate, students with disabilities must be educated with students who are not disabled.<sup>10</sup> The least restrictive environment (LRE) is the placement in which an individual student can be taught and make progress in the general education curriculum to the maximum extent possible with students without disabilities. Removal from the general educational environment may occur only when the nature or severity of the student's disability is such that education in regular classes cannot be achieved satisfactorily, even with the use of supplementary aids and services. Unless the IEP requires otherwise, the student should be placed in the school he or she would attend if nondisabled.<sup>11</sup>

School districts must ensure that a full continuum of educational placements is available to meet the needs of its students. Placements include the following, presented from least to most restrictive:<sup>12, 13</sup>

- Regular class placement (i.e., the student spends 80 percent or more of the school week in a general education class with nondisabled peers)
- Resource room placement (i.e., the student spends between 40 percent to 80 percent of the school week in a general education class with nondisabled peers and is pulled out to an ESE setting for the remainder of the time)
- Self-contained or separate class placement on a traditional school campus (i.e., the student spends less than 40 percent of the school day in a general education class with nondisabled peer, and is served for most or all of the school day in ESE setting)
- ESE center or special day school attended only by students with disabilities
- Separate private school, residential facility, or hospital or homebound program

Although each individual school does not have to offer a full continuum of services and placements, within the district as whole the available options must be sufficient to meet the needs of all students with disabilities.

## **Individual Educational Plan (IEP)**

Before a student with a disability can receive ESE services, a written plan describing the student's needs and the services that will be provided must be developed. The phrase "individualized education program" is found in IDEA while Florida statute and rule refer to an "individual educational plan." The terms are synonymous.

### ***IEP Team and Parent Participation***

At a minimum, the IEP team must include:

- the parents;
- at least one general education teacher of the student;
- at least one special education teacher of the student;

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<sup>10</sup> 34 CFR §300.114

<sup>11</sup> 34 CFR §300.116

<sup>12</sup> 34 CFR §300.115

<sup>13</sup> Section 1003.57, F.S.

- a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the district;
- an individual who can interpret the instructional implications of evaluation results;
- other individuals who have knowledge or special expertise regarding the student; and
- the student with a disability (when appropriate).<sup>14</sup>

The parent must be invited and encouraged to participate in any IEP team meeting,<sup>15</sup> as well as any other meetings in which the student’s ESE program or placement is discussed,<sup>16</sup> and the parent’s concerns for enhancing the education of their child must be considered when developing the IEP.<sup>17</sup>

### ***Special Considerations***

In addition to incorporating the parent’s concerns into the IEP, the IEP team must consider a series of special factors when developing an IEP and, when applicable, address them in the student’s IEP.<sup>18</sup> For the student in question, the relevant requirements are:

- If a student’s behavior impedes his or learning or that of others, the team must consider the use of positive behavioral interventions or supports and other strategies to address the behavior. This may be accomplished through a behavior intervention plan or through annual goals or short-term objectives or benchmarks and services included in the IEP to address the student’s behavior.
- The team must consider the student’s communication needs.

### ***Present Levels Statement***

The IEP must include a statement of the student’s present levels of academic achievement and functional performance, including how the disability affects the student’s involvement and progress in the general curriculum.<sup>19</sup> Providing the “baseline” from which to measure student progress, the information in the present level statement is used to inform decisions regarding the remainder of the IEP.

Florida historically has utilized a “domain” model for documenting student’s strengths and needs in the IEP. Although not required, districts often utilize these categories when writing present level statements. Throughout Section V. Review of Educational Services, the reader will see references to five domains: curriculum and learning, independent functioning, social/emotional behavior, health, and communication. In addition, for older students the present level information often is presented based on secondary transition areas such as employment and community experience.

### ***Annual Goals***

Once the student’s needs are identified in the present level statement, annual goals are developed to describe what the student will be expected to do or learn within a year. Academic and

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<sup>14</sup> 34 CFR §300.321(a)

<sup>15</sup> 34 CFR §300.322

<sup>16</sup> 34 CFR §300.501(b)

<sup>17</sup> 34 CFR §300.324(a)(1)

<sup>18</sup> 34 CFR §300.324(a)(2)

<sup>19</sup> 34 CFR §300.320(a)(1)

functional goals focus on the learning and behavioral problems resulting from the student's disability and should be aligned with state and district performance standards. The annual goals and short-term objectives or benchmarks provide a mechanism for determining whether the student is progressing in the ESE program and the general education curriculum, and whether the placement and services are appropriate. Goals must be measurable and describe what the student is reasonably expected to accomplish within duration of the IEP.<sup>20</sup>

### ***ESE Services***

The IEP must include a statement of the special education and related services and supplementary aids and services to be provided to or on behalf of the student, and a statement of any program modifications or supports for school personnel that will be provided to enable the student to:

- advance appropriately toward attaining the annual goals;
- be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities; and
- be educated and participate with other students with disabilities and nondisabled students.<sup>21</sup>

The specific type and amount of ESE services the student will receive are based on the student's present levels and annual goals.

### ***Student Progress and Annual Review***

School districts must offer an IEP that is reasonably calculated to enable the student to make progress that is appropriate given his or her specific circumstances. Progress toward the annual goals must be reported to parents periodically during the duration of the IEP. The IEP team must convene at least annually and review the IEP to determine whether the annual goals are being achieved. If the meeting is held at or near the duration date of the IEP, a new IEP referred to as an "annual review" is developed. If a meeting is held in the interim, the IEP can be amended until an annual review meeting is held. The IEP may be revised as appropriate to address any lack of expected progress, the results of reevaluation, or information provided by the parents.<sup>22</sup>

### **Discipline and Manifestation Determination Reviews**

In most cases, students with disabilities are subject to the same disciplinary procedures as nondisabled students. There are exceptions, however, such as when a suspension is considered a change in placement under IDEA. A change of placement occurs when a suspension is for more than 10 consecutive school days or when the student has been subjected to a series of removals that constitutes a pattern because the removals:

- cumulate to more than 10 school days in a school year;
- because the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
- because of additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

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<sup>20</sup> 34 CFR §300.320(a)(2)

<sup>21</sup> 34 CFR §300.320(a)(4)

<sup>22</sup> 34 CFR §300.324(b)

The three basic types of suspension implemented in BCPS are in-school-suspension (ISS), also referred to as internal suspension, out-of-school suspension (OSS), also referred to as external suspension, and alternative to external suspension (AES). Students with disabilities who are suspended must continue to receive educational services sufficient to enable them to progress toward meeting the goals in their IEPs.<sup>23</sup> Assignment to AES in lieu of OSS is often used as a means of providing those educational services when ISS is not sufficiently stringent. Unlike traditional out-of-school suspension in which students are simply sent home, often unattended, ISS and AES provide the opportunity for educational benefit within a supervised setting and may be used to meet the disciplinary protections required by IDEA. When FAPE is provided through the AES, transportation to the site is made available and, depending upon the specific circumstances, the days of suspension may not count toward the change of placement threshold described above.

