



**Virgin Islands
Department of Education
Special Education Rules**

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VIRGIN ISLANDS DEPARTMENT OF EDUCATION

SPECIAL EDUCATION RULES

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1834 Kongens Gade
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INTRODUCTION

This manual entitled the Virgin Islands Department of Education Special Education Rules has been updated and replaces a previous document entitled the United States Virgin Islands Special Education State Plan for Fiscal years 1992-1994 under Part B of the Individuals with Disabilities Act (IDEA) (PL 101-476) as amended, and approved, incorporated under the Education Consolidation and Improvement Act (PL 95-134). These Rules provide requirements to which local education agencies and other public and private agencies providing publicly funded education and related services to children with disabilities must adhere.

These Rules are in compliance with the requirements outlined in the Individuals with Disabilities Education Act of 2004

Take the time to become familiar with the entire document and reference it often and regularly as you provide appropriate educational services to our children with disabilities.

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**GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
DEPARTMENT OF EDUCATION**

SPECIAL EDUCATION RULES

I. RIGHT TO EDUCATION RULE STATEMENT

I. A. PURPOSES

In accordance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) as amended all children with disabilities ages 3 through 21 residing in the Territory have the right to a Free Appropriate Public Education (FAPE), including children with disabilities who have been suspended or expelled from school. To accomplish the purposes of the Act the relevant goals are outlined as follows:

1. Each child with a disability, ages 3 through 21, with no exceptions, in the Territory of the United States Virgin Islands, including children with disabilities who have been suspended or expelled from school, and who have not graduated from high school with a regular high school diploma, receives a free and appropriate public education that includes special education and related services as specified on the Individual Education Program (IEP), designed to meet the child's unique needs, and to prepare them for further education, independent living and employment. This policy applies to all public agencies within the Territory.
2. Entitlement to FAPE begins no later than the child's third birthday. In the event a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or Individual Family Service Plan (IFSP) will begin. The IEP or an IFSP is in effect for the child by that date in accordance with 34 CFR §300.323 (b).
3. All children residing in the Territory who have disabilities regardless of the severity or chronic nature of their disabling condition and who are in need of special education and related services are identified, located, evaluated, and an IEP or IFSP is developed for them.
4. FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.
5. The rights of children with disabilities and the rights of their parents are protected.

6. The obligation to make FAPE available to all children with disabilities does not apply with respect to a child aged 18 through 21 who, in the last educational placement prior to incarceration in an adult correctional facility, was not actually identified as being a child with a disability under 34 CFR §300.8 and these Rules and did not have an IEP.

If a child aged 18 through 21 had been identified as a child with a disability and had received services in accordance with an IEP, but left school prior to their incarceration or did not have an IEP, but was identified as a child with a disability, FAPE must be available.

FAPE need not be made available to children with disabilities who have graduated from high school with a regular high school diploma. The term regular high school diploma does not include an alternative degree that is not fully aligned with the Territory's academic standards, such as a certificate or a general educational development credential.

I. B. AUTHORITY

These Rules authorized under Section 292 of Act 4667, delineates the Department's Rules on Special Education (Section 292-1) and all mandatory requirements for the implementation of Act 4667 and the IDEA.

I. C. APPLICABILITY

Section 285 of the Act designates the Virgin Islands Department of Education as the responsible governmental agency to secure the fullest implementation in the Virgin Islands of the Individuals with Disabilities Education Improvement Act of 2004 and applies to all public agencies in the U. S. Virgin Islands.

I. D. AMENDMENTS

Any proposed changes in these Rules shall be in accordance with the provisions of Section 292 of Act 4667 and of the Act.

I. E. FULL EDUCATIONAL OPPORTUNITY

All children with disabilities ages 3 through 21 residing in the Virgin Islands with no exceptions, including children with disabilities who have been suspended or expelled from school, and who have not graduated from high school with a regular high school diploma, receives a free and appropriate public education that includes special education and related services as specified on the Individual Education Program (IEP), designed to meet the child's unique needs, and to prepare them for independent life and employment. This policy applies to all public agencies within the territory.

I. F. DEFINITIONS

The terms defined below are found throughout these Rules.

1. **Act, the.** Within these rules reference to the Act, means the Individuals with Disabilities Education Improvement Act of 2004.
2. **Adaptive behavior.** The effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of children of comparable age and cultural group.
3. **Assistive technology device.** Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
4. **Assistive technology service.** Is any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
 - a. The evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment.
 - b. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities.
 - c. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
 - d. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.
 - e. Training or technical assistance for a child with a disability or, if appropriate, that child's family.
 - f. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

5. **Audiology.** This includes:
 - a. Identification of children with hearing loss.
 - b. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing.
 - c. Provision of habilitative activities such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation.
 - d. Creation and administration of programs for prevention of hearing loss.
 - e. Counseling and guidance of children, parents, and teachers regarding hearing loss.
 - f. Determination of children's needs for group and individual amplification, selecting and fitting appropriate aids, and evaluating the effectiveness of amplification.
6. **Autism.** A developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three that adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in Rule I.F. 17 below. If a child manifests characteristics of the disability category autism after age three, that child could be diagnosed as having autism if the criteria in Rule II.G.1. are satisfied.
7. **Child with a disability.** A child evaluated in accordance with these Rules as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (referred to in these rules as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, a multiple disabilities and by reason thereof, needs special education and related services. For a child aged 3 through 7, the term "child with a disability" includes a child experiencing developmental delays measured by appropriate diagnostic instruments and procedures in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and who by reason thereof, need special education and related services.

If it is determined, through an appropriate evaluation under these Rules, that a child has one of the disabilities identified above, but only needs a related service and not special education (defined as specially designed instruction), the child is not classified as a child with a disability under these Rules. If, consistent with the definition of special education under Rule I.F.61, the related service required by the child is considered special education rather than a related service under these Rules, the child would be determined to be a child with a disability.

8. **Communication disorders (speech/language impairment).** A communication disorder such as stuttering, impaired articulation, language impairment, or a voice impairment that adversely affects a child's educational performance.
9. **Core academic subjects.** Core academic subjects are English, reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts history; and geography.
10. **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 other 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.
 - c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. 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).
11. **Counseling services.** Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

12. **Day; business day; school day.**
- a. **Day** means calendar day unless otherwise indicated as business day or school day.
 - b. **Business day** means Monday through Friday, except for Federal and State holidays unless holidays are specifically included in the designation of business day.
 - c. **School day** means any day, including a partial day that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.
13. **Deaf-blind.** A concomitant hearing and visual impairment, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
14. **Developmental delay.** A significant delay or deficit in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. For this reason the child needs special education services. This definition applies only to children age 3 through 7.
15. **Educational Service Agency.** An Educational Service Agency is—
- a. A regional public multiservice agency—
 - 1. Authorized by Territorial law to develop, manage, and provide services or programs to LEAs;
 - 2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;
 - b. Includes any other public institutions or agency having administrative control and direction over a public elementary school or secondary school; and
 - c. Includes entities that meet the definition of intermediate educational unit in section 602 (23) of the Act as in effect prior to June 4, 1997.
16. **Elementary School.** An Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.
17. **Emotional disturbance.** A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely

affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression, a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

18. **Equipment.** Machinery, utilities, built-in equipment, and any necessary enclosures or structures to house the machinery, utilities or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory and other technological aids and devices; and books, periodicals, documents, and other related materials.
19. **Evaluation.** Procedures used in accordance with these Rules to determine whether a child has a disability, and the nature and extent of the special education and related services that the child needs.
20. **Excess Costs.** Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—
 - a. Amounts received—
 1. Under Part B of the Act;
 2. Under Part A of title I of the ESEA; and
 3. Under Parts A and B of title III of the ESEA and;
 - b. Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service.
21. **Extended school year services.** Special education and related services that:
 - a. Are provided to a child with a disability:
 1. Beyond the normal school year of the LEA.
 2. In accordance with the child's IEP.
 3. At no cost to the parents of the child.
 - b. Meet the standards of the VIDE.
22. **Federal administrative responsibilities.** Any administrative responsibility or obligation established or imposed under Part B of the Individuals with Disabilities

Education Improvement Act (20 U.S.C. 1400 et. seq.) and its implementing regulations (34 CFR 300) or under the General Education Provisions Act or its implementing regulations (34 CFR 76).

23. **Free appropriate public education (FAPE).** Special education and related services that:
 - a. Are provided at public expense, under public supervision and direction, and without charge.
 - b. Meet the standards of the Virgin Islands State Office of Education and Part B of the IDEA.
 - c. Include an appropriate preschool, elementary school, and secondary school education in the Virgin Islands.
 - d. Are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 CFR §§300.320 through 300.334, as well as these Rules.
24. **General education curriculum.** The same curriculum as that provided for nondisabled children (the Virgin Islands Curriculum).
25. **Hearing impairment (deafness/hearing impairment).** “A hearing impairment” is a generic classification of hearing loss including the terms deafness and hearing impairment.
 - a. **Deafness.** A hearing impairment so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance.
 - b. **Hearing impairment.** A hearing impairment, whether permanent or fluctuating, that adversely affects a child’s educational performance, but that is not included under the definition of Deafness.
26. **Highly Qualified Special Education Teacher.**
 - a. For any special education teacher teaching core academic subjects, the term has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 and 34 CFR 200.56, except that the requirements for highly qualified also—
 1. Include the requirements described in paragraph (b) of this definition and;
 2. Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements outlined in subparagraphs (b)

and (c) of this definition.

b. Requirements for special education teachers in general.

1. For any public elementary school or secondary school special education teacher in the Virgin Islands highly qualified requires that—

a. the teacher has obtained full Virgin Islands certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the Virgin Islands special education teacher licensing examination, and holds a license to teach in the Virgin Islands as a special education teacher.

b. the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

c. the teacher holds at least a bachelor's degree.

NOTE: The entire definition of Highly Qualified Special Education Teachers is extensive. For a complete definition refer to §300.18 of the Act.

27. **Homeless Children.** The term “homeless children” has the meaning given the term “homeless children and youths” in section 725 of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.
28. **IDEA.** The Individuals with Disabilities Education Improvement Act (20 U.S.C. 1400 et. Seq.) as amended, and its implementing regulations 34 CFR 300 and 303. “IDEA-B” refers to Part B of the Act.
29. **Individualized Education Program (IEP).** A written statement for a child with a disability that is developed, reviewed, and revised in accordance with these Rules and §§300.320 through 300.324 of the Act.
30. **Individualized Education Program Team or IEP Team.** An IEP team is a group of individuals described in §300.321 of the Act that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
31. **Individual family service plan.** Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.
32. **Infant or toddler with a disability.** An individual under three years of age who needs early intervention services because the individual is experiencing

developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay

33. **Limited English Proficient.** Means an individual who is aged 3 through 21; is enrolled or preparing to enroll in an elementary school or secondary school; and either was not born in the United States or whose native language is a language other than English; who is a Native American, Alaska Native, or a native resident of an outlying area; and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the state's proficient level of achievement on state assessments described in Section 1111(b)(3) of ESEA; or the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.
34. **Least restrictive environment (LRE).** 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 not disabled. 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.
35. **Local educational agency (LEA).** Each of the two Virgin Islands districts, the St. Thomas-St. John district and the St. Croix district constitute the LEAs. An LEA is the public authority legally constituted within the Territory for administrative control of its public elementary schools and secondary schools.
36. **Medical services.** Services that are provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
37. **Mental Retardation.** Significantly below-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.
38. **Multiple disabilities.** Concomitant impairments (such as mental disability,

blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

39. **Native language.**

- a. Used with reference to an individual of limited English proficiency, the language normally used by an individual, or in the case of a child, the language normally used by the parents of the child except as provided in paragraph (b) of this definition.
- b. In all direct contact with a child, including evaluation of the child, the language normally used by the child in the home or learning environment.
- c. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

40. **Occupational therapy.** A service provided by a qualified occupational therapist; and includes:

- a. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation.
- b. Improving ability to perform tasks for independent functioning if functions are impaired or lost.
- c. Preventing, through early intervention, of initial or further impairment or loss of function.

41. **Orientation and mobility services.** Services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home and community; and includes teaching children the following as appropriate:

- a. Spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street).
- b. To use the long cane or service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision.

- c. To understand and use remaining vision and distance low vision aids.
 - d. Other concepts, techniques, and tools.
42. **Orthopedic impairment.** Is a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
43. **Other health impairment.** Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever and sickle cell anemia and Tourette syndrome that adversely affects a child's educational performance.
44. **Parent.** Parent means a biological or adoptive parent of a child, a foster parent, unless Territorial law, regulations, or contractual obligations with a Territorial or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for a child, an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare, or a surrogate parent who has been appointed as outlined in accordance with IV. V. of these Rules. The biological or adoptive parent, when attempting to act as the parent when more than one party is qualified to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make education decisions for the child. If any judicial decree or order identifies a specific person or persons identified in this definition to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of these Rules.
45. **Parent counseling and training.**
- a. Assisting parents in understanding the special needs of their child.
 - b. Providing parents with information about child development.
 - c. Helping parents to acquire the necessary skills that will allow them to

support the implementation of their child's IEP.