Before a student with an IEP can be suspended for a period of time that reflects a change in placement, a meeting must be held to determine if the behavior that led to the disciplinary referral is directly related to the disability or the result of the district's failure to implement the student's IEP. If the answer to either of those questions is yes, the student cannot be suspended and must be returned to the current placement.<sup>24</sup> An exception is made if the violation involves weapons, drugs, or serious bodily injury, in which case the student can be removed to an alternative setting for up to 45 days.<sup>25</sup>

If the behavior is found not to be a manifestation of the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied in the same manner and for the same duration in which they would be applied to students without disabilities, except that some amount of ESE services must be provided to enable the student to continue to progress toward the goals on the IEP.

While IDEA and Florida rules state that the school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement that would require a manifestation determination,<sup>26, 27</sup> the Parent Participation Form used by BCPS to invite parents to IEP team meetings states that a manifestation determination is "required after 10 cumulative school days of suspension." whether or not a pattern of removals indicates the suspension would be considered a change of placement.

### **Functional Behavioral Assessment and Behavior Intervention Plan**

A functional behavioral assessment (FBA) is a process for identifying and clearly defining a specific problem behavior (what the student does), the purpose of the behavior (why the student does it), and what factors maintain the behavior that is interfering with the student's educational progress.

The results of a FBA are used to develop a behavior intervention plan (BIP) designed to teach positive replacement behaviors and decrease inappropriate behaviors. A BIP generally provides a

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<sup>23</sup> Rule 6A-6.03312(5)(a), F.A.C.

<sup>24</sup> 34 CFR §300.530(e)

<sup>25</sup> 34 CFR §300.530(g)

<sup>26</sup> 34 CFR §300.530

<sup>27</sup> Rule 6A-6.03312(1)(a), F.A.C.

description of the problem behavior, hypotheses as to why the behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior.

Although recommended whenever a student exhibits a pattern of challenging behavior, a functional behavioral assessment (FBA) and a positive behavior intervention plan (PBIP) based on the FBA are specifically required in two circumstances:

- as part of any evaluation to determine if a student is eligible for ESE services as a student with an emotional/behavioral disability (E/BD)<sup>28</sup>; and
- whenever a manifestation determination review reveals that a student's behavior is a manifestation of the disability.<sup>29</sup>

As noted above in the description of *IEP Special Considerations*, when a student's behavior impedes his or learning or that of others, the IEP team must consider the use of positive behavioral interventions or supports and other strategies to address the behavior. The student's social/emotional and behavioral needs may be met through annual goals or short-term objectives or benchmarks and services included in the IEP itself or through a separate behavior intervention plan.

### **Procedural Safeguards**

IDEA provides parents with specific rights and procedural safeguards regarding special education.<sup>30</sup> They afford guarantees for students with disabilities and their parents and provide mechanisms for districts and families to resolve disagreements. Examples are described below, and include but are not limited to:

- prior written notice;
- Informed consent for:
  - ✓ initial evaluation or reevaluation to determine ESE eligibility,
  - ✓ initial provision of ESE services, and
  - ✓ student placement in an ESE center school;<sup>31</sup>
- revocation of consent; and
- disciplinary protections.

At the age of majority, these rights transfer to the adult student, who now has the right and responsibility to make certain legal choices; in Florida that occurs when the student turns 18. This includes the right to make educational decisions that the parents made until this time. The rights automatically transfer at the age of majority unless the student with a disability has been determined incompetent under state law or has a guardian advocate appointed to make educational decisions.

It is important to note that the subject of this review turned 18 on September 24, 2016, so all of the rights previously granted to his mother were transferred to him on that day.

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<sup>28</sup> Rule 6A-6.03016(3)(a), F.A.C.

<sup>29</sup> 34 CFR §300.530(f)

<sup>30</sup> 34 CFR §300.504

<sup>31</sup> Section 1003.5715, F.S.

### ***Prior Written Notice***

The school district must give parents a written notice whenever it proposes or refuses to begin or change a student's identification, evaluation, or educational placement or the provision of a free appropriate public education to the student.<sup>32</sup> Among other things, the notice must include a description of what the district is proposing or refusing to do, why it is proposing or refusing the action, any other options that were considered, and why those other options were rejected.<sup>33</sup>

Situations in which prior written notice is required include referral for evaluation or reevaluation; changing the student's placement (e.g., resource placement to regular class placement; separate class placement on a traditional school campus to placement in an ESE center school); or a significant change in the nature or amount of special education and related services the student receives (e.g., discontinuing language therapy; increasing counseling from 30 minutes per month to 60 minutes per week).

### ***Informed Consent***

Parental consent related to exceptional student education must be "informed"; therefore, the following requirements apply:

- The parent must be given all information relevant to the action for which consent is sought, in his or her native language or through another mode of communication.
- The parent understands and agrees in writing to the action for which consent is sought.
- The parent or legal guardian understands that granting consent is voluntary on the part of the parent or legal guardian and may be revoked at any time.
- If a parent or legal guardian revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).<sup>34</sup>

In accordance with IDEA, parental consent is required for the following actions:<sup>35</sup>

- Consent must be obtained prior to conducting an initial evaluation. If the parent fails to provide consent or does not respond to the district's written requests, the district **may, but is not required to**, pursue an initial evaluation through mediation or due process procedures. Consent for initial evaluation must not be construed as consent for services.
- Consent must be sought prior to conducting a reevaluation. If the parent does not respond after multiple attempts, the district may proceed with the reevaluation. However, if the parent refuses consent, the district **may, but is not required to**, pursue the reevaluation through mediation or due process procedures.
- Consent for the initial provision of ESE services must be obtained prior to initiating the IEP. If the parent fails to respond or refuses to consent to the initial provision of ESE, the school district **may not** use mediation or due process hearing procedures in order to obtain agreement or a ruling to allow the services.

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<sup>32</sup> 34 CFR §300.503(a)

<sup>33</sup> 34 CFR §300.503(b)

<sup>34</sup> 34 CFR §300.9

<sup>35</sup> 34 CFR §300.300

In addition to the IDEA requirements state above, Florida requires parental consent for the following actions:

- provision of instruction in the state standards access points curriculum and administration of an alternate assessment; and
- placement of a student in an ESE center school.

The school district may not implement these actions without written consent of the parent, or adult student whose rights have transferred, unless it documents reasonable efforts to obtain the consent and the parent or adult student has failed to respond, or the school district obtains approval through a due process hearing.<sup>36</sup>

### ***Revocation of Consent***

Consent for an action not yet taken can be revoked at any time. This means that the parent or adult student can revoke consent for any further services and remove the student from the ESE program. They cannot revoke consent for some services and retain others – the revocation applies to all services provided through the IEP.

The revocation request must be in writing. When consent is revoked, the district may not continue to provide the services on the IEP and must give prior written notice before ceasing the services.

As with consent for the initial provision of ESE services, when a parent revokes consent the district **may not** use mediation or due process procedures to obtain agreement or a ruling that the services may be provided.

## **V. Review of NC’s Educational Services**

Information gleaned through interviews, student records, and supporting documents was analyzed to assess the extent to which BCPS followed federal and state laws and regulations, local district policies and procedures, and non-regulatory agency guidance in its provision of educational services to NC.

To develop a full and logical understanding of the student’s educational experience in BCPS, a chronological approach was used to analyze the data. Results are summarized for the following time periods:

- Prekindergarten – Ages 3 through 5
- Elementary School – Kindergarten through Grade 5
- Middle School – Grades 6 through 8
- High School – Grades 9 through 12

Information regarding the student’s educational progression, including actions taken by the district, parent, or student, are described. Discussion focuses on the educational components outlined in Section IV. ESE Implementation and the extent to which the district’s actions or responses were in alignment with regulations and expectations.

A summary of the student’s enrollment history is provided as Attachment B.

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<sup>36</sup> Section 1003.5715, F.S.

[REDACTED]

As described in Section III, Legal Requirements for Exceptional Student Education, a manifestation determination must be conducted when an external suspension is for more than 10 consecutive school days or when a student is subjected to a series of removals that cumulates to more than ten days in a school year. However, if the student continues to receive educational services that provide FAPE, days of suspension may not count toward the threshold of more than ten days.

[REDACTED]

[REDACTED]

[REDACTED]

The purpose of an FBA is to identify the function or purpose that a behavior serves for a student so that appropriate interventions can be developed. An intervention is most likely to be effective if it fosters positive behaviors that serve the same purpose for the student as the problem behavior. Intervention strategies may include effective prevention, remediation, or the development of alternative behaviors (replacement behaviors).

[REDACTED]

[REDACTED] . It is not uncommon for students this age to test limits and engage in more challenging behavior. A recent BCPS report on discipline rates demonstrates this pattern, with the percentage of students overall receiving referrals for disruptive behavior in 2016-17 increasing from 3.7% in elementary school to 12% in middle school, and then dropping to 7.2% in high school. Similarly, the percentage for acts against persons increased from 1.7% in elementary school to 6.2% in middle school, then dropping to 2.5% in high school.<sup>37</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>37</sup> [http://www.broward.k12.fl.us/sar/releases/briefs/Incidents\\_Suspensions2017.pdf](http://www.broward.k12.fl.us/sar/releases/briefs/Incidents_Suspensions2017.pdf)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

[Redacted text]

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<sup>38</sup> ([http://bcps-mentalhealth.com/downloads/Threat\\_Assessment\\_Manual\\_Update\\_2017.pdf](http://bcps-mentalhealth.com/downloads/Threat_Assessment_Manual_Update_2017.pdf))

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>39</sup> Section 394.463, F.S.

[REDACTED]



[REDACTED]

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[REDACTED]

## **VI. Recommendations**

[REDACTED]

Throughout this time period, available evidence indicates that, with isolated exceptions, the district adhered to procedural and substantive requirements when implementing this student's exceptional education program. Two specific instances were identified, however, in which the IEP team or other ESE staff did not follow the requirements of Florida statute or IDEA. The first involved Florida's requirement that informed consent be obtained from a parent (or adult student) prior to placement in a center school. The second involved the district's response when the student requested reinstatement of ESE services after having revoked consent several months earlier. The following recommendations are proposed to address those specific circumstances.

1. Review, and revise as needed, the focus of staff development regarding the placement of students in ESE center schools to incorporate training and practice in facilitating emotionally charged meetings and ensure staff have a complete understanding of the requirements as they apply to all possible scenarios.

2. Review, and revise as needed, policies, procedures, and staff development to ensure students enrolled in OCLC sites who are suspected of having a disability and needing special education services are referred and evaluated within established timelines.

During the course of this review the evaluators identified factors and/or current practices that would benefit from further consideration. The following are suggestions for improving or enhancing current systems to make them more effective or, looking forward, to positively influence potential outcomes for students who experience some of the same circumstances as NC.

3. Review and revise current training and guidance regarding revocation of consent, with attention to less common situations such as when:
  - an adult student revokes consent for their own services against advice of the parent and continued informal contact with designated school staff could result in the student's decision to reestablish services;
  - a student is known to have social/emotional or behavioral needs and therefore, as a general education student, should have access to the counseling and mental health services available to all students through the district's multi-tiered system of supports; or
  - a parent or adult student orally states their desire to revoke consent but does not submit the request in writing as required, so that staff remain neutral and are able to act without either promoting or hindering the revocation.
4. Review and revise procedures and current guidance documents regarding reentry into ESE after consent has been revoked to more explicitly consider situations such when:
  - there is a history of supporting data indicating that the student has been a high-needs ESE student;
  - IEP team members strongly disagreed with the decision to revoke consent based on the data available at the time of revocation; or
  - there is substantial evidence indicating the student needs ESE services and no recent evidence from the general education record indicating the student no longer has a disability and needs special education services.
5. Review existing data systems to identify redundancies and inefficiencies and determine the most effective way to integrate multiple systems, maximizing accuracy and shareability across users.
6. Establish a protocol for reviewing the records of students transferring to alternative education programs to include discipline and ESE records in addition to course and credit information. The process must be designed to prohibit potentially discriminatory practices while ensuring the receiving program has the educational information needed to provide effective and appropriate placements and services.
7. Establish a protocol for communicating with all relevant staff in a receiving school or program when a student with social/emotional or behavioral needs transitions from an ESE center school or ESE separate class setting in a traditional school building to a less restrictive general education setting. In addition to the annual goals and positive behavioral supports included within an IEP, a behavior intervention plan or similar document that more explicitly

details the actions to be taken in response to student behavior and includes a formal system for monitoring and/or tracking student performance should be considered for transitioning students.

- 8.** Develop an audit process to be implemented for all records that pertain to discipline and safety, including but not limited to consequences and interventions imposed in response to disciplinary infractions and threat assessments. The purpose of the process is three-fold: (1) to determine the extent to which the actions proposed are implemented as stated in the relevant documentation; (2) identify and correct flaws in communication systems that may impede implementation; and (3) hold accountable the staff members responsible for implementation.

## **Appendix A. Selected Laws and Regulations**

Selected federal regulations and State Board of Education (SBE) rules implementing the Individuals with Disabilities Education Act are provided below, either in whole or as excerpts of the most significant components that contribute to the provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE). The contents are by no means exhaustive, but they represent key aspects of the law that are most relevant for this student and this review. In addition, Section 394.463, Florida Statutes, related to Florida's Baker Act is provided as a reference.

### **IDEA Implementing Regulations – Selected Components**

#### **Least Restrictive Environment**

The first set of regulations addresses important requirements governing the circumstances under which a student can be removed from the general education classroom and still receive FAPE.