46. **Personally identifiable.** This information includes:
 - a. The name of the child, the child's parent, or other family, member.
 - b. The address of the child.
 - c. A personal identifier, such as the child's social security number or child number.
 - d. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
47. **Physical education.** The development of:
 - a. Physical and motor fitness.
 - b. Fundamental motor skills and patterns.
 - c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
 - d. Includes special physical education, adapted physical education, movement education, and motor development.
48. **Physical therapy.** Services provided by a qualified physical therapist.
49. **Psychological services.** Psychological services include:
 - a. Administering psychological and educational tests, and other assessment procedures.
 - b. Interpreting assessment results.
 - c. Obtaining, integrating, and interpreting information about a child's behavior and conditions relating to learning.
 - d. Consulting with other staff members in planning school programs to meet the special needs of a child as indicated by psychological tests, interviews, direct observations and behavioral evaluations.
 - e. Planning and managing a program of psychological services including psychological counseling for children and parents.

- f. Assisting in developing positive behavioral intervention strategies.
50. **Public Agency.** A public agency includes the SEA, LEAs, ESAs and any other political subdivisions of the Territory that are responsible for providing education to children with disabilities.
51. **Qualified personnel.** Personnel who have met VIDE-approved or VIDE recognized certification, licensing, registration, paraprofessional qualification standards, or other comparable requirements that apply to the area in which the individuals are providing special education or related services. (I. F.26.)
52. **Recreational services.** Recreational services include:
- a. Assessment of leisure function.
 - b. Therapeutic recreation services.
 - c. Recreation programs in schools and community agencies.
 - d. Leisure education.
53. **Rehabilitation counseling services.** Services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a child with a disability. The term also includes vocational rehabilitation services provided to children with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
54. **Related services.** Transportation and such developmental, corrective, and other supportive services determined by an IEP team as required to assist a child with a disability to benefit from special education. Such services include speech-language pathology; audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services, medical services for diagnostic or evaluation purposes, and interpreting services including when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services such as communication access real-time translation (CART), C-Print and Type Well and special interpreting services for children who are deaf blind. The term also includes school health services, social work services in schools, and parent counseling and training. Related Services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g. mapping),

maintenance of that device, or the replacement of that device. Nothing in this definition limits the right of a child with a surgically implanted device (e.g. cochlear implants) to receive related services that are listed in this definition that are determined by the IEP Team to be necessary for the child to receive FAPE. Furthermore, nothing in this definition limits the responsibilities of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school, or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

- 55. **School-age children with disabilities.** School-age children with disabilities are individuals, ages 3 through 21, who have been determined to be eligible for special education consistent with these Rules.
- 56. **School health services and School nurse services.** Means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- 57. **Scientifically based research.** Scientifically based research has the meaning given the term in section 9101 (37) of the ESEA.
- 58. **Secondary school.** As used in these Rules, the term secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.
- 59. **Service Plan.** A written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive service, including the location of the services and any transportation necessary consistent with 34 CFR §300.132 and is developed and implemented in accordance with §§300.137 through 300.139.
- 60. **State educational agency (SEA).** The State Educational Agency or SEA means the Virgin Islands Board of Education and the Virgin Islands Department of Education (VIDE).
- 61. **Social work services in schools.** Social work services in schools include:
 - a. Preparing a social or developmental history on a child with a disability.
 - b. Group and individual counseling with the child and family.

- c. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school.
 - d. Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.
 - e. Assisting in developing positive behavioral intervention strategies.
62. **Special education.** Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes speech-language pathology, travel training and vocational education and may include other related services, if they meet the definition of special education.
63. **Specially designed instruction.** Adapting, as appropriate to the needs of eligible children under these Rules, the content, methodology, or delivery of instruction in order to:
- a. Address the unique needs of the child that result from the child's disability.
 - b. Ensure access of the child to the general education curriculum, so that he or she can meet the educational standards within the jurisdiction of the LEA that apply to all children.
64. **Specific learning disability.** A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbances, or of environmental, cultural or economic disadvantage.
65. **Speech-language pathology services.** Speech-language pathology services includes:
- a. Identification of children with speech or language impairments.
 - b. Diagnosis and appraisal of specific speech or language impairments.
 - c. Referral for medical or other professional attention necessary for the

habilitation of speech or language impairments.

- d. Provision of speech and language services for the habilitation or prevention of communicative impairments.
- e. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

66. **Supplementary aids and services.** Aids, services, and other supports that are provided in regular education classes or other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with these Rules, including the LRE requirement (Rule III.S.).

67. **Transition Services.** A coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Transition service is based on the individual child's needs, taking into account the child's strengths, preferences and interests. Transition services includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

68. **Transportation.** Transportation services includes:

- a. Travel to and from school and between schools.
- b. Travel in and around school buildings.
- c. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

69. **Traumatic brain injury.** An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

70. **Travel training.** Instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:
- a. Develop an awareness of the environment in which they live.
 - b. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
71. **Visual impairment.** An impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
72. **Ward of the State.** A ward of the state is a child who, as determined by the Territory is a foster child, a ward of the state or in the custody of a public child welfare agency. A ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in 34 CFR §300.30.

II. CHILD FIND, IDENTIFICATION AND EVALUATION

II. A. CHILD FIND SYSTEM

1. Consistent with requirements of Part B of the IDEA and with these Rules, the Virgin Islands Department of Education through the State Office of Special Education is responsible for planning and implementing a Territory-wide coordinated plan of child identification, location and evaluative processes. Each public agency through the Divisions of Special Educational Services shall coordinate and implement child identification, location and evaluative processes. Additionally, each public agency shall utilize the procedures delineated herein to ensure that all children, including children who are homeless children or are wards of the State, with disabilities birth through 21 years of age, residing within the jurisdiction of the public agency, and those attending private schools, regardless of the severity of their disability and who are in need of special education and related services are identified, located and evaluated. Included in child find activities are children who are suspected of being children with disabilities and in need of special education, even though they are advancing from grade to grade and highly mobile children, including migrant children. This includes the implementation of a computerized child information system to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services. The Part C Infants and Toddlers program participation may include the actual implementation of child find activities for infants and toddlers with disabilities. Additionally, the use of an interagency agreement or other mechanism for providing for the Part C lead agency's participation does not alter or diminish the responsibility of the SEA to ensure the uninterrupted transition of eligible Part C children to Part B.

These requirements of this Rule apply to:

- a. Highly mobile children with disabilities (such as migrant and homeless children), children who are wards of the state and children who are suspected of being a child with a disability in need of special education.
- b. Children who are suspected of being a child with disability under these Rules and who are in need of special education and related services, even though they are advancing from grade to grade.
- c. The determination that a child is a "child with a disability" under these Rules must be made on an individual basis, by the group responsible within the child's LEA for making those determinations.

2. Major components of the Child Find system include:

- a. Implementation and coordination of Child Find activities including private schools within the public agency's jurisdiction through the annual plans developed by the public agency and approved by the State Office of Special Education.
- b. Provision by the VI-SOSE of ongoing technical assistance to LEAs, private schools, and other state agencies in implementing the Child Find system.
- c. Implementation of the Territory-wide data collection system to report child information including Federal Child Count.
- d. Planning for and conducting periodic inter-departmental meetings and pooling of resources to jointly fund and conduct twice yearly screening activities. This includes infants and toddlers with disabilities population in accordance to the interagency agreement between the Department of Health's Infant and Toddler's program and the VIDE.
- e. Conducting professional development for staff of public and private day care and Head Start facilities on characteristics of disabling conditions and basic screening instruments to facilitate the referral process.
- f. Scheduling of screening activities on sites of public and private day care and Head Start centers;
- g. Participating or presenting at parent and consumer boards and group meetings to share information regarding special education and/or related services;
- h. Children enrolled in the public school general education programs that are suspected of having a disability shall be identified through in-school screening procedures.
- i. Collaborating and coordinating with public, semi-autonomous and private agencies to conduct child find activities to include but not limited to the:
 1. Department of Health, Part C Infants and Toddlers Program and its Interagency Coordinating Council which has responsibility for providing early intervention services for infants and toddlers with disabilities, ages birth through two, the Divisions of Maternal Child Health and Mental Health; and
 2. Department of Human Services-Divisions of Disabilities and Rehabilitation, Social Services, Children, Youth and

- Families including Head Start and Day Care; Office of Child Care Regulatory and Volunteer Services; and
3. Virgin Islands Center for Independent Living; and
 4. Lutheran Social Services; and
 5. Disabilities Rights Center of the Virgin Islands; and
 6. Legal Services of the Virgin Islands; and
 7. Virgin Islands University Center on Excellence on Developmental Disabilities; and
 8. Virgin Islands Resource Center for the Disabled; and
 9. Private Schools; and
 10. Virgin Islands Advisory Panel on Special Education; and
 11. VI Family Information Network on Disabilities
 12. Hospitals; and
 13. Social Service agencies; and
 14. Primary Health care providers

3. Parentally placed private school children with disabilities—Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary school located in the LEA. The LEA must ensure that there is equitable participation of parentally placed private school children and that there is an accurate count of such children. In conducting the activities of this paragraph, the LEAs are required to undertake the activities similar to the activities undertaken for the agency's public school children and in a time period comparable to that for children attending public schools in the LEA. The cost of carrying out the child find requirements of this paragraph, including individual evaluations, may not be considered in determining if an LEA has met its obligation under the requirements of the IDEA.
4. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find activities requirements, include parentally-placed private school children who reside in any State other than the State in which the private schools that they attend are located.

II. B. GENERAL EDUCATION INTERVENTIONS

The LEA through its School Based Staff Support Teams or comparable unit for preschool age children must document a history of classroom interventions and or programs, which, whenever appropriate and correctly implemented, proved ineffective, before referring a child for special education evaluation, including potentially eligible preschool age children.

1. The primary purposes of this process shall be to assist in:
 - a. Identifying and establishing scientifically based interventions and or programs for children having educational difficulties.
 - b. Evaluating, monitoring, and documenting regular education interventions and or programs.
 - c. Determining if failure of the interventions is due to a suspected disability.
2. If school personnel determine that referral for special education evaluation is necessary, a record of the results of the interventions implemented, including adjustments made, shall be included in the referral packet and reviewed along with the child's previous school performance.
3. Each public agency shall establish a system for managing this process.

II. C. INITIAL EVALUATION

If school personnel determine that the available general education interventions and or programs have been unsuccessful and there is reason to suspect that the child is eligible for special education and related services, the child shall be referred to special education services staff for a comprehensive evaluation. In addition to school initiated referrals for evaluation, a parent, state educational agency, other state agency or an LEA can request an initial evaluation.

1. The public agency shall ensure before the initial provision of special education and related services that a full and individual initial evaluation is conducted for each child being considered for special education services to determine if the child is a “child with a disability” under Part B of the IDEA and these Rules, and to determine the educational needs of the child. The child's IEP team in meeting the IEP requirements in these Rules shall use the results of the evaluation.
2. Parental requests for evaluations shall be submitted to special education services for review and recommendation. The right of a parent to refer a child for evaluation shall not be denied or delayed by the procedures listed in the Rule pertaining to General Education Interventions. In the case of a parental referral, every effort must be made to implement the general education intervention procedures outlined in Rule II. B.
3. Each public agency shall have written procedures for making a referral for an individual evaluation and the actions to be taken on the referral.
4. Prior written notice must be provided and written parental consent for testing must be obtained before a child is evaluated (see Rule IV). Once the public agency receives parental consent, the evaluation process must begin within a reasonable period of time. If the child is a ward of the state as defined in these rules, and is not residing with the child's parent, the LEA shall make reasonable efforts to obtain the informed consent from the parent of the child for an initial evaluation to determine if the child is a child with a disability. The LEA is not required to obtain informed consent from the parent of a child for an initial evaluation to determine if the child is a child with a disability if:
 - a. Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
 - b. The rights of the parents of the child have been terminated in accordance with Virgin Islands law; or
 - c. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virgin Islands law and consent for an initial evaluation has been given by an

individual appointed by the judge to represent the child.

5. The parents of a child with a disability shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement of the child, and the provision of FAPE to the child (see Rule IV).
6. A child referred from within the school district and being evaluated for the first time may not be placed in special education and/or receive special education and related services prior to the completion of the determination of eligibility for special education and related services and the completion of the IEP process.
7. An initial evaluation to determine whether a child is a child with a disability must be conducted within 45 days from receipt of parent consent for an initial evaluation. In the case of the child who moves to a new school district after consent is given but before the evaluation can be completed, the 45 day timeline can be extended as long as the new district is making sufficient progress to complete the evaluation and the parents and LEA agree to a specific time when the evaluation shall be completed. The timeline does not apply if a parent repeatedly fails or refuses to produce the child for evaluation.
 - a. If a parent of a child enrolled in a territorial school does not provide consent for an initial evaluation, the agency may, but is not required to, use procedural safeguards as outlined in Subpart E of 34 CFR 300 and 301 including the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516.
 - b. If the public agency does not pursue the evaluation under the above, the agency does not violate its obligation under 34 CFR §300.111 and 34 CFR §§300.301 through 300.311.