#### **34 CFR §300.114 LRE requirements.**

*(a) General.*

*(1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.*

*(2) Each public agency must ensure that—*

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and*
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

*(b) Additional requirement—State funding mechanism—*

*(1) General.*

- (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and*
- (ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.*

*(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.*

#### **34 CFR §300.115 Continuum of alternative placements.**

*(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.*

*(b) The continuum required in paragraph (a) of this section must—*

*(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and*

*(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.*

### **34 CFR §300.116 Placements.**

*In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—*

*(a) The placement decision—*

*(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*

*(2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;*

*(b) The child's placement—*

*(1) Is determined at least annually;*

*(2) Is based on the child's IEP; and*

*(3) Is as close as possible to the child's home;*

*(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;*

*(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and*

*(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.*

### **Procedural Safeguards and Parent Participation**

The next set of federal regulations addresses significant procedural safeguards related to parental consent, the parent's role as an important member of the IEP team, and the transfer of rights at the age of majority

### **34 CFR §300.9 Consent.**

*Consent means that—*

*(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;*

*(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and*

*(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.*

*(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).*

*(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.*

### **34 CFR §300.300 Parental consent.**

#### *(a) Parental consent for initial evaluation.*

*(1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation.*

*(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.*

*(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.*

*(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—*

*(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;*

*(ii) The rights of the parents of the child have been terminated in accordance with State law; or*

*(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.*

*(3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.*

*(ii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.*

#### *(b) Parental consent for services.*

*(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.*

*(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.*

*(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—*

*(i) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;*

*(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and*

*(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child.*

*(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—*

*(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;*

*(ii) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;*

*(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and*

*(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services.*

*(c) Parental consent for reevaluations.*

*(1) Subject to paragraph (c)(2) of this section, each public agency—*

*(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.*

*(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.*

*(iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.*

*(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—*

*(i) It made reasonable efforts to obtain such consent; and*

*(ii) The child's parent has failed to respond.*

*(d) Other consent requirements.*

*(1) Parental consent is not required before—*

*(i) Reviewing existing data as part of an evaluation or a reevaluation; or*

*(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.*

*(2) In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.*

*(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c), or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.*

*(4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and*

*(ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.*

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

### **34 CFR §300.501 Opportunity to examine records; parent participation in meetings.**

(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(b) Parent participation in meetings.

(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.

(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

### **34 CFR §300.520 Transfer of parental rights at age of majority.**

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and

(ii) All rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

*(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.*

*(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.*

## **Disciplinary Protections for Students with Disabilities**

The last set of federal regulations provided here addresses the disciplinary protections that are applied to ensure students with disabilities are not denied FAPE, even when out-of-school suspension is imposed due to a behavioral violation.

### **34 CFR §300.530 Authority of school personnel.**

*(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.*

*(b) General.*

*(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).*

*(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.*

*(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.*

*(d) Services.*

*(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—*

- (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and*
- (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.*

(2) *The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.*

(3) *A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.*

(4) *After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.*

(5) *If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.*

(e) *Manifestation determination.*

(1) *Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—*

(i) *If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or*

(ii) *If the conduct in question was the direct result of the LEA's failure to implement the IEP.*

(2) *The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.*

(3) *If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.*

(f) *Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—*

(1) *Either—*

(i) *Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or*

(ii) *If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and*

(2) *Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.*

(g) *Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—*

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### **Florida State Board of Education – Selected Administrative Rules**

The full text of two rules is provided here. The first, *Rule 6A-6.0331, Florida Administrative Code (F.A.C.)*, delineates the requirements related to referral, evaluation, and eligibility determinations for exceptional student education programs in general. It also addresses the consent requirements students to receive ESE services, including the right to revoke that consent.

The second, *Rule 6A-6.03016, F.A.C.*, provides a definition for emotional/behavioral disability (E/BD) and describes the required evaluation procedures and criteria for determining if a student is eligible for ESE services under this program.

#### ***Rule 6A-6.0331, Florida Administrative Code (F.A.C.) General Education Intervention Procedures, Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services.***

*The state’s goal is to provide full educational opportunity and a free appropriate public education (FAPE) to all students with disabilities ages three (3) through twenty-one (21) and to students who are gifted in grades kindergarten through 12. School districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures. They must ensure that all students with disabilities or who are gifted and who are in need of exceptional student education (ESE) as defined in paragraph 6A-6.03411(1)(n), F.A.C., are identified, located, and evaluated, and FAPE is made available to them if it is determined that the student meets the eligibility criteria specified in Rules 6A-6.03011, 6A-6.03012, 6A-6.030121, 6A-6.03013, 6A-6.03014, 6A-6.030151, 6A-6.030152, 6A-6.030153, 6A-6.03016, 6A-6.03018, 6A-6.03019, 6A-6.03020, 6A-6.03022, 6A-6.03023,*

*paragraph 6A-6.03026(1)(b) and Rule 6A-6.03027, F.A.C. ESE includes specially designed instruction as defined in paragraph 6A-6.03411(1)(jj), F.A.C.; special education as defined in paragraph 6A-6.03411(1)(kk), F.A.C.; and related services as defined in paragraph 6A-6.03411(1)(dd), F.A.C. These requirements apply to all students, including those who are homeless or are wards of the state or who attend private schools, regardless of the severity of their disability. Additionally, school districts may elect to serve children with disabilities below the age of three (3) years in collaboration with the Part C Early Steps Program. The procedures and criteria for general education interventions, identification, evaluation, and determination of eligibility of students with disabilities and gifted students by school districts shall be set forth in the school district's ESE Policies and Procedures document consistent with the following requirements.*

*(1) General education intervention procedures for kindergarten through grade twelve (12) students suspected of having a disability who are enrolled in public schools. It is the local school district's responsibility to develop and implement a multi-tiered system of support which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment. In implementing a data-based problem solving process designed to develop, implement and evaluate a coordinated continuum of evidence-based instruction and intervention practices, a school district may carry out problem solving activities that include the provision of educational and behavioral evaluations, services, and supports, including evidence-based literacy instruction and professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral interventions and, where appropriate, instruction on the use of adaptive and instructional technology. The general education intervention requirements set forth in paragraphs (a) through (e) of this subsection are not required of students suspected of being gifted or who are being considered for eligibility in accordance with Rule 6A-6.03020, F.A.C., for special education and related services for students who are homebound or hospitalized. The general education interventions requirements set forth in paragraphs (a), (b) and (e) of this subsection may not be required for students suspected of having a disability if a team that comprises qualified professionals and the parent determines that these general education interventions are not appropriate for a student who demonstrates a speech disorder or severe cognitive, physical or sensory disorders, or severe social/behavioral deficits that require immediate intensive intervention to prevent harm to the student or others.*

*(a) Parent involvement in general education intervention procedures. Opportunities for parents to be involved in a data-based problem solving process to address the student's areas of concern must be made available. In addition, there must be discussion with the parent regarding the data used to identify the problem and monitor student progress, the student's response to instruction and interventions, modification of the interventions, and anticipated future action to address the student's learning and/or behavioral needs. Documentation of parental involvement and communication must be maintained.*

*(b) Observations of the student must be conducted in the educational environment and, as appropriate, other settings to document the student's learning or behavioral areas of concern. At least one (1) observation must include an observation of the student's performance in the general classroom.*

*(c) Review of existing data, including anecdotal, social, psychological, medical, and achievement (including classroom, district and state assessments) shall be conducted. Attendance data shall be reviewed and used as one indicator of a student's access to instruction.*

*(d) Vision and hearing screenings shall be conducted for the purpose of ruling out sensory deficits that may interfere with the student's academic and behavioral progress, and additional screenings or assessments to assist in determining interventions may be conducted, as appropriate. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.*

*(e) Evidence-based interventions addressing the identified areas of concern must be implemented in the general education environment. The interventions selected for implementation should be developed by a team through a data-based problem solving process that uses student performance data to identify and analyze the area(s) of concern, select and implement interventions, and monitor the effectiveness of the interventions. Interventions shall be implemented as designed for a period of time sufficient to determine effectiveness, and with a level of intensity that matches the student's needs. Pre-intervention and ongoing progress monitoring measures of academic and/or behavioral areas of concern must be collected and communicated to the parents in an understandable format, which may include, but is not limited to, graphic representation.*

*(f) Nothing in this section should be construed to either limit or create a right to FAPE under Rules 6A-6.03011-.0361, F.A.C., or to delay appropriate evaluation of a student suspected of having a disability.*

*(g) A school district may not use more than fifteen (15) percent of the amount it receives under Part B of the IDEA for any fiscal year to develop and implement a coordinated continuum of evidence-based general education interventions for students in kindergarten through grade twelve (12) who are not currently identified as needing special education and related services but who need additional support to succeed in the general education environment. Funds made available to carry out this paragraph may be used to carry out general education intervention procedures aligned with activities funded by and carried out under the Elementary and Secondary Education Act (ESEA), if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this paragraph. For IDEA Part B funds used in this way, the school district must annually report to the Florida Department of Education on the number of students served under this paragraph who received general education interventions and the number of students who received such services and subsequently receive special education and related services under Part B of the IDEA during the preceding two (2) year period.*

*(2) Procedures prior to initial evaluation for prekindergarten children. For children who are below mandatory school attendance age and who are not yet enrolled in kindergarten, the activities specified in subsection (1) of this rule are not required. The following requirements apply to this population:*

*(a) Existing social, psychological, and medical data shall be reviewed, with referral for a health screening when the need is indicated; and,*

*(b) Vision and hearing screenings shall be conducted for the purpose of ruling out sensory deficits. Additional screenings to assist in determining interventions may be conducted as appropriate.*

*(3) Initial evaluation. Each school district must conduct a full and individual initial evaluation before the initial provision of ESE. Either a parent of a kindergarten through grade 12 student or child age three (3) to kindergarten entry age, or a school district may initiate a request for initial evaluation to determine if the student is a student with a disability. Either a*

*parent of a kindergarten through grade 12 student or a school district may initiate a request for initial evaluation to determine if a student is gifted.*

*(a) The school district must seek consent from the parent or guardian to conduct an evaluation whenever the district suspects that a kindergarten through grade 12 student, or a child age three (3) to kindergarten entry age, is a student with a disability and needs special education and related services. Circumstances which would indicate that a student may be a student with a disability who needs special education and related services include, but are not limited to, the following:*

*1. When a school-based team determines that the kindergarten through grade 12 student's response to intervention data indicate that intensive interventions implemented in accordance with subsection (1) of this rule are effective but require a level of intensity and resources to sustain growth or performance that is beyond that which is accessible through general education resources; or*

*2. When a school-based team determines that the kindergarten through grade 12 student's response to interventions implemented in accordance with subsection (1) of this rule indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions; or*

*3. When a child age three (3) to kindergarten entry age receives a developmental screening through the school district or the Florida Diagnostic and Learning Resource Center and based on the results of the screening it is suspected that the child may be a child with a disability in need of special education and related services; or*

*4. When a parent requests an evaluation and there is documentation or evidence that the kindergarten through grade 12 student or child age three (3) to kindergarten entry age who is enrolled in a school district operated preschool program may be a student with a disability and needs special education and related services.*

*(b) Within thirty (30) days of a determination that a circumstance described in subparagraphs (3)(a)1., (3)(a) 2. or (3)(a)3., of this rule exists for a student in grades kindergarten through grade 12 or a child age three (3) to kindergarten entry age, the school district must request consent from the parent to conduct an evaluation, unless the parent and the school agree otherwise in writing.*

*(c) As described in subparagraph (3)(a)4. of this rule, if a parent requests that the school conduct an evaluation to determine whether their child is a child with a disability in need of special education and related services, the school district must within thirty (30) days, unless the parent and the school agree otherwise in writing:*

*1. Obtain consent for the evaluation; or*

*2. Provide the parent with written notice in accordance with Rule 6A-6.03311, F.A.C., explaining its refusal to conduct the evaluation.*

*(d) Prior to a school district request for initial evaluation of a student in grades K through 12 suspected of having a disability, school personnel must make one (1) of the following determinations and include appropriate documentation in the student's educational record to the effect that:*

*1. The general education intervention procedures have been implemented as required under this rule and the data indicate that the student may be a student with a disability who needs special education and related services;*

2. The evaluation was initiated at parent request and the activities described in subsection (1) of this rule will be completed concurrently with the evaluation but prior to the determination of the student's eligibility for special education and related services; or

3. The nature or severity of the student's areas of concern make the general education intervention procedures inappropriate in addressing the immediate needs of the student.

(e) The school district shall be responsible for conducting all initial evaluations necessary to determine if the student is eligible for ESE and to determine the educational needs of the student. Such evaluations must be conducted by examiners, including physicians, school psychologists, psychologists, speech-language pathologists, teachers, audiologists, and social workers who are qualified in the professional's field as evidenced by a valid license or certificate to practice such a profession in Florida. In circumstances where the student's medical care is provided by a physician licensed in another state, at the discretion of the school district administrator for exceptional student education, a report of a physician licensed in another state may be accepted for the purpose of evaluation and consideration of eligibility as a student with a disability. Educational evaluators not otherwise covered by a license or certificate to practice a profession in Florida shall either hold a valid Florida teacher's certificate or be employed under the provisions of Rule 6A-1.0502, F.A.C.

1. Tests of intellectual functioning shall be administered and interpreted by a professional person qualified in accordance with Rule 6A-4.0311, F.A.C., or licensed under Chapter 490, F.S.

2. Standardized assessment of adaptive behavior shall include parental input regarding their student's adaptive behavior.

(f) For a signed consent for evaluation received by a school district on or before June 30, 2015, the school district shall ensure that initial evaluations of students suspected of having a disability are completed within sixty (60) school days (cumulative) as defined in paragraph 6A-6.03411(1)(h), F.A.C., that the student is in attendance after the school district's receipt of parental consent for the evaluation. For prekindergarten children, initial evaluations must be completed within sixty (60) school days after the school district's receipt of parental consent for evaluation.