II. D. EVALUATION PROCEDURES

The public agency must provide notice to the parents of a child with a disability a description of any evaluation procedures the agency proposes to conduct. Each public agency shall establish and implement procedures that meet the evaluation requirements of Part B of the IDEA and these Rules as follows:

1. Tests and other evaluation materials used to assess a child are selected and administered so, as not to be discriminatory on a racial or cultural basis and are administered by trained and knowledgeable personnel.
2. Tests and other evaluation materials are done in the language most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer.
3. The application of standards of validity, reliability, and administration by trained personnel in accordance with applicable instructions by assessment producers to all assessment procedures; and to require coordination in the administration of assessments between school districts if a child moves from one district to another in the same academic year.
4. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
5. A variety of assessment tools and strategies are used to gather relevant, functional, and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities) that may assist in determining:
 - a. Whether the child is a "child with a disability" under Part B of the IDEA and these Rules.
 - b. The content of the child's IEP.
6. Any standardized tests that are given to a child must have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

7. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) must be included in the evaluation report.
8. Tests and other evaluation materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
9. Tests are selected and administered to ensure that if a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
10. No single procedure may be used as the sole criterion for determining whether a child is a "child with a disability" and for determining an appropriate educational program for the child.
11. The child must be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
12. In evaluating each child with a disability under these Rules, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
13. The public agency must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.
14. The public agency must use assessment tools and strategies that provide relevant information that directly assists evaluation team members in determining the educational needs of the child.
15. Instruments which serve the purpose of early identification of learning problems and the development and implementation of interventions prior to referral for evaluation are not to be used by an agency for any purpose other than that intended.
16. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year must be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.

II. E. DETERMINATION OF NEEDED EVALUATION DATA

1. As part of an initial evaluation (if appropriate) and as part of any reevaluation, the evaluation team, including individuals required on the IEP team, including the parents and other qualified professionals, as appropriate shall:
 - a. Review existing evaluation data on the child including:
 1. Evaluations and information provided by the parents of the child;
 2. Current classroom-based local, or Territorial assessments and classroom observations; and
 3. Observations by teachers and related service providers;
 4. Academic information about the child and;
 - b. On the basis of that review and input from the child's parents, identify what additional data, if any are needed to determine:
 1. Whether the child has a particular category of disability according to these Rules and the educational needs of the child or in the case of a reevaluation whether the child continues to have such a disability and the educational needs of the child;
 2. The present levels of academic achievement and the related developmental needs of the child.
 3. Whether the child needs special education and related services, or in the case of reevaluation of a child, whether the child continues to need special education and related services; and
 4. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.
 5. Whether additional data are needed about the child's present levels of academic achievement and related developmental needs.

2. The evaluation team described in this Rule may conduct its review without a meeting.
3. Each public agency shall ensure that the IEP of each child with a disability is reviewed in accordance with 34 CFR §§ 300.320-300.328 and shall conduct a reevaluation of each child if the LEA determines that the educational and related services needs, including improved academic achievement and functional performance of the child warrant or if the child's parents or teacher request one, and limits reevaluations to no more than once a year, unless parents and LEA agree otherwise and at least once every 3 years, unless parents and LEA agree otherwise.
4. Provide the results of any reevaluations to the child's IEP team to be used in reviewing and as appropriate, revising the child's IEP.
5. As part of the reevaluation, if the evaluation team and other qualified professionals as appropriate, determines no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs;
 - a. The public agency must provide written notice to the child's parents:
 1. Of that determination and the reasons for it; and
 2. Of the right of the parents to request an assessment to determine whether, for purposes of services under these Rules, the child continues to be a child with a disability or to determine the educational needs of the child.
 - b. The public agency is not required to conduct an assessment for purposes of determining the child's continuing eligibility, unless requested to do so by the child's parents.
6. The evaluation team shall administer tests and other evaluation materials, as may be needed to produce the data for an initial evaluation or reevaluation.
7. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.
8. Before a change in eligibility, except as provided in paragraph (8) (a) of this section, a public agency must evaluate a child with a disability before determining that the child is no longer a child with a disability.
 - a. The evaluation described in this section is not required before the termination of a child's eligibility under these Rules due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under

Territorial law.

- b. For a child whose eligibility terminates under circumstances described in paragraph (a) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

II. F. DETERMINATION OF ELIGIBILITY

1. Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a "child with a disability" and the educational needs of the child as defined in Part B of the IDEA and these Rules. When interpreting evaluation data for this purpose and determining the educational needs of the child, the LEA shall:
 - a. Ensure that the child may not be determined to be "child with a disability" if the determinant factor for such a determination is lack of instruction in reading, included in the essential components of reading instruction meaning explicit and systematic instruction in phonemic awareness; phonics; vocabulary development; reading fluency; including oral reading skills and reading comprehension strategies, lack of appropriate instruction in math; or limited English proficiency and if the child does not otherwise meet the eligibility criteria under these Rules; and
 - b. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. All data sources must be documented and carefully considered.
 - c. Provide the parent with a copy of the evaluation report and documentation of determination of eligibility.
2. If the team makes a determination that the child meets the eligibility criteria in Rule II. F.1, an Individualized Education Program (IEP) shall be developed for the child within fifteen calendar days. Special education and related services may not begin and special education placement may not be made before the IEP is developed.
3. Each public agency shall ensure that the IEP of each child with a disability is reviewed in accordance with §§300.320-324; and
4. Before determining that a child is no longer eligible for special education and related services, the public agency must evaluate the child with a disability in accordance with Rule II. D. and II. E. An evaluation is not required before termination of a child's eligibility under Part B of the IDEA due to graduation with a regular high

school diploma or the completion of the school year in which the child turned twenty-one (21).

5. Additional Procedures for Identifying Children with Specific Learning Disabilities

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in II G. 11 of these Rules must be made by the child's parents and a team of qualified professionals, which must include—

The child's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or for a child less than school age, an individual qualified by the Department of Education and Board of Education to teach a child of his or her age; and at least one person qualified to conduct individual diagnostic examination of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

Determining the existence of a specific learning disability

a. The group described in III F. and II G. 5 of these rules may determine that a child has a specific learning disability if—

1. The child does not achieve adequately for the child's age or to meet the Department of Education's grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or Department of Education's grade level standards:

- (a) Oral expression
- (b) Listening comprehension
- (c) Written expression
- (d) Basic Reading skill
- (e) Reading fluency skills
- (f) Reading Comprehension
- (g) Mathematics calculation
- (h) Mathematics problem solving.

2. The child does not make sufficient progress to meet age or Departmental grade level standards in one or more of the areas identified in paragraph (a) (1) of this section when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Departmental grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with Sections II (D) (E) and (F) of these Rules; and the group determines that its findings under paragraphs (a) (1) and (2)

of this section are not primarily the result of--

- (a) A visual, hearing, or motor disability;
- (b) Mental retardation;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

3. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in Sections II (D) (E) and (F) of these Rules--

(a) Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

4. The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in II C. (7) of these Rules, unless extended by mutual written agreement of the child's parents and a group of qualified professionals as described in III F and II G. (5) of these Rules--

- (a) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 3 (a) of this section; and whenever a child is referred for an evaluation.

Observation:

1. The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. In determining whether a child has a specific learning disability, the group described in III F. and II G. (5) of these Rules must decide to--

- (a) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
- (b) Have at least one member of the group determining eligibility conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is

obtained.

- (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

Specific documentation for the eligibility determination:

1. For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in these Rules must contain a statement of--
 - a. Whether the child has a specific learning disability;
 - b. The basis for making the determination, including an assurance that the determination has been made in accordance with these Rules
 - c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - d. The educationally relevant medical findings, if any;
 - e. Whether the child does not achieve adequately for the child's age or to meet Departmental grade-level standards and the child does not make sufficient progress to meet age or Departmental grade-level standards or intellectual development consistent with these Rules and the Act; and
 - f. The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
 - g. If the child has participated in a process that assesses the child's response to scientific, research-based intervention, the instructional strategies used and the student-centered data collected; and the documentation that the child's parents were notified about the Territory's policies regarding the amount and nature of the student performance data that would be collected and the general education services that would be provided and the strategies for increasing the child's rate of learning and the parents' right to request an evaluation.
5. Each member of the group must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusion

II. G. CATEGORICAL DEFINITIONS

This Rule defines, by category each disabling condition for determining eligibility for a child under Part B of the IDEA and these Rules:

1. *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or changes in daily routines, and unusual responses to sensory experiences.

- a) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in II. G. 1. 4. of these rules.
- b) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in 1. a. is satisfied.

2. *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

3. *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

4. *Developmental Delay* means a child aged three through seven who is experiencing developmental delays measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- a) Physical development
- b) Cognitive development
- c) Communication development
- d) Social or emotional development
- e) Adaptive development; and

Who, by reason thereof, needs special education and related services.

5. *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- a) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

- c) Inappropriate types of behavior or feelings under normal circumstances.
- d) A general pervasive mood of unhappiness or depression.
- e) A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under II. G. 5.

6. *Hearing impairment* means impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

7. *Mental retardation* means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

8. *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs they cannot be accommodated in special education programs solely for one of the impairment. Multiple disabilities does not include deaf-blindness.

9. *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease, and impairments from other causes.

10. *Other health impairment* means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:

- a. Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Tourette syndrome and sickle cell anemia; and
- b. Adversely affects a child's educational performance.

11. *Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as

perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

12. Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.

13. Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

14. Vision impairment including blindness means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

III. INDIVIDUALIZED EDUCATION PROGRAMS (IEPS)

III. A. GENERAL RESPONSIBILITY DEFINITION

The Virgin Islands Department of Education assures that each public agency in the territory shall develop procedures for the implementation of these IEP requirements consistent with Part B of the IDEA.

III. B. WHEN INDIVIDUALIZED EDUCATION PROGRAMS (IEPs) MUST BE IN EFFECT

The Virgin Islands Department of Education through its public agencies assures that on or after July 1, 2004:

At the beginning of each school year, the SEA shall ensure that each public agency shall have in effect, for each child with a disability age 3-21 in its jurisdiction, an Individualized Education Program (IEP). An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with these Rules.

1. An IEP must:
 - a. Be in effect before special education and related services are provided to an eligible child; and
 - b. Be implemented as soon as possible following the IEP meeting in which it is developed.
2. The child's IEP must be accessible to each general education teacher, special education teacher, related services provider and other service providers who are responsible for its implementation for the specified child; and
3. Each teacher and provider described in the above paragraph must be informed of:
 - a. Their specific responsibilities related to implementing the child's IEP; and
 - b. The specific accommodations, modifications, and supports that must be provided for the child in accordance with their IEP.
4. In the case of a child with a disability ages 3 through 5 who is eligible for specialized preschool services, or at the discretion of the SEA, a two year

old child who will turn age three during the school year, the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636 (d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age, and that is developed in accordance with the IEP procedures of these Rules and the IDEA. A child with a disability ages 3 through 5 who is eligible for special education and related services must have an IEP or IFSP in place by his or her 3rd birthday.

- a. If an IFSP is used, it must be developed in accordance with these Rules and the agency and child's parents must agree to its use.
- b. The difference between an IEP and an IFSP must be explained to the parents in detail; and
- c. If the parents choose an IFSP, written informed consent is required.

III. C. TRANSFER CHILDREN

1. If a child with a disability who has been receiving special education from another public agency within the same academic year within the Territory and has an IEP that was in effect, transfers to another LEA, the LEA shall provide the child with a FAPE with services comparable to those included in the previously held IEP, in consultation with the parents until the receiving LEA adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with the IDEA and these Rules.

2. If a child with a disability transfers school districts within the same academic year from another State to any public agency within the Territory and has an IEP that was in effect in another State, the LEA or public agency shall provide such child with a FAPE, including services comparable to those in the previously held IEP, in consultation with the parents until the LEA or public agency conducts an evaluation if determined necessary by the agency, and develops a new IEP if appropriate, consistent with the IDEA and these Rules.

3. The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and all other records relating to the provision of special education or related services from the previous public agency in which the child was enrolled.

4. Any public agency or LEA in the Territory which receives a request for an IEP, supporting documents and all other records relating to the provision of special

education or related services for a child that was previously enrolled in the Territory, must take reasonable steps to promptly respond to the request from the new public agency.

III. D. PUBLIC AGENCY RESPONSIBILITY FOR IEP MEETINGS

1. Each public agency is responsible for initiating and conducting meetings for the purpose of reviewing and revising a child's individualized education program or if consistent with 34 CFR §300.323(b), an IFSP, 3 through 5 year olds (or, at the discretion of the SEA a 2 year-old child with a disability who will turn age 3 during the school year) consistent with these Rules.
2. Within sixty days following the public agency's receipt of parent consent to an initial evaluation of a child that:
 - a. The child is evaluated; and
 - b. If determined eligible, special education and related services are made available to the child in accordance with an IEP.
3. Each public agency must convene a meeting to develop the IEP within fifteen calendar days of determination that a child needs special education and/or related services.

III. E. DEVELOPMENT, REVIEW AND REVISION OF THE IEP

Nothing in this Rule requires the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP Development, Review, and Revision of IEP:

1. In developing each child's IEP, the IEP team shall consider:
 - a. The strengths of the child and the concerns of the parent for enhancing the education.
 - b. The results of the initial or most recent evaluation of the child and as appropriate, the results of the child's performance on any general statewide or district wide assessment programs.
 - c. The academic, developmental, and functional needs of the child.