(g) Beginning July 1, 2015, the school district shall ensure that initial evaluations of students and preschool age children age three (3) through kindergarten entry age suspected of having a disability are completed within sixty (60) calendar days after the school district's receipt of parent consent for evaluation. For the purposes of this rule, the following calendar days shall not be counted toward the sixty (60) calendar day requirement:

1. All school holidays and Thanksgiving, winter and spring breaks as adopted by the district school board as required by Rule 6A-10.019, F.A.C.;

2. The summer vacation period beginning the day after the last day of school for students and ending on the first day of school for students in accordance with the calendar adopted by the district school board as required by Rule 6A-10.019, F.A.C. However, the school district is not prohibited from conducting evaluations during the summer vacation period; and,

3. In the circumstance when a student is absent for more than eight (8) school days in the sixty (60) calendar day period, the student's absences shall not be counted toward the sixty (60) calendar day requirement.

(h) The sixty (60)-day timeframe for evaluation does not apply to a school district if:

1. The parent of the student repeatedly fails or refuses to produce the student for the evaluation; or

2. A student enrolls in a school served by the school district after the timeframe has begun, and prior to a determination by the student's previous school district as to whether the student is a student with a disability. This exception applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed. Assessments of students with disabilities who transfer from one school district to another school district in the same school year must be coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(i) The school district shall ensure that students suspected of being gifted are evaluated within a reasonable period of time as specified in the district's ESE Policies and Procedures Document as defined in subsection 6A-6.03411(2), F.A.C., but no more than ninety (90) school days that the student is in attendance after the school district's receipt of parental consent for the evaluation.

(4) Parental consent for initial evaluation.

(a) The school district must provide the parent written notice that describes any evaluation procedures the school district proposes to conduct. In addition, the school district proposing to conduct an initial evaluation to determine if a student is a student with a disability and needs special education and related services or is gifted and needs ESE must obtain informed consent from the parent of the student before conducting the evaluation.

(b) Parental consent for initial evaluation must not be construed as consent for initial provision of ESE.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability or is gifted.

(d) In the event that the parent fails to respond to the district's request to obtain informed written consent, the district must maintain documentation of attempts made to obtain consent.

(e) For initial evaluations only, if the child is a ward of the State and is not residing with the student's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability if:

1. Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the student;

2. The rights of the parents of the student have been terminated in accordance with Chapter 39, Part X, F.S.; or

3. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for initial evaluation has been given by an individual appointed by the judge to represent the student.

(f) If the parent of a student suspected of having a disability who is enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue initial evaluation of the student by using the mediation or due process procedures contained in Rule 6A-6.03311, F.A.C. The school district does not violate its child find obligations if it declines to pursue the evaluation.

(g) A school district may not use a parent's refusal to consent to initial evaluation to deny the parent or the student any other service, benefit, or activity of the school district, except as provided by this rule.

*(5) Evaluation procedures.*

*(a) In conducting an evaluation, the school district:*

*1. Must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student within a data-based problem solving process, including information about the student's response to evidence-based interventions as applicable, and information provided by the parent. This evaluation data may assist in determining whether the student is eligible for ESE and the content of the student's individual educational plan (IEP) or educational plan (EP), including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;*

*2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and,*

*3. Must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.*

*(b) Each school district must ensure that assessments and other evaluation materials and procedures used to assess a student are:*

*1. Selected and administered so as not to be discriminatory on a racial or cultural basis;*

*2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;*

*3. Used for the purposes for which the assessments or measures are valid and reliable; and,*

*4. Administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.*

*(c) Assessments and other evaluation materials and procedures shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.*

*(d) Assessments shall be selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills, unless those are the factors the test purports to measure.*

*(e) The school district shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.*

*(f) A student shall be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.*

*(g) An evaluation shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability.*

*(6) Determination of eligibility for exceptional students.*

*(a) A group of qualified professionals determines whether the student is an exceptional student in accordance with this rule and the educational needs of the student. The parents of a student being considered for eligibility as a student with a disability shall be invited and encouraged to participate as equal members of the group. The school district must provide a*

*copy of the evaluation report and the documentation of the determination of eligibility at no cost to the parent.*

*(b) In interpreting evaluation data for the purpose of determining if a student is an exceptional student and the educational needs of the student, each school district shall:*

*1. Draw upon data and information collected as part of a data-based problem solving process from a variety of sources, such as aptitude and achievement tests, the student's response to instruction and interventions implemented, parent input, student input as appropriate, teacher recommendations, and information about the student's physical condition, social or cultural background, and adaptive behavior;*

*2. Ensure that information obtained from all of these sources is documented and analyzed by the team as part of the problem solving process; and,*

*3. Determine eligibility in accordance with the criteria and procedures specified in these rules.*

*(c) If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with Rule 6A-6.03028, F.A.C. For children ages three (3) through five (5) years, an individual family support plan (IFSP) may be developed in lieu of an IEP in accordance with Rule 6A-6.03029, F.A.C.*

*(d) A student may not be determined eligible as a student with a disability if the determinant factor is:*

*1. Lack of appropriate instruction in reading, including the essential components of reading instruction, including explicit and systematic instruction in (a) phonemic awareness; (b) phonics; (c) vocabulary development; (d) reading fluency, including oral reading skills; and (e) reading comprehension strategies;*

*2. Lack of appropriate instruction in math; or*

*3. Limited English proficiency; and,*

*4. The student does not otherwise meet the eligibility criteria specified in Rules 6A-6.03011-.0361, F.A.C.*

*(e) A student may not be denied eligibility as a student who is gifted if the determinant factor is limited English proficiency.*

*(f) For students identified as gifted, an EP in accordance with Rule 6A-6.030191, F.A.C., shall be developed.*

*(7) Reevaluation Requirements.*

*(a) A school district must ensure that a reevaluation of each student with a disability is conducted in accordance with Rules 6A-6.03011-.0361, F.A.C., if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation.*

*(b) A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise and must occur at least once every three (3) years, unless the parent and the school district agree that a reevaluation is unnecessary.*

*(c) Each school district must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.*

*(d) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override provisions of mediation or due process. The school district does not violate its child find, evaluation or reevaluation obligations if it declines to pursue the evaluation or reevaluation.*

*(e) The informed parental consent for reevaluation need not be obtained if the school district can demonstrate that it made reasonable efforts to obtain such consent and the student's parent has failed to respond.*

*(8) Additional requirements for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must take the following actions:*

*(a) Review existing evaluation data on the student, including:*

*1. Evaluations and information provided by the student's parents;*

*2. Current classroom-based, local, or State assessments and classroom-based observations; and,*

*3. Observations by teachers and related services providers.*

*(b) Identify, on the basis of that review and input from the student's parents, what additional data, if any, are needed to determine the following:*

*1. Whether the student is a student with a disability or, in case of a reevaluation of the student, whether the student continues to have a disability;*

*2. The educational needs of the student;*

*3. The present levels of academic achievement and related developmental needs of the student;*