2. The IEP team shall also:
 - a. In the case of a child whose behavior impedes the child's learning or that of others, consider strategies, if appropriate including positive behavioral interventions, strategies, and supports to address that behavior;
 - b. In the case of a child with limited English proficiency, consider the language needs of the child as these needs relate to the child's IEP;
 - c. In the case of a child, who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, an appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - d. Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
 - e. Consider whether the child requires assistive technology devices and services as a part of the child's special education, related services or supplementary aids and services; and
 - f. Consider whether the child requires Extended School Year (ESY) services in accordance with III. N.
3. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in III. E. 2. If, in considering the special factors described in III. E. 2, the IEP team determines that a child needs a particular device or service for educational purposes (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE; the IEP team shall include a statement to that effect in the child's IEP.

4. Each public agency shall ensure that the IEP team, initiate and conduct a meeting periodically, but not less than annually to review each child's IEP to determine whether the annual goals for the child are being met, and if appropriate, revise the IEP to address:
 - a. Any lack of expected progress towards the annual goals and in the general education curriculum, if appropriate.
 - b. The results of any reevaluations conducted.
 - c. Information about the child provided to, or by the parents.
 - d. The child's anticipated needs
 - e. The child's present levels of academic achievement and functional performance.
5. The general education teacher of the child with a disability as a member of the IEP team, must to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in:
 - a. The determination of appropriate positive behavioral interventions and strategies.
 - b. The determination of supplementary aids and services, program modifications, or supports for school personnel that will be provided for the child consistent with the IEP.
6. A single coordinated education and treatment plan shall be developed for each child with a disability who requires special services from both the public schools and other State agencies. It is not necessary, however, for the plan to be limited to a single agency's form or forms jointly developed by the agencies. If a single coordinated education and treatment plan is developed for a child with a disability, it must meet the requirements of 34 CFR §§300.324-300.328 Individual Education Programs.
7. In the case where a participating agency, other than the educational agency, fails to provide agreed-upon transition services, the educational agency shall reconvene the IEP to identify alternative strategies to meet the transition objectives.
8. For the purpose of making changes to a child's IEP after the annual IEP meeting for a school year, the parent and public agency may agree not to

convene an IEP meeting for the purpose of making those changes, and may develop a written document to amend or modify the child's current IEP.

9. Changes to the IEP may be made either by the entire IEP Team or, as provided in paragraph 8 of this section, by amending the IEP rather than by redrafting the entire IEP. At the parents' request, a copy of the revised IEP with amendments must be provided. If changes are made to the child's IEP under (8) or (9) of this section, the public agency must ensure that each member of the child's IEP team is informed of the changes.
10. The parent and public agency may agree to use alternative means of meeting participation such as video conferences and conference calls for IEP meetings and carrying out administrative matters.

III. F. IEP TEAM COMPOSITION

Each public agency ensures that each IEP team for each child with a disability includes:

1. The parents of the child with a disability (If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls); and
2. Not less than one core academic subject regular education teacher of such child (if the child is, or may be participating in the regular education environment);
3. Not less than one special education teacher or, where appropriate, at least one special education provider of such child;
4. A representative of the public agency who:
 - a. Is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
 - b. Is knowledgeable about the general education curriculum; and
 - c. Is knowledgeable about the availability of resources of the public agency.
5. A public agency may designate another public agency member of the IEP team to also serve as the public agency's representative, if the above criteria are satisfied.

6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of the knowledge or special expertise of any individual described in this Rule shall be made by the party who invited the individual to be a member of the IEP team.
7. Whenever appropriate, the child.
8. An individual who can interpret the instructional implications of evaluation results who may be another member of the team described in 2 through 5 of this Rule.
9. If the purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, the child must be invited to the meeting. If the child does not attend the IEP meeting, the public agency shall take other steps to ensure that the child's preferences and interests are considered.
10. The public agency shall also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so; the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

III. G. IEP TEAM ATTENDANCE

1. A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
2. A member of the IEP Team may be excused from attending an IEP meeting in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--
 - a) The parent, in writing, and the public agency consent to the excusal; and
 - b) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

3. For a child previously served under Part C of the IDEA, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

III. H. PARENT PARTICIPATION IN IEP MEETINGS

1. Each public agency shall take steps to ensure that one or both of the parents of the child with disability are present at each meeting or are afforded the opportunity to participate, including:
 - a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
 - b. Scheduling the meeting at a mutually agreed-upon time and place.
2. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must have a record of its attempts to arrange a mutually agreed-upon time and place, such as:
 - a. detailed records of telephone calls made or attempted and the results of those calls;
 - b. copies of correspondence sent to the parents and any responses received; and
 - c. detailed records of visits made to the parent's home or place of employment and the results of those visits.
3. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or severe hearing impairment or whose native language is other than English. Such services shall be at no cost to the parents.
4. If parents are unable to attend an IEP meeting, the public agency will be responsible to enact one of the following procedures to insure that the parents have participated as much as possible within the decision-making process.
 - a. The parents are invited to school at a later date to review, suggest changes in and/or give approval to the decisions made at the meeting;

- b. A phone conference whereby a school representative reviews, in detail, the results of the meeting and obtains parental feedback; or
 - c. A school representative or committee member makes a home visit and reviews the information with parents and gets feedback.
- 5. The parents of a child with a disability are expected to be equal members of the IEP team, along with the school personnel in developing, reviewing and revising the IEP for their child. It is expected that parents will:
 - a. Provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child.
 - b. Participate in the discussion about the child's need for special education and related services and supplementary aids and services.
 - c. Join with the other participants in deciding how the child will be involved and progress in the general education curriculum and participate in territory- and district wide assessments, and what services the public agency will provide to the child and in what setting.
- 6. The public agency must give the parent a copy of the child's Individualized Education Program, at no cost to the parent.

III. I. NOTICE OF IEP MEETINGS

- 1. The specific notice procedure used to notify parents is left to the discretion of the public agency, but the agency must maintain a written record of its efforts to contact parents.
- 2. The notice must indicate the purpose, time, and location of the meeting, and who will be in attendance. The notice will also inform the parents of the provisions of III. F. 6, relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.
- 3. For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16 or younger if determined appropriate by the IEP Team, the notice must--

- ✓ a. Indicate that a purpose of the meeting will be the Consideration of the postsecondary goals and transition services for the child in accordance with §300.320 (b); and
 - b. Indicate that the LEA will invite the child.
 - c. Indicate any other agency that will be invited to send a representative.
- 4. The public agency shall provide separate notices of the IEP meeting to both the child and the parents for children who have reached the age of majority or are emancipated and have not been declared incompetent by the courts.
- 5. Written or verbal notification will be in the primary language spoken at home.

III. J. CONTENT OF INDIVIDUALIZED EDUCATION PROGRAM

- 1. The contents of each IEP developed for a child with a disability must include:
 - a. A statement of the child's present levels of academic and functional performance, including; how the child's disability affects the child's participation and progress in the general education curriculum.
 - b. For preschool children, as appropriate, how the disability affects the child's participation in age-appropriate activities.
- 2. A statement of measurable annual goals, including academic and functional goals designed to:
 - a. Meet the child's needs that result from the child's disability so that the child can be involved in and progress in the general education curriculum; (i.e., the same curriculum as for non-disabled children), or for preschool children, as appropriate, to participate in appropriate activities; and
 - b. Meet each of the child's other educational needs resulting from the child's disabilities.

- c. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.
- 3. A description of –
 - a. How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - b. When periodic reports on the progress the child is making towards meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.
- 4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—
 - a. To advance appropriately toward attaining the annual goals;
 - b. To be involved in and make progress in the general education curriculum in accordance with paragraph (1) of this section, and to participate in extracurricular and other nonacademic activities and;
 - c. To be educated and participate with other children with disabilities and nondisabled children in the activities described in III. S. of these Rules
- 5. An explanation of the extent, if any to which the child will not participate with nondisabled children in the regular education environment and in the activities described in paragraph (4) of this section.
- 6. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments; and
 - a. If the IEP Team determines that the child must take an alternate assessment instead of the standard State or district wide assessment of student achievement, a statement of why—
 - 1. The child cannot participate in the regular assessment; and

2. The particular alternate assessment selected is appropriate for the child.
7. The projected date for the beginning of services and modifications described in paragraph 4 of this section and the anticipated frequency, location, and duration of the services, accommodations and modifications; and
8. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—
 - a. Appropriate measurable postsecondary goals based upon age appropriate assessments related to training, education, employment, and, where appropriate, independent living skills.
 - b. The transition services, including course of study, needed to assist the child in reaching those goals.
9. Beginning not later than one year before the child reaches the age of eighteen, the IEP must include a statement that the child has been informed of the child's rights under Part B of the IDEA, if any, that will transfer to the child on reaching the age of majority.
10. The signatures and titles of all IEP meeting participants and the date each one signed.

III. K. TRANSITION SERVICES

1. For purposes of these Rules, "transition services" means a coordinated set of activities for a child with a disability that:
 - a. Are designed within an results-oriented process, that are focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, (including supported employment), continuing adult education, adult services, independent living, or community participation;
 - b. Are based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes--

1. Instruction.
 2. Related Services.
 3. Community experiences.
 4. The development of employment other post-school adult living objectives.
 5. If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- c. May be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.
2. As used in these Rules, "participating agency," means a state or local agency other than the LEA responsible for the child's education that is financially and legally responsible for providing transition services to the child. Agency responsibilities for transition services are as follows:
- a. Any participating agency, including a state vocational rehabilitation agency, is not relieved of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.
 - b. If a participating agency, other than the public agency, fails to provide agreed-upon transition services contained in the IEP, the public agency must reconvene an IEP meeting to identify alternative strategies to meet the transition objectives for the child set out in the IEP and provide or pay for these services in a manner to ensure the continued provision of services during disputes involving which agency is financially responsible.

III. L. PHYSICAL EDUCATION

Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to non-disabled children unless:

1. The child is enrolled full time in a separate facility.
2. The child needs specially designed physical education as prescribed in the child's IEP.

If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with these Rules.

III. M. ASSISTIVE TECHNOLOGY

1. Each public agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services as specified in these Rules.
2. On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.
3. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

III. N. EXTENDED SCHOOL YEAR SERVICES (ESY)

1. Extended school year services are special education and related services that are provided to a child with a disability: a) beyond the normal school year of the public agency, b) in accordance with the child's IEP, c) at no cost to the parents of the child, and d) meet the standards of the SEA.
2. Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with these Rules.
3. Extended school year services must be provided only if a child's IEP team determines on an individual basis through the IEP process, that the services are necessary for the provision of FAPE to the child.
4. In implementing ESY requirements, the public agency may not:

- a. Limit extended school year services to particular categories of disability.
- b. Unilaterally, limit the type, amount, or duration of these services.

III. O. CHILDREN WITH DISABILITIES CONVICTED AS ADULTS AND INCARCERATED IN ADULT PRISONS

The obligation to make FAPE available (including special education/related services) under IDEA –Part B and these Rules to all children with disabilities applies to students age 18 through 21, who are convicted as adults and incarcerated in an adult correctional system, with the following exceptions:

1. The IEP team of a child with a disability, who is convicted as an adult under the Territory's law and incarcerated in an adult prison, may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. In this case, the IEP and LRE requirements do not apply with respect to these modifications.
2. Requirements that do not apply to the content of IEPs for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons are:
 - a. Participation in state or district-wide assessment of student achievement.
 - b. Transition planning and services with respect to children whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
3. Exceptions to FAPE. -These requirements do not apply to children aged 18 through 21, who in their last educational placement prior to their incarceration in an adult correctional facility—(A) were not actually identified as being a child with a disability under 34 CFR §300.8 and (B) Did not have an IEP under Part B of the Act or to those children with disabilities who have graduated from high school with a regular high school diploma.
4. A child with a disability who had received services in accordance with an IEP, but who left school prior to their incarceration; or did not have an IEP in their last educational setting, but who had actually been identified as a “child with a disability” under 34 CFR §300.8, and children with disabilities who have graduated from high school but have not been awarded a regular high school diploma are entitled to continue receiving their special education and related services.

III. P. CHILDREN IN 24-HOUR RESIDENTIAL LIVING FACILITIES

1. The responsibility for the provision of special education and related services to a child with disabilities placed in a 24-hour residential setting rests with the school district within which the residential setting is located. If residential placement for these children is requested to be provided with public education funding, the district of the parents' residence is responsible for responding to this request.
2. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the educational program, including non-medical care and room and board must be at no cost to the parents of the child.

III. Q. IEP ACCOUNTABILITY

1. Each public agency must provide special education and related services to a child with disabilities in accordance with the child's IEP; and
2. Make a good faith effort to assist the child to achieve the goals and objectives/benchmarks in the IEP must be made; and
3. Part B of the Act does not require that an agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives; and
4. Nothing in this Rule limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required of this Rule are not being made.

III. R. LEAST RESTRICTIVE ENVIRONMENT (LRE)

Each public agency must establish and implement policies and procedures that meet the requirements of Least Restrictive Environment (LRE) under Part B of the IDEA and these Rules. The following requirements must be met for all children with disabilities, ages 3 through 21:

1. General. Each public agency shall ensure that:
 - a. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities and pre-school children with disabilities are educated with children who are not

disabled.

- b. A child with a disability must be enrolled in the school he or she would attend if non-disabled, unless the IEP requires another arrangement. If the child cannot be educated in the neighborhood school, the child must be provided an educational program as close to the child's home as possible.
- c. Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when 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.
- d. In providing or arranging for the provision of nonacademic and extracurricular services, each child with disabilities will participate with non-disabled children, to the maximum extent appropriate to meet the needs of that child in nonacademic and extracurricular services and activities. Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referral to agencies that provide assistance to individuals with disabilities, employment of children, including both employment by the public agency and assistance in making outside employment available.
- e. The Virgin Islands Department of Education does not use a funding mechanism which distributes funds based on the type of setting in which a child is served that will result in the failure to provide FAPE to a child with a disability, as described in the child's IEP.

2. Continuum of Alternative Placements

- a. Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services to meet the LRE requirements in its service delivery system.
- b. The continuum must include:

1. Instruction in regular classes
2. Special classes
3. Special schools
4. Home instruction
5. Instruction in hospitals and institutions

- c. In addition, make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

3. Placements- In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that:

- a. The placement decision 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;
- b. The child's educational placement shall be individually determined at least annually and is based on the child's IEP;
- c. The placement is made in conformity with the LRE provisions of these rules and is as close as possible to the child's home;
- d. 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 non-disabled;
- 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; and
- f. In selecting the LRE, consideration is given to any potential harmful effect on the child or the quality of services that the child needs.
- g. In providing or arranging for the provision of nonacademic and extracurricular services and activities, the public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to

participate in nonacademic settings.

4. Children in Public or Private Institutions. Each public agency, through its placement and IEP procedures, shall ensure that children placed by the public agency in public or private institutions are placed in the least restrictive environment, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures). Implementation of this policy is further described in Rules III. U and III. V.
5. Technical Assistance and Training Activities. The VIDE shall carry out activities to ensure that teachers and administrators in public agencies are fully informed about their responsibilities for implementing 34 CFR §300.114, and are provided with technical assistance and training necessary to assist them in this effort. The VIDE shall ensure the implementation of the least restrictive environment provision through its technical assistance/training and monitoring activities. If as a result of the monitoring activities evidence indicates that a public agency is making placements that are inconsistent with the LRE requirements, the VIDE will:
 - a. Review the public agency's justifications for its actions.
 - b. Assist in the planning and implementation of any necessary corrective actions.
6. Funds are not distributed to LEAs on the basis of the type of setting in which a child is served.

III. S. PRESCHOOL EDUCATIONAL SERVICES

Services for children with disabilities ages 3 through 5, served in preschool programs, are to be provided consistent with these Rules, with the following:

1. **Transition planning.** Transition planning for children referred from Part C providers must be conducted consistent with the territory's current interagency transition agreement. This planning shall be implemented at least ninety (90) days, and at the discretion of the parties up to 6 months, before the child is eligible for the preschool program under Part B of the IDEA in accordance with these Rules. Each public agency will participate in transition planning meetings arranged by the lead agency for the Part C program. The Team shall consider a child's IFSP when developing an appropriate program for a child transitioning from Part C to Part B services.
2. **Services at age three.**
 - a. For those children who turn age three during the school year, including those who are enrolled in early intervention programs, FAPE must be made available for eligible children on their 3rd birthday, and an IEP or IFSP, as appropriate is in effect for an eligible child by that date.
 - b. If an eligible child's 3rd birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

III. T. PARENT INVOLVEMENT IN PLACEMENT DECISIONS

1. Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.
2. In implementing this requirement, each public agency shall use procedures for parent involvement in placement decisions consistent with those used for parent participation in IEP meetings (see Rule III. H).
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 shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing (Rule III. H).
4. A group may make a placement decision without the involvement of the parents if the public agency is unable to obtain the parents' participation in

the decision. In this case the public agency must have a record of its attempts to ensure their involvement, including information that is consistent with the requirements for conducting an IEP meeting without a parent in attendance (see Rule III. H.)

5. The public agency shall make reasonable efforts to ensure that the parents understand and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

III. U. CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES.

1. If a child with a disability is placed in or referred to a private school or facility by a public agency as a means of providing special education and related services, the public agency must assure that:
 - a. The services are provided in conformance with an IEP that meets the requirements of these Rules; and
 - b. The services are provided at no cost to the parents.
 - c. The private school or facility meets all of the VIDE standards that apply to education provided by the public agencies including requirements under Part B of IDEA except for the requirements of §300.18 and 300.156 (c).
 - d. The child has all of the rights of a child with a disability who is served by a public agency.
 - e. The Compliance Manager of the State Office of Special Education is notified in writing of the placement, to ensure compliance with these Rules through the inclusion of the facility in the monitoring process, as necessary.
2. The VIDE will monitor compliance with these requirements through procedures such as written reports, on-site visits, parent questionnaires, and the monitoring process.
3. The public agency is responsible to disseminate copies of applicable VIDE standards to each private school or facility to which a public agency has referred or placed a child with a disability.

4. The VIDE will provide an opportunity for representatives of those private schools and facilities to participate in the development and revision of VIDE standards that apply to them.
5. Developing IEPs.
 - a. Before a public agency places a child with a disability in or refers a child to a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with these Rules
 - b. The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
6. Reviewing and revising IEPs.
 - a. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the placing public agency.
 - b. If the private school or facility initiates and conducts these meetings, the agency shall ensure that the parents and an agency representative:
 1. Are involved in any decisions about the child's IEP.
 2. Agree to any proposed changes in the programs before those changes are implemented.
7. Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with these Rules remains with the placing public agency and the VIDE.

III. V. CHILDREN WITH DISABILITIES ENROLLED IN PRIVATE SCHOOL BY THEIR PARENTS WHEN FAPE IS AT ISSUE

1. A public agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the public agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with Rule III. W.
2. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures in these Rules.
3. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the public agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the Territory's standards that apply to education provided by the SEA and public agencies, if the public agency did not make FAPE available.
4. The cost of reimbursement described in item three of this Rule may be reduced or denied if:
 - a. At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
 - b. At least ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (4) (a) above;

- c. If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Rule IV. E., of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make child available for the evaluation; or
 - d. upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- 5. Notwithstanding the notice requirement in item 4 above, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:
 - a. Parents had not received notice from the public agency of the notice requirement in III. W.4 (a) and;
 - b. the school prevented the parents from providing the notice;
 - c. compliance with paragraph (4) (a) of this section would likely result in physical harm to the child; and
 - d. may, in the discretion of the court or a hearing officer, or be reduced or denied for failure to provide this notice if—
 - 1. the parents are not literate or cannot write in English; or
 - 2. compliance with paragraph (4) (a) of this section would likely result in serious emotional harm to the child.

III. W. CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

Children covered by this Rule are children with disabilities enrolled by their parents in private, including religious schools, or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36 other than those children covered under Rule III. X.

- 1. **Child Find.** Each public agency must locate, identify, and evaluate all private school children with disabilities, who are enrolled by their parents in private, including religious, elementary schools and secondary schools in the jurisdiction of the public agency, in accordance with these Rules. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools. Each public agency shall

consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in this Rule.

2. **Provision of Services.** To the extent consistent with their number and location in the Territory, provision must be made for the participation of private school, including religious, elementary schools and secondary school children with disabilities in the program assisted or carried out Part B of the IDEA and these Rules, by providing them with special education and related services (including direct services) in accordance with this Rule. All special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

The VIDE shall ensure that, in accordance with this rule, a service plan is developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under these Rules.

3. **Expenditures.** In order to meet the requirements of this Rule, each public agency must spend the following on providing special education and related services (including direct services) to private school children with disabilities:
 - a. For children ages 3 through 21, an amount that is the same proportion of the public agency's total sub-grant under Part B of the IDEA as the number of private school children with disabilities ages 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction ages 3 through 21.
 - b. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children.
 - c. Children aged three through five, an amount that is the same proportion of the LEA's total sub grant under section 619 (g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

- d. Children aged three through five are considered to be parentally placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.

If an LEA has not expended for equitable services all of the funds described in (5) (a) and (5) (c) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

4. **Child Count:** Each public agency shall:

- a. A timely and meaningful manner, consult with representatives of parentally-placed private school children with disabilities to determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and
- b. Ensure that the count is conducted on any date between October 1 and December 1, inclusive of each year.
- c. Child count must be used to determine the amount that the public agency must spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.
- d. Expenditures for child find activities may not be considered in determining whether the public agency has met the requirements of this Rule.
- e. Public agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this Rule.
- f. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities.

5. **No individual right to special education and related services.** No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to parentally placed private school

children with disabilities must be made in accordance with this Rule.

6. **Consultation with representatives of private school children with disabilities.** An LEA or if appropriate an SEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children and representatives of parents of parentally-placed private school children with disabilities in light of the funding under this Rule regarding:
 - a. The Child Find Process, including—
 1. How parentally-placed private school children suspected of having a disability can participate equitably; and
 2. How parents, teachers, and private school officials will be informed of the process.
 - b. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133 (b), including the determination of how the proportionate share of those funds was calculated.
 - c. The consultation process—
 1. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities, identified through the child find process can meaningfully participate in special education and related services.
 - d. The provision of special education and related services. How, where and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including discussion of--
 1. The types of services, including direct services and alternate service delivery mechanisms; and
 2. How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
 3. how and when those decisions will be made.

- e. Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.
 - f. Written affirmation following timely and meaningful consultation, the LEA must obtain written affirmation signed by the representatives of participating private schools. In the event that the private school representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.
7. **Genuine opportunity.** Each public agency shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this Rule.
8. **Timing.** The consultation required by item 8 of this Rule must occur before the public agency makes any decision that affects the opportunities of private school children with disabilities to participate in services under this Rule.
9. **Decisions.** The public agency shall make the final decisions with respect to the services to be provided to eligible private school children.
- a. A private school official has the right to submit a complaint to the SEA that the LEA:
 - 1. Did not engage in consultation that was meaningful and timely; or
 - 2. Did not give due consideration to the view of the private school official.
 - b. In the event that a private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this section
 - c. The LEA must forward the appropriate documentation to the SEA.
 - d. If the private school official is dissatisfied with the decision of

the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in (b) of this section.

- e. The SEA must forward the appropriate documentation to the Secretary.

10. **Services plan.** If a child with a disability is enrolled by his or her parents in a religious or other private school and will receive special education or related services from a public agency, the public agency shall:

- a. Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with item 13 of this Rule.
- b. Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend; the public agency shall use other methods to ensure participation by the private school including individual or conference telephone calls.

11. **Services provided.**

- a. The services provided to parentally placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of §300.18 of the Act.
- b. Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- c. No parentally placed private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.
- d. Each parentally placed private school child with a disability who has been designated to receive services must have a service plan that describes the specific special education and related services that the public agency will provide to the child in light of the services that the public agency has determined it will make

available to parentally placed private school children with disabilities

e. The services plan must to the extent appropriate:

1. Meet the requirements of Rule III.D, with respect to the services provided, or for a child ages three through five, meet the requirements of 300.323 (b); and
2. Be developed, reviewed, and revised consistent with the IEP provisions in Rule III. D.

12. **Location of Services.** Services provided to parentally placed private school children with disabilities may be provided on-site at a child's private school, including a religious school, and/or in a public agency facility to the extent consistent with law.

13. **Transportation.**

a. If necessary for the child to benefit from or participate in the services provided under this Rule, a private school child with a disability must be provided transportation:

1. From the child's school or the child's home to a site other than the private school; and
2. from the service site to the private school, or to the child's home, depending on the timing of the services.

b. Public agencies are not required to provide transportation from the child's home to the private school.

c. The cost of transportation described in item 15(a) above may be included in calculating whether the public agency has met the expenditure requirement under item 5 of this Rule.

14. **Due Process:**

a. **Due process inapplicable.** The procedures for conducting a due process hearing under Rule IV do not apply to complaints that a public agency has failed to meet the requirements of this section, including the provision of services indicated on the child's service plan.

- b. **Due process applicable.** The procedures for conducting a due process hearing under Rule IV do apply to complaints that a public agency has failed to meet the requirements of Child Find in the Act and these Rules including the requirements of evaluation and determination of eligibility under these Rules. Complaints filed under this paragraph must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.
- 15. **State complaints.** Complaints that a SEA or a public agency has failed to meet the requirements of this Rule may be filed under the state's complaint procedures as specified in Rule IV. H.
- 16. **Separate classes prohibited.** A public agency may not use funds available under Part B of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the children if:
 - a. The classes are at the same site.
 - b. The classes include children enrolled in public schools and children enrolled in private schools.
- 17. **Requirement that funds not benefit a private school.** A public agency may not use funds provided under Part B of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The public agency shall use funds provided under Part B of the IDEA to meet the special education and related services needs of children enrolled in private schools rather than the needs of the private school or the general needs of the children enrolled in a private school.
- 18. **Use of Public School Personnel.** A public agency may use funds provided under Part B of the IDEA to make public school personnel available in other than public facilities to the extent necessary to provide services specified under this Rule for parentally placed private school children with disabilities and if those services are not normally provided by the private school.
- 19. **Use of Private School Personnel.** A public agency may use funds available Part B of the IDEA to pay for the services described in this Rule and provided by any employee of a private school if the employee performs the services outside of his/her regular hours of duty and the employee performs the services under public supervision and control.