*4. Whether the student needs special education and related services or, in the case of a reevaluation of the student, whether the student continues to need special education and related services; and,*

*5. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general curriculum.*

*(c) The group conducting this review may do so without a meeting.*

*(d) The school district shall administer tests and other evaluation measures as may be needed to produce the data that is to be reviewed under this section.*

*(e) If the determination under this section is that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's educational needs, the school district shall notify the student's parents of:*

*1. That determination and the reasons for the determination; and,*

*2. The right of the parents to request an assessment to determine whether the student continues to be a student with a disability and to determine the student's educational needs. The school district is not required to conduct the assessment unless requested to do so by the student's parents.*

*(f) Reevaluation is not required for a student before the termination of eligibility due to graduation with a standard diploma or exiting from school upon reaching the student's twenty-second (22nd) birthday. For a student whose eligibility terminates under these circumstances, a school district must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.*

*(g) Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.*

*(h) If a parent of a student who is home schooled or placed in private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district may not use the consent override provisions of mediation or due process and the school district is not required to consider the student eligible for services under Rules 6A-6.03011-.0361, F.A.C.*

*(i) To meet the reasonable efforts requirements to obtain parental consent, the school district must document its attempts to obtain parental consent using procedures such as those used to obtain parental participation in meetings as described in subparagraph 6A-6.03028(3)(b)7., F.A.C.*

*(9) Parental Consent for the Initial Provision of Services.*

*(a) A school district responsible for making FAPE available to an exceptional student must obtain informed consent from the parent of the student before the initial provision of ESE to the student.*

*(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of ESE to the student.*

*(c) If the parent of a student fails to respond or refuses to consent to the initial provision of ESE, the school district may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the services may be provided to the student.*

*(d) If the parent of the student refuses consent to the initial provision of ESE, or the parent fails to respond to a request to provide consent for the initial provision of ESE, the school district will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with the ESE for which the school district requests consent. In addition, the school district is not required to convene an IEP or EP team meeting or develop an IEP or EP for the student for the ESE for which the school district requests such consent.*

*(e) If, at any time subsequent to the initial provision of ESE, the parent of a student revokes consent in writing for the continued provision of ESE, the school district may not continue to provide ESE to the student, but must provide prior written notice before ceasing the provision of ESE. The school district may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the services may be provided to the student.*

*(f) If a parent of a student revokes consent in writing for the continued provision of ESE, the school district:*

*1. Will not be considered to be in violation of the requirement to make FAPE available to the student for its failure to provide the student with further ESE; and,*

*2. Is not required to convene an IEP or EP team meeting or develop an IEP or EP for the student for further provision of ESE.*

*(g) If a parent of a student with a disability revokes consent in writing for their child's receipt of ESE after the initial provision of ESE to the student, the school district is not required to amend the student's education records to remove any references to the student's receipt of ESE because of the revocation of consent.*

*(10) Parental Consent for Specific Actions.*

*(a) A school district may not proceed with the following actions included in a student's IEP without written informed consent of the parent unless the school district documents reasonable efforts to obtain the parent's consent and the student's parent has failed to respond, or the school district obtains approval through a due process hearing in accordance with subsection 6A-6.03311(9), F.A.C. To meet the reasonable efforts requirements to obtain parental consent*

*the school district must document its attempts to obtain parental consent using procedures such as those used to obtain parental participation in meetings as described in subparagraph 6A-6.03028(3)(b)7., F.A.C. Those actions requiring parental consent include:*

- 1. Administration of an alternate assessment in accordance with Section 1008.22, F.S., and provision of instruction in the state standards access points curriculum; and,*
- 2. Except for a change in placement as described in Section 1003.57(1)(h), F.S., placement of the student in an exceptional student education center as defined in paragraph 6A-1.099828(2)(b), F.A.C.*

*(b) The district shall obtain written parental consent for the actions described above on the Parental Consent Form – Instruction in the State Standards Access Points Curriculum and Statewide, Standardized Alternate Assessment, Form 313181, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-04779>) (effective December 2014) English, Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese, and Parental Consent Form – Student Placement in an Exceptional Education Center, Form 313182, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-03384>) (effective March 2014) English, Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese, adopted by the Department of Education and incorporated by reference and available at <http://www.fl DOE.org/ese/> or may be obtained from the Department of Education, Bureau of Exceptional Education and Student Services, 325 West Gaines Street, Room 614, Tallahassee, FL 32399. Both forms were translated into Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese.*

*(c) At any time an IEP team meeting is to be convened for the purpose of reviewing or changing a student’s IEP as it relates to any of the actions described above, the school district must provide written notice of the meeting to the parent at least ten (10) days before the meeting. The notice must indicate the purpose, time, and location of the meeting and who, by title or position, will attend the meeting. The meeting may be convened prior to the tenth (10th) day, if the parent consents upon receipt of the written notice described above.*

*(d) Within ten (10) school days of a parent indicating in writing on a consent form described in paragraph (b) of this subsection that they do not consent to an action described in paragraph*

*(a) of this subsection, the district must either develop and implement a new placement or instruction and assessment procedures in accordance with a new IEP or must request a due process hearing in accordance with subsection 6A-6.03311(9), F.A.C. During the pendency of a due process hearing or appellate proceeding regarding a due process complaint, the student must remain in the student’s current educational assignment while awaiting the decision of the due process hearing or court proceeding, unless the parent and the district school board agree otherwise.*

***Rule 6A-6.03016, F.A.C., Exceptional Student Education Eligibility for Students with Emotional/Behavioral Disabilities.***

*(1) Definition. Students with an emotional/behavioral disability (E/BD). A student with an emotional/behavioral disability has persistent (is not sufficiently responsive to implemented evidence based interventions) and consistent emotional or behavioral responses that adversely affect performance in the educational environment that cannot be attributed to age, culture, gender, or ethnicity.*

*(2) General education interventions and activities. Prior to referral for evaluation, the requirements in subsection 6A-6.0331(1), F.A.C., must be met.*

*(3) Evaluation. In addition to the provisions in subsection 6A-6.0331(5), F.A.C., the evaluation for determining eligibility shall include the following:*

*(a) A functional behavioral assessment (FBA) must be conducted. The FBA must identify the specific behavior(s) of concern, conditions under which the behavior is most and least likely to occur, and function or purpose of the behavior. A review, and if necessary, a revision of an FBA completed as part of general education interventions may meet this requirement if it meets the conditions described in this section. If an FBA was not completed to assist in the development of general education interventions, one must be completed and a well-delivered scientific, research-based behavioral intervention plan of reasonable intensity and duration must be implemented with fidelity prior to determining eligibility. Implementation of the behavioral intervention plan is not required in extraordinary circumstances described in paragraph (4)(e) of this rule;*

*(b) The evaluation must include documentation of the student's response to general education interventions implemented to target the function of the behavior as identified in the FBA;*