20. Property, equipment and supplies.

- a. A public agency must keep title to and exercise continuing administrative control of all equipment, property, and supplies that the public agency acquires with Part B funds for the benefit of parentally placed private school children with disabilities.
- b. A public agency may place equipment and supplies in a private school for the period needed for the program.
- c. The public agency shall ensure that the equipment and supplies placed in a private school:
 1. Are used solely for Part B purposes; and
 2. Can be removed from the private school without remodeling the private school facilities.
- d. The public agency shall remove equipment and supplies from a private school if:
 1. The equipment and supplies are no longer needed for the purpose of the project; or
 2. Removal is necessary to avoid unauthorized use of the equipment and supplies for other than project purposes.

21. No funds under Part B of the Act may be used for repair, minor remodeling or construction of private school facilities.

III. X. GRADUATION

1. The obligation of the public agency to make FAPE available to all children with disabilities does not apply to children with disabilities who graduated from high school with a regular high school diploma. Children who participated in a graduation ceremony, but who were awarded a document other than a regular high school diploma (such as a GED or a Certificate of Completion or Attendance) are still entitled to FAPE, unless they have completed the school year in which they have turned 21 years of age.
2. Graduation with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with Rule IV. E. Parents of children who have reached the age of majority, or who are emancipated and have not been declared incompetent by a court, retain their parental notice rights in accordance

with 34 CFR §300.503.

3. It is not necessary to evaluate a child as described in Rule II.D., before the termination of the child's special education eligibility due to graduation with a regular high school diploma or completing the school year in which the child turns 21 years of age. When a child's eligibility ends due to either of these circumstances, the LEA shall provide a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals.
4. Graduation issues must be addressed by the IEP team on an individual basis. The IEP is the vehicle for making changes to graduation requirements to meet the unique educational needs for children with disabilities such as, the IEP must document the nature and extent of modifications, substitutions, and/or exemptions made to accommodate a child with disabilities. (See III, Y.6.c., High School Graduation Requirements) The decision to terminate services, through graduation, for a child with disabilities under the age of 21 is an IEP team decision.
5. Children who had been served in special education during one of their high school years, but who are not receiving services at the time of graduation, are eligible for changes made to their graduation requirements during the time they received services. When a child's special education services are terminated, the IEP team must document the modifications that have been made with appropriate school personnel to ensure that the child is on track for graduation.
6. Children with disabilities and their parents must be informed regarding graduation. Since graduation from high school with a regular diploma constitutes a change in placement requiring written prior notice (Rule IV.E) parents and children must be notified of the child's impending graduation with enough lead-time for due process procedures to be implemented, should they disagree with the public agency's intent to graduate the child. This notification must include the following information:
 - a. Issuance of a regular high school diploma terminates the child's eligibility for public educational services. A regular high school diploma will terminate the public agency's obligation to provide FAPE.
 - b. The public agency may not be required to withhold issuance of an earned regular high school diploma if the child with disabilities has met the graduation requirements.
 - c. The IEP team on a case-by-case basis may exempt the child or modify the mastery demonstration to accommodate the child's disability. Children who have been served in special education during one of their

high school years but who are not receiving service at the time of graduation are eligible for modifications made during the time they received service. When a child's special education services are terminated, special education teams must document the modifications that have been made with appropriate school personnel to ensure that the child is on track for graduation.

7. Graduation options, for children with disabilities whose age mates will graduate during a given academic year, include the following:
 - a. If VIDE, VI-BOE and public agency graduation requirements are completed, the child will graduate and receive a regular high school diploma.
 - b. If graduation requirements as amended on the IEP are completed, the child will graduate and receive a regular high school diploma.
 - c. If graduation requirements as amended on the IEP are not completed and the child's IEP or transition plan documents the need for transition services offered by the public agency, the child may be allowed to participate in the graduation ceremonies, however, a diploma shall not be issued until the child has successfully completed his/her program.
 - d. If graduation requirements as amended on the IEP are not completed before the child completes the school year in which he turns 21, the child may be issued a certificate (e.g. Certificate of Completion or Attendance) indicating that a record of competencies can be made available to them or others who may legitimately inquire.
 - e. If graduation requirements as amended on the IEP are not completed due to factors that are not a direct manifestation of the child's disability (as determined by the IEP team), the child is not eligible to participate in graduation ceremonies or receive a regular high school diploma until the amended requirements are met.
 - f. If graduation requirements as amended on the IEP are not completed due to factors that are a direct manifestation of the child's disability (as determined by the IEP team), the child shall be allowed to participate in graduation ceremonies, but is not eligible to receive a regular high school diploma until the amended requirements are met.

III. Y. TERMINATION OF SERVICES

Termination of special education and related services to a child with a disability constitutes a change in placement and is therefore subject to the notice requirements of Rule IV.E.

Termination of services must be made through a team meeting held for reviewing or changing a child's IEP. Required participants in the meeting to consider termination of services are the same as in any IEP meeting, and include the child's parents. Discontinuation of special education services may be because:

1. The child no longer qualifies for special education services, as determined by the IEP team through the reevaluation process (Rules II.D., E., and F.).
2. The parent (or child of majority) refuses special education services. In this case, services are discontinued but the child is not declassified, and eligibility for services continues until the expiration of the three-year evaluation period. Such a refusal of service must be documented in writing and signed by the parent/guardian.

III. Z. SERVICES FOR HOMEBOUND AND HOSPITALIZED CHILDREN WITH DISABILITIES

1. The homebound and hospitalized service pattern is designed for identified children with disabilities who are permanently or temporarily homebound or hospitalized, the primary purpose of which is something other than the child's educational needs. Instructional services available through this service arrangement are intended for identified children with disabilities who, for reasons of health, accident, injury, substance abuse, or other treatment (including psychiatric and mental health), are homebound or hospitalized.
2. Subsequent referrals of homebound and hospitalized children for evaluation and eligibility determination for special education services must be made to the home district. The home district maintains responsibility for the evaluation, classification, and development of the Individualized Educational Program (IEP).
3. Children served as homebound or hospitalized must be evaluated and classified according to one of the disability conditions as described in these Rules. Classification of the child as eligible under one of the disability categories must follow the approved regulations for evaluating and determining eligibility according to the criteria for the particular classification (see Rule II.F and II. G). the service can begin as soon as possible, although the child must have an expected absence of at least two weeks.
4. The teacher of the homebound or hospitalized child must maintain contact with the special education teacher and/or the regular classroom teacher from the school responsible for serving the child in the school setting.
5. Components of a local school district's system for homebound and hospitalized service delivery shall include and address the following areas:

- a. **Service providers.** Personnel assigned to provide homebound/hospitalized instruction to children with disabilities shall be licensed according to the standards specified in the Virgin Islands Board of Education and meet the definition of highly qualified special education teacher.
 - b. **Amount of instruction** will be determined by the IEP team.
 - c. **Initiation of services.** The delivery of educational services for the homebound or hospitalized child with disabilities must be approved by the child's health professional contingent upon the child's health and ability to receive instruction.
 - d. **Responsibility for services.** The home school district (district in which parents/ guardians reside) retains responsibility for continuing the educational program of the child during his homebound or hospitalized stay, unless the child is also in the state's custody. In this case, the school district in which the child resides during state custody is responsible for providing the child's educational program. If the parent does not wish the district to provide the services, and/or if the hospital or facility provides an educational program deemed appropriate by the parents, they may sign a form refusing school district services during the hospital/home stay. If the child is placed in a 24-hour residential setting, Rule III. Q applies.
6. **Prohibition.** LEAs are prohibited from using Home Instruction as a placement option for a child with a disability for disciplinary reasons.

III. AA. MONITORING IEP

Annually, using a random sample reflecting 7% of the IEPs and IFSPs of the schools and/or programs being monitored, the SEA will utilize the procedures set forth in the VI Department of Education Monitoring Manual to monitor and evaluate IEPs and IFSPs as appropriate.

IV. PROCEDURAL SAFEGUARDS

IV. A. PROCEDURAL SAFEGUARDS

Consistent with the requirements of Part B and these rules, the VIDE has established, maintains, and implements procedural safeguards that each public agency shall adopt for parents and children with disabilities.

IV. B. OPPORTUNITY TO EXAMINE RECORDS

The parents of children with disabilities shall be afforded, in accordance with these Rules, an opportunity to inspect and review all educational records with respect to the identification, evaluation, and educational placement of the child; and the provision of a FAPE to the child as defined in Rule I.F. 23.

IV. C. PARENT PARTICIPATION IN MEETINGS

1. The parents of children with disabilities shall be afforded, in accordance with these Rules, an opportunity to participate in any meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a (FAPE) to the child. Public agencies must provide notice to parents of the meetings described above early enough to ensure that they will have an opportunity to participate. The notice itself must be consistent with Rules III. I. and IV. E.
2. 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 if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.
3. Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child, consistent with the procedures of Rule III.F.
4. 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 shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
5. A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents'

participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of Rule III. G.

6. The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

IV. D. INDEPENDENT EDUCATIONAL EVALUATION

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question and that the evaluation is either paid for in full by the public agency or that the evaluation is otherwise provided at no cost to the parents. Each public agency shall adopt and implement these policies and procedures related to independent educational evaluations that meet the requirements of Part B of the IDEA and these Rules. The following requirements must be addressed.

1. The parents of the child with a disability have a right to obtain an independent educational evaluation at public expense if they disagree with the public agency's evaluation of the child, subject to the provisions in this section.
2. Upon request, the public agency shall provide to parents information about where an independent educational evaluation may be obtained and the applicable agency criteria for independent educational evaluations as set forth in this section.
3. Whenever an independent educational evaluation is made at the public's expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent that those criteria are consistent with the parent's right to an independent educational evaluation.
4. If a parent request an independent educational evaluation at the public agency's expense, the public agency must without unnecessary delay either initiate a hearing under Rule IV I to show that its evaluation is appropriate or ensure that an independent educational evaluation is provided at the public agency's expense, unless the public agency demonstrates in a hearing that the evaluation obtained by the parent did not meet public agency criteria.

5. If the public agency initiates a hearing and the final decision is that public agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. If an independent educational evaluation is at the public's expense, the public agency must ensure that the evaluation is provided at no cost to the parent.
6. If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required, and the public agency may not unreasonably delay either, providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.
7. If a parent obtains an independent educational evaluation of a child with a disability at private expense, the results of the evaluation must be considered by the public agency, if it meets public agency criteria, in any decision made with respect to the provisions of a free appropriate public education to the child, and may be presented as evidence at a hearing under this subpart regarding that child.
8. If a hearing officer makes a request for an independent educational evaluation as part of a hearing, it must be at the public's expense.
9. An independent educational evaluation conducted at the public's expense becomes the property of the public agency in its entirety.
10. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.
11. Except for the criteria described in Rule IV. D 3 of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

IV. E. PRIOR NOTICE

1. Written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or to the provision of a free appropriate public education to the child or if the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. If the notice described above relates to an action proposed by the public agency that also requires parental consent, the public agency may give notice at the same time it requests parental

consent.

2. The notice required under this section must include:

- a. A description of the action proposed or refused by the agency;
- b. An explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- c. A statement that the parents of a child with a disability have protection under the procedural safeguards of the IDEA and these Rules and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- d. Sources for parents to contact to obtain assistance in understanding the procedural safeguards provisions of Part B of the IDEA.
- e. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- f. A description of the factors that are relevant to the agency's proposal or refusal.

3. The notice required under this section must be:

- a. Written in language understandable to the general public.
- b. Provided in the native language or other mode of communication used by the parent, unless it is clearly not feasible to do so.

4. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that:

- a. The notice is translated orally, or by other means to the parent in his or her native language or other mode of communication;
- b. The parent understands the content of the notice; and

- c. There is written evidence that these requirements have been met.

IV. F. PROCEDURAL SAFEGUARDS NOTICE

1. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a year, except that a copy also shall be given to the parents:
 - a. Upon initial referral for evaluation or parental request for an evaluation;
 - b. Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year.
 - c. In accordance with the discipline procedures in §300.530 (h); and
 - d. When requested by a parent.

An LEA or SEA may place a current copy of the procedural safeguards notice on its Internet website.

2. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available under these Rules, applicable sections of the IDEA and the State complaint procedures. The notice shall be written in the native language of the parents (unless it is clearly not feasible to do so) and written in an easily understandable manner, relating to:
 - a. Independent educational evaluation;
 - b. Prior written notice;
 - c. Parental consent;
 - d. Access to educational records;
 - e. The opportunity to present and resolve complaint, including—
 1. the time period in which to make a complaint;
 2. the opportunity for the agency to resolve the complaint;

3. The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; and
 4. the availability of mediation;
- f. The child's placement during pendency of any due process complaint;
 - g. Procedures for children who are subject to placement in an interim alternative educational setting;
 - h. Requirements for unilateral placement by parents of children in private schools at public expense;
 - i. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
 - j. State level appeals;
 - k. Civil actions, including the time period in which to file such actions and;
 - l. Attorneys' fees.
3. A parent of a child with a disability may elect to receive notices required under these Rules by electronic mail communication.

IV. G. PARENTAL CONSENT

1. The granting of consent by the parent is voluntary and may be revoked at any time. If the parent revokes consent, that revocation is not retroactive, that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked. 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. 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. Informed written parental consent must be obtained before:

- a. Conducting an initial evaluation or re-evaluation; and
- b. Initial provision of special education and related services to a child with a disability.

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 may not use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child. The public agency will not be considered to be in violation of the agreement 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. The public agency is not required to convene an IEP meeting or develop an IEP for the child.

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 may not continue to provide special education and related services to the child but must provide prior written notice before ceasing the provision of special education and related services.

The public agency may not use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child. The public agency will not be considered to be in violation of the agreement to make FAPE available to the child because of the failure to provide the child with further special education and related services for which the parent refuses to or fails to provide consent and the agency is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.

3. Consent for initial evaluation may not be construed as consent for initial placement as described in paragraph (2) (b) above.

4. Parental consent is not required before:

- a. Reviewing existing data as part of an evaluation or a re-evaluation; or

- b. 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.
 - c. Screenings of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered an evaluation for eligibility for special education and related services.
- 5. Refusal: If the parents of a child with a disability refuse consent for initial evaluation or refuse to respond to request for initial evaluation, the LEA may not use due process to seek authority to conduct an evaluation. The SOSE or LEAs may not use due process to seek to provide services if parents have failed to provide consent for services. If parents refuse consent for services the SOSE or LEAs will not be considered to have failed to provide FAPE to the child and shall not be required to convene IEP meetings about the child. The LEAs are required to maintain documentation regarding parental refusal to provide consent for services.
- 6. LEAs and other agencies shall make reasonable effort to obtain informed consent prior to an initial evaluation if the child is a ward of the State and not living with the child's parents, but is not required to obtain consent if the agency, despite reasonable efforts, cannot locate the child's parents; the rights of the parents have been terminated under State law; or the rights of the parent to make educational decisions has been subrogated under State law and consent for the initial evaluation has been given by an individual appointed by a judge to represent the child.
- 7. Informed parental consent must be obtained prior to conducting any reevaluation of a child with a disability. 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 outlined in §300.506 or §300.507. Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. Documentation of a public agency's attempts to obtain informed parental consent for reevaluation must be consistent with the following procedures:
 - a. Detailed records of telephone calls made or attempted and the results of those calls.
 - b. Copies of correspondence sent to the parents and any responses received.

- c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- 8. A public agency may not use a parent's refusal to consent to one service or activity under paragraphs 2, 3, or 4 of this section, to deny the parent or child any other service, benefit, or activity of the public agency, except as required by these Rules.

IV. H. COMPLAINT PROCEDURES

- 1. The Virgin Islands Department of Education has adopted procedures for resolving any complaint, including a complaint filed by an organization or individual from another state. The complaint must be in writing, to the State Director of Special Education with a copy sent to the school district superintendent of the public agency in which the alleged violation has occurred. If the parents are unable to file in writing, they may contact the public agency or SEA for assistance. To assist parents, organizations or individuals in filing a complaint, the State Office of Special Education has available a model form to assist in filing a complaint and due process complaint notice. The parent, entity, individual or group, must identify him or herself and provide the following information:
 - a. A statement that the public agency has violated a requirement of the Part B of the IDEA or these Rules, it must clearly identify the concern or the alleged violation as well as the facts on which the statement is based. If necessary, the SOSE will assist the complainant in clarifying allegations.
 - b. The name of the child, the address of the residence of the child, and the name of the school the child is attending;
 - c. The name of the child or children or school or district associated with the specific complaint allegations;
 - d. Must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the SOSE received the complaint;
 - e. Include a daytime telephone number where the complainant can be reached along with a mailing address;

- f. In the case of a homeless child or youth available contact information for the child and the name of the school the child is attending; and
- g. Should be sent to the State Director of Special Education
- h. The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA
- i. A proposed resolution of the problem to the extent know and available to the party at the time.
- j. Sufficiency of complaint: The due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraphs (a) through (i) of this section.

1. Within five days of receipt of notification under paragraph (j) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraphs (a) through (i) of this section, and must immediately notify the parties in writing of that determination.

- k. A party may amend its due process complain only if—

1. The other part consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held through the Resolution Process; or

2. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

- l. If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve in the Resolution Process begin again with the

filing of the amended due process complaint.

2. Within sixty calendar days of the receipt of a complaint, the SEA through the State Director of Special Education shall:
 - a. Assign the complaint to the State Office of Special Education staff for review and further investigation with parent or representative of the organization (within five days).
 - b. Conduct an independent on-site investigation if determined necessary (within a forty-five day period);
 - c. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - d. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum allowing the public agency to offer a proposal to resolve the complaint and an opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506 of the Act.
 - e. Review all relevant information and make a determination as to whether the public agency is violating or has violated a requirement of Part B of the IDEA or of these Rules; and
 - f. Issue a written decision to the complainant that is endorsed by the State Director of Special Education with a copy to the respective Superintendent that addresses each allegation in the complaint and contains:
 1. Findings of facts and conclusions.
 2. The reasons for the SEA's final decisions.
 3. An extension of time to complete actions under this section is permitted if exceptional circumstances exist with respect to a particular complaint or the parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization) and the public agency involved agree to extend the time to engage in mediation pursuant to these Rules or to

engage in other alternative means of dispute resolution.

- g. Determine procedures for effective implementation of the SEA's decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.
4. In resolving a complaint in which the SEA has found a failure to provide appropriate services, the SEA pursuant to its general supervisory authority under Part B of the IDEA must address:
 - a. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child.
 - b. Appropriate future provision of services for all children with disabilities.
5. If a written complaint is received that is also the subject of a due process hearing, under the Due Process Hearing Procedures in these Rules, or contains multiple issues, of which one or more are part of that hearing, the SEA must set aside any part of the complaint that is being addressed in the hearing until its conclusion. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and complaint procedures described in this section.
6. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the due process hearing decision is binding on that issue. The SEA must inform both parties of this fact. A complaint alleging a LEA's failure to implement a due process decision, however, must be submitted directly to the State Director of Special Education and resolved by the SEA.
7. Parents and other interested individuals including parent training and information centers, independent living centers, representative of protection and advocacy agencies, professional organizations, and other appropriate entities, shall be informed about these procedures through:
 - a. Procedural safeguards notice provided by local school districts.
 - b. Government media resources.

- c. SEA staff presentations conducted throughout the territory.

IV. I. DUE PROCESS HEARING AND MEDIATION PROCEDURES

Consistent with the requirements of Part B of the IDEA and these Rules, the procedures noted below shall be utilized for conducting due process hearings and mediation in the Territory.

IV. J. REQUEST FOR HEARING

1. If the parents of a child with a disability or any other party are aggrieved by a public agency's decision or proposal to initiate or change, the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education to the child, they may request an impartial due process hearing of their complaint which is to be in writing to the State Director of Special Education. If the parents or any other party are unable to make the request in writing, they can contact the SEA for assistance. The public agency may also initiate a hearing on the same matters, as may a child with a disability or who is suspected of having a disability that, is the age of majority, and has not been declared incompetent by a Court. A parent or agency must request an impartial hearing on the their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint. This timeline does not apply to a parent if the parent was prevented from filing a due process complaint due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or the LEA withholding of information from the parent that was required under the IDEA and these Rules.
2. When requesting a hearing, the parent of a child with a disability, other party, or the attorney representing the child must provide notice, which remains confidential and which includes:
 - a. The name of the child;
 - b. The address of the residence of the child or available contact information in the case of homeless child;
 - c. The name of the school the child is attending;
 - d. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
 - e. A proposed resolution of the problem to the extent known

and available to the parents at the time.

3. The SEA has developed a model request form to assist parents in filing a request for a due process hearing that includes the information required in subsection 2 above.
4. An SEA may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraph 2 of this section.
5. Upon receipt of a written request for a hearing or the public agency initiates the hearing, the State Director shall:
 - a. Inform the parents in writing of any free or low-cost legal services as well as other services relevant to mediation or a due process hearing, if the parent requests the information or initiates a hearing under IV. J.
 - b. Offer parents or the agency an opportunity to participate in mediation, unless the parent waives the opportunity for mediation;
6. The SEA, shall conduct the impartial due process hearing including cost associated with the payment of fees of the due process hearing officers and court reporter. The public agency is responsible for other costs of the hearing, including attorneys' fees.
7. The SEA shall ensure that within forty five days after receipt of the written hearing request, the hearing is immediately commenced and completed, including any mediation conducted pursuant to these Rules, and a final decision is rendered, unless a specific extension of time has been granted by the hearing officer.
8. The SEA shall monitor all due process hearings to ensure adherence to required procedures.
9. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

IV. K. MEDIATION

The public agency ensures that procedures are established and implemented to allow parties the opportunity to resolve the disputes involving any matter described in Rule IV. I through a mediation process, including matters arising prior to the filing of a complaint. At a minimum, mediation must be available whenever a due process hearing or an expedited due process hearing

is requested.

1. The procedures must meet the following requirements:
 - a. The procedures ensure that the mediation process is voluntary on the part of the parties, is not used to deny or delay the parent's rights for a hearing or to deny any other rights afforded under Part B of the IDEA, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
 - b. The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. A representative of the SEA shall assign a mediator on a rotating basis from that list whenever a due process hearing request is filed.
 - c. The State shall bear the cost of the mediation process, including the costs of meetings to encourage mediation.
 - d. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.
 - e. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a legally binding written mediation agreement signed by both parties to the dispute. The mediator shall also provide a copy within seven days to the SEA.
 - f. Any issues of the hearing complaint not resolved in the written mediation agreement will go forth to hearing, unless the parties agree otherwise.
 - g. The absence of a signed mediation agreement within the prescribed time frame will constitute a presumption that agreement has not been reached and due process hearing timelines continue.
 - h. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such

process. Nothing in these regulations shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties.

i. The mediation agreement must be signed by both the parent and a representative of the agency who has the authority to bind such agency and; the agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

J. Following resolution as denoted by a signed mediation agreement, the SEA will ascertain that the mediation agreement has been fully implemented by the responsible public agency. Should it be determined that the responsible public agency has not implemented the provision of the agreement the SEA will initiate enforcement procedures.

2. **Impartiality of the mediator.** An individual who serves as a mediator:

a. May not be an employee of any public agency or any state agency that is involved in the education or care of the child;
or

b. Must not have a personal or professional interest that conflicts with the person's objectivity;

c. Is not an employee of a public agency or State agency solely because he or she is paid by the VIDE SEA to serve as a mediator.

IV. L. ASSIGNMENT OF HEARING OFFICER

1. If either party refuses to participate in mediation conference or other proposed mediation steps, or if mediation efforts fail to settle the differences between the parties, the VI State Office of Special Education Director shall assign an impartial hearing officer on a rotating basis from a list of qualified hearing officers it maintains. The hearing officer's schedule and assignment history is public information. Each public agency shall keep a register of persons who may serve as hearing officers, including their qualifications that have been trained and approved by the SEA. The impartial hearing officer shall carry out all appropriate activities in conformance with the SEA procedures.

2. An impartial hearing officer shall not be assigned from the register to a particular hearing that, with respect to that hearing has any personal or professional bias or interest which might conflict with his or her objectivity toward either of the parties to the hearing or any of the issues to be decided in the hearing. An employee of the public agency involved in the education or care of the child shall also be excluded from serving as a hearing officer.
3. Hearing officers will be considered qualified if they:
 - a. Possess knowledge of, and the ability to understand, the provisions of the IDEA and all Federal and State regulations pertaining to it, and legal interpretation of the IDEA by State and Federal courts;
 - b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
 - d. Attend all training sessions for hearing officers provided or facilitated by the State Office of Special Education;
 - e. Attend the orientation training for hearing officers offered annually by the State Office of Special Education; and
4. An individual who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
5. A hearing officer may at any point withdraw from consideration or from service in any hearing in which he or she believes a personal or professional bias or interest of any of the issues to be decided in the hearing exist which might conflict with his or her objectivity.

IV. M. PRE-HEARING PROCEDURES

GENERAL

Whenever a complaint has been received, the parents or Local Education Agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency.

IV. RESOLUTION SESSION

Within fifteen days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint. This meeting must include a representative of the public agency who has decision-making authority on behalf of that agency. The meeting may not include an attorney, unless the parent is accompanied by an attorney.

The purpose of the Resolution Session is to provide the parent the opportunity to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. The relevant members of the IEP Team are determined by the parent and the LEA.

The Resolution meeting need not be held if the parent and the LEA agree in writing to waive the meeting or the parent and the LEA agree to use the mediation process described in IV. K. of these Rules.

If the LEA has not resolved the due process complaint to the satisfaction of the parent within thirty days of the receipt of the due process complaint, the due process hearing may occur. The timeline for issuing a final decision begins at the expiration of this thirty day period.

The forty five day timeline for the due process hearing to begin starts the day after one of the following events occur: Both parties agree in writing to waive the resolution meeting after either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible; if both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or public agency withdraws from the mediation process.

If a resolution to the dispute is reached at the meeting described in this section, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind the agency, and is enforceable in any Territorial court of competent jurisdiction or in a district court of the United States, or, by the SEA.

Agreement Review Period--If the parties execute an agreement, a party may void the agreement within three business days of the agreement's execution.

1. Within a reasonable amount of time the hearing officer shall provide the parent or guardian, the public agency, and the SEA written notice of the date, time and place of the hearing.