*(c) A social/developmental history compiled from a structured interview with the parent or guardian that addresses developmental, familial, medical/health, and environmental factors impacting learning and behavior, and which identifies the relationship between social/developmental and socio-cultural factors, and the presence or non-presence of emotional/behavioral responses beyond the school environment;*

*(d) A psychological evaluation conducted in accordance with Rule 6A-6.0331, F.A.C. The psychological evaluation should include assessment procedures necessary to identify the factors contributing to the development of an emotional/behavioral disability, which include behavioral observations and interview data relative to the referral concerns, and assessment of emotional and behavioral functioning, and may also include information on developmental functioning and skills. The psychological evaluation shall include a review of general education interventions that have already been implemented and the criteria used to evaluate their success;*

*(e) A review of educational data which includes information on the student's academic levels of performance, and the relationship between the student's academic performance and the emotional/behavioral disability; additional academic evaluation may be completed if needed; and,*

*(f) A medical evaluation must be conducted when it is determined by the administrator of the exceptional student program or the designee that the emotional/behavioral responses may be precipitated by a physical problem.*

*(4) Criteria for eligibility. A student with an emotional/behavioral disability must demonstrate an inability to maintain adequate performance in the educational environment that cannot be explained by physical, sensory, socio-cultural, developmental, medical, or health (with the exception of mental health) factors; and must demonstrate one or more of the following characteristics described in paragraphs (4)(a) or (4)(b) of this rule and meet the requirements of paragraphs (4)(c) and (4)(d) of this rule:*

*(a) Internal factors characterized by:*

*1. Feelings of sadness, or frequent crying, or restlessness, or loss of interest in friends and/or school work, or mood swings, or erratic behavior; or*

*2. The presence of symptoms such as fears, phobias, or excessive worrying and anxiety regarding personal or school problems; or*

3. Behaviors that result from thoughts and feelings that are inconsistent with actual events or circumstances, or difficulty maintaining normal thought processes, or excessive levels of withdrawal from persons or events; or

(b) External factors characterized by:

1. An inability to build or maintain satisfactory interpersonal relationships with peers, teachers, and other adults in the school setting; or

2. Behaviors that are chronic and disruptive such as noncompliance, verbal and/or physical aggression, and/or poorly developed social skills that are manifestations of feelings, symptoms, or behaviors as specified in subparagraphs (4)(a)1.-3. of this rule.

(c) The characteristics described in paragraph (4)(a) or (b) of this rule must be present for a minimum of six (6) months duration and in two (2) or more settings, including but not limited to, school, educational environment, transition to and/or from school, or home/community settings. At least one (1) setting must include school.

(d) The student needs special education as defined in paragraph 6A-6.03411(1)(kk), F.A.C.

(e) In extraordinary circumstances, general education interventions and activities as described in subsection (2) of this rule and criteria for eligibility described in paragraph (4)(c) of this rule may be waived when immediate intervention is required to address an acute onset of an internal emotional/behavioral characteristic as listed in paragraph (4)(a) of this rule.

(5) Characteristics not indicative of a student with an emotional/behavioral disability:

(a) Normal, temporary (less than six (6) months) reactions to life event(s) or crisis; or

(b) Emotional/behavioral difficulties that improve significantly from the presence of evidence based implemented interventions; or

(c) Social maladjustment unless also found to have an emotional/behavioral disability.

### **Section 394.463, Florida Statutes, Involuntary examination.**

(1) *Criteria.* A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(2) *Involuntary Examination.*

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an *ex parte* order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The *ex parte* order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her

*to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department the next working day. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.*

*2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department the next working day.*

*3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department the next working day. The document may be submitted electronically through existing data systems, if applicable.*

*(b) A person may not be removed from any program or residential placement licensed under chapter 400 or chapter 429 and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the person is such that preparation of a law enforcement officer's report is not practicable before removal, the report shall be completed as soon as possible after removal, but in any case before the person is transported to a receiving facility. A facility admitting a person for involuntary examination who is not accompanied by the required ex parte order, professional certificate, or law enforcement officer's report shall notify the department of such admission by certified mail or by e-mail, if available, by the next working day. The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.*

*(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may:*

- 1. Serve and execute such order on any day of the week, at any time of the day or night; and*
- 2. Use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and take custody of the person who is the subject of the ex parte order. When practicable, a law enforcement officer who has*

received crisis intervention team (CIT) training shall be assigned to serve and execute the ex parte order.

(d)1. A law enforcement officer taking custody of a person under this subsection may seize and hold a firearm or any ammunition the person possesses at the time of taking him or her into custody if the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person.

2. If the law enforcement officer takes custody of the person at the person's residence and the criteria in subparagraph 1. have been met, the law enforcement officer may seek the voluntary surrender of firearms or ammunition kept in the residence which have not already been seized under subparagraph 1. If such firearms or ammunition are not voluntarily surrendered, or if the person has other firearms or ammunition that were not seized or voluntarily surrendered when he or she was taken into custody, a law enforcement officer may petition the appropriate court under s. 790.401 for a risk protection order against the person.

3. Firearms or ammunition seized or voluntarily surrendered under this paragraph must be made available for return no later than 24 hours after the person taken into custody can document that he or she is no longer subject to involuntary examination and has been released or discharged from any inpatient or involuntary outpatient treatment provided or ordered under paragraph (g), unless a risk protection order entered under s. 790.401 directs the law enforcement agency to hold the firearms or ammunition for a longer period or the person is subject to a firearm purchase disability under s. 790.065(2), or a firearm possession and firearm ownership disability under s. 790.064. The process for the actual return of firearms or ammunition seized or voluntarily surrendered under this paragraph may not take longer than 7 days.

4. Law enforcement agencies must develop policies and procedures relating to the seizure, storage, and return of firearms or ammunition held under this paragraph.

(e) The department shall receive and maintain the copies of ex parte orders, involuntary outpatient services orders issued pursuant to s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467, professional certificates, and law enforcement officers' reports. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be used to prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and shall provide copies of reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided upon the order of a physician if the physician determines that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist or a clinical psychologist or, if the receiving facility is owned or operated by a hospital or health system, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.

*(g) The examination period must be for up to 72 hours. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:*

- 1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;*
- 2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;*
- 3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or*
- 4. A petition for involuntary services shall be filed in the circuit court if inpatient treatment is deemed necessary or with the criminal county court, as defined in s. 394.4655(1), as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(4)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.*

*(h) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by a facility within the examination period specified in paragraph (g). The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services pursuant to s. 394.4655(2) or involuntary inpatient placement pursuant to s. 394.467(1), the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient services or involuntary outpatient placement must be entered into the patient's clinical record. This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before stabilization if the requirements of s. 395.1041(3)(c) have been met.*

*(i) One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:*

- 1. The patient must be examined by a facility and released; or*
- 2. The patient must be transferred to a designated facility in which appropriate medical treatment is available. However, the facility must be notified of the transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.*

*(3) Notice of Release. Notice of the release shall be given to the patient's guardian or representative, to any person who executed a certificate admitting the patient to the receiving facility, and to any court which ordered the patient's evaluation.*