2. The hearing officer shall ensure that each hearing and each review involving oral arguments is conducted at a time and place reasonably convenient to the parties involved.
3. At the discretion of the hearing officer, a pre-hearing conference shall be held in order to:
 - a. Clarify the issues(s) of the hearing;
 - b. Review the hearing rights of both parties;
 - c. Review the procedures for conducting the hearing; and.
 - d. Afford both parties the opportunity for disclosure. In no event will such a pre-hearing conference be held later than five days prior to the hearing.
4. Each party shall disclose to the other the full name, title, occupation, and place of employment of each witness, a capsule summary of the witnesses' testimony and any other evidence to be presented. These disclosures must be made at least five days prior to the hearing.
5. During a pre-hearing conference conducted pursuant to this section, or in the alternative through the delivery of a written notice the hearing officer shall ensure that the parents are provided a full explanation of their hearing rights.

IV. N. HEARING RIGHTS

Any party to a hearing or an appeal has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; and
4. Obtain written, or, at the option of the parents, electronic, verbatim record of the hearing and findings of fact and decisions.

5. At least five business days before a hearing each party shall disclose to all other parties all evaluations completed by that date and recommendations, based on the offering party's evaluations, that the party intends to use at the hearing.
6. A hearing officer may bar any party that fails to comply with the above provision from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

IV. O. PARENT RIGHTS IN HEARING

In addition to the rights noted above, parents are assured of their right to have the child who is the subject of the hearing present, and to determine whether the hearing shall be open or closed to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents.

IV. P. DECISION OF HEARING OFFICER

The hearing officer must make a decision on substantive grounds based on a determination of whether the child received FAPE in accordance with the following requirements:

1. The final decision will be in writing, or at the option of the parent, electronic, and shall be sent by certified mail or hand-delivered within 45 days after the request for the hearing to the parents, to the public agency to their respective representatives, and to the SEA Disabilities Compliance Manager. A hearing officer may grant specific extensions of time beyond the forty five days, at the request of either party.
2. The decision of the hearing officer will include findings of fact and decision and reasons for these findings and decision.
3. The decision of the hearing officer shall be based solely on evidence and testimony presented at the hearing.
4. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—
 - a. Impeded the child's rights to a FAPE;
 - b. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child' or
 - c. Caused a deprivation of educational benefit

5. A verbatim record of the proceedings of the hearing will be made, and shall include any materials or statements specifically requested by any of the parties to appear in the record.
6. The decision of the hearing officer is final upon the parents and upon the agency, its officers, employees and agents, unless a party of the hearing appeals the decision in court or brings a civil action.
7. Following rendering of the hearing officer's decision, the VIDE will ascertain that the decision has been fully implemented by the responsible public agency through its monitoring process. Should it be determined that the responsible public agency has not implemented these orders the VI-SOSE will initiate enforcement procedures.
8. The VI-SOSE Disabilities Compliance Manager or designee shall transmit the findings and decision to the Virgin Islands Advisory Panel on Special Education (VIAPSE) and make them available to the public, after deleting any personally identifiable information.

IV. Q. CIVIL ACTION

Any party aggrieved by the findings and due process hearing decision has the right to bring a civil action with respect to the complaint brought under Section 615 of the IDEA.

The party bringing the action shall have ninety days from the date of the decision of the hearing officer to file a civil action. This action may be brought in any Territorial court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

1. In any action brought under this section, the court:
 - a. Shall receive the records of the administrative proceeding;
 - b. Shall hear additional evidence at the request of a party; and
 - c. Shall grant the relief that the court determines to be

appropriate, basing its decision on the preponderance of the evidence.

2. The district court of the United States has jurisdiction of actions brought under Section 615 of IDEA, without regard to the amount in controversy.
3. Nothing in this part restricts or limits the rights, procedures, and remedies available under the U. S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the right of children with disabilities, except that, before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the Act, the procedures for a due process hearing must be exhausted to the same extent as would be required had the action been brought under Section 615 of the Act.
4. The Virgin Islands, accepting funds under Part B of the IDEA, waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of Part B of the IDEA.
5. In a suit against the Virgin Islands for a violation of Part B of the IDEA, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than the Territory.
6. The Virgin Islands Department of Education engages in positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the IDEA.

IV. R. EXPEDITED DUE PROCESS HEARING PROCEDURES

1. Expedited due process hearings must meet the same requirements of a due process hearing, except that the hearing officer may make the determination that:
 - a. Each party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two business days before the expedited hearings.
 - b. At least two business days before an expedited hearing each party shall disclose to the other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

2. An impartial due process hearing officer who satisfies the requirements of Rule IV.K must conduct an expedited due process hearing and whose schedule will permit conducting the hearing and issuing a written decision within the expedited hearing time frame. If a hearing officer's name is selected from the list that meets all of the requirements with the exception of meeting the specific time frame, the next name on the list will be selected. This process will be repeated as necessary until a hearing officer who can meet the accelerated time frame is named. A written decision shall be mailed or delivered to the parties within forty five days of the SEA's receipt of the request for the hearing without exceptions or extensions. The twenty day timeline established under this section is the same for expedited hearings requested by parents or public agencies.
3. The hearing officer's decision in an expedited due process hearing is final, consistent with the procedures for any due process hearing decision and may be appealed under the civil action provisions of Rule IV.P.

IV. S. CHILD'S STATUS DURING PROCEEDINGS

1. Except when challenging the Interim Alternative Educational Setting (IAES) or manifestation determination under Rule V., during the pendency of any administrative hearing or judicial proceeding pursuant to these Rules, the child involved must remain in the current educational placement, unless the State or agency and the parents agree otherwise.
2. If the hearing involves initial admission to the public school, the child will be placed in a public school program until the completion of the proceedings with the consent of the parents;
3. If the decision of a hearing officer in a due process hearing conducted by the SEA, agrees with the child's parents that change of placement is appropriate, that placement must be treated as an agreement between the local agency and the parents for purposes of the current educational placement described in Rule IV. R. I. of this section, including any judicial proceeding(s).
4. If the complaint involves an application for initial services under these Rules from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

IV. T. EXPENDITURES ASSOCIATED WITH THE HEARING

The VI-SOSE shall be responsible for paying fees and necessary expenses incurred by the hearing officer, and the court reporter or stenographic service, in accordance with VI-SOSE policies and procedures. The parents and agency involved shall each be responsible for legal and other fees that they incur. Funds under Part B of the Act may not be used to pay the costs of attorney's fees or costs related to an action or proceeding under section 615 of the Act and subpart E of the federal regulations.

IV. U. REASONABLE ATTORNEYS' FEES

1. In any action or proceeding brought under section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party; or; if the prevailing party is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation
2. A court awards reasonable attorneys' fees under IDEA Section 615(i) (3) consistent with the following:
 - a. Fees awarded under 615 (i) (3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.
 - b. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent, if:
 1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or in the case of an administrative proceeding, at any time, more than ten days before the proceeding begins;
 2. The offer is not accepted within ten days; and
 3. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

- c. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action or for resolution session meetings required by the IDEA.
- d. An award of attorney's fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
- e. Except as noted in paragraph (f) below, the court reduces the amount of attorneys' fees awarded, if the court finds that:
 - 1. The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
 - 2. The amount of the attorneys' fees otherwise authorized to be awarded, unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
 - 3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
 - 4. The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with Rule IV. I. 2.
- f. The above provisions related to reduction in the amount of attorneys' fees do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action of proceeding or there was a violation of section 615 of the Act.

IV. V. SURROGATE PARENTS

- 1. Each public agency shall ensure the rights of child with a disability are protected

if no parent can be identified (as defined in I. F. 44), if after reasonable efforts the public agency cannot discover the whereabouts of a parent; or where the child is a ward of the State or for an unaccompanied homeless youth. Under such circumstances, the child shall be assigned a surrogate parent. The public agency shall maintain a list of persons who have completed a surrogate training program, from which a surrogate parent is assigned. The public agency must establish a method for determining whether a child needs a surrogate parent and assigning a surrogate parent.

2. The surrogate parent may represent the child in all matters relating to the identification, evaluation and educational placement of the child, and the provision of a free appropriate public education.
3. The public agency shall ensure that a person selected as a surrogate:
 - a. Is not an employee of the SEA, the LEA or any other agency that is involved in the education or care of the child.
 - b. Has no interest that conflicts with the interest of the child he or she represents.
 - c. Has knowledge and skills that ensure adequate representation of the child.
4. A public agency may select as a surrogate a person, in any way permitted under state law, who is an employee of a non-public agency that only provides non-educational care for a child and who meets the standards of Rules IV.V.1. and IV.V.3. above;
5. A person who otherwise qualifies to be a surrogate parent under the Rule IV. V.3 is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
6. The state is required to make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

IV. W. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

1. Consistent with state law which applies to all children, when a child with a disability reaches the age of 18 (except for a child with a disability who has been

determined to be incompetent by the courts), the public agency shall provide any notice required by these Rules to both the individual and the parents; and all other 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 and these Rules transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution.
3. Whenever a State transfers rights under this subsection pursuant to paragraphs IV.W.1 and IV.W.2 above, the agency shall notify the individual and the parents of the transfer of rights.
4. A statement is required on the child's IEP, beginning at least one year before a child's 18th birthday, that the child and parents have been informed of their rights under Part B of the IDEA that will transfer to the child on reaching the age of 18, consistent with these Rules. The parent still retains the right to any required notice, along with the child. All other rights accorded to parents under Part B transfer to the child.
5. In the case of a child with a disability who has reached the age of majority, but has not been determined to be incompetent by the court, an appropriate IEP Team and the parent or an appropriate individual may make a decision that because of the extent of child's disability, the child is unable to provide informed consent with respect to his or her educational program. The IEP Team may appoint the parent or an appropriate individual to represent the child's educational interests throughout the period of the child's eligibility under Part B of the Act. This action must be noted on the child's IEP.

IV. X. CONFIDENTIALITY OF INFORMATION

In accordance with section 444 of the GEPA, the Secretary takes appropriate action to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act and consistent with §§300.611 through 300.627.

1. The following definitions are provided as used in this section:
 - a. **Personally Identifiable** means that information includes:
 1. The name of the child, the child's parent, or other family member;
 2. The address of the child;
 3. A personal identifier, such as the child's Social Security

Number or Child Number;

4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
 - b. **Destruction** means physical destruction or removal of Personal identifiers from information so that the information is no longer personally identifiable.
 - c. **Education records** means the type of records covered under the definition "education records" in 34 CFR Part 99, the regulations implementing the Family Education Rights and Privacy Act of 1974.
 - d. **Participating Agency** means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the IDEA.
2. The VI-SOSE and other public agencies involved in the education of children with disabilities have established and implement procedures that meet the requirements of Part B of the IDEA and these rules, including notice to parents with:
 - a. A description of the extent that the notice is given in the native languages of the various population groups in the Territory.
 - b. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the VI-SOSE has established for use in gathering the information (including source from whom information is gathered), and the uses to be made of the information.
 - c. A summary of the policies and procedures that the participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.
 - d. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 (FERPA) and implementing regulations under 34 CFR Part 99.
 - e. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers, or other media, or both, with circulation adequate to notify parents throughout the Territory of the activity.

3. **Right of Access**

- a. Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the public agency under these Rules. The public agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any due process hearing, including an expedited due process hearing, or resolution session pursuant to §300.510 of the Act and in no case more than 45 days after the request has been made.
 - b. The right to inspect and review education records under this section includes:
 - 1. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and
 - 2. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - 3. The right to have a representative of the parent inspect and review the records.
 - c. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters of guardianship, separation and divorce.
4. **Record of access.** Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except for access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.
5. **Records on more than one child.** If any education record includes information on more than one child, the parents of each child shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

6. **List of types and locations of information.** On request, each participating agency shall provide parents a list of the types and location of education records collected, maintained, or used by the agency.
7. **Fees.**
 - a. Each participating agency may charge a reasonable fee for copies of records that are made for parents under Part B of the IDEA, if the fee does not **effectively prevent** the parents from exercising their right to inspect and review those records.
 - b. A participating agency may not charge a fee to search for or to retrieve information under this section.
8. **Amendment of records at parent's request**
 - a. A parent who believes that information in the education records collected, maintained, or used under Part B of the IDEA is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency that maintains the information to amend the information.
 - b. The public agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
 - c. If the public agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR §300.568..
9. **Opportunity for a hearing**
 - a. The public agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.
 - b. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parents in writing.
 - c. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other

rights of the child, it shall so inform the parents of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency.

- d. Any explanation placed in the records of the child under this section must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency, and if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

10. **Hearing procedures.** A hearing that challenges the education records, must be held in accordance with 34 CFR 99 as specified in the procedures described below. At a minimum, the LEA's hearing procedures must adhere to the following requirements:

- a. The hearing shall be held within a reasonable period of time after the participating agency receives the request, and the parent of the child or eligible child shall be given notice of the date, place and time reasonably in advance of the hearing.
- b. The hearing may be conducted by any party, including an official of the public agency that does not have a direct interest in the outcome of the hearing.
- c. The parent of the child or eligible child shall be afforded a full and fair opportunity to present evidence relevant to the issues raised, and may be assisted or be represented by individuals of his or her choice at his or her own expense, including an attorney.
- d. The agency shall make its decision in writing within a reasonable period of time after the conclusion of the hearing.
- e. The decision of the participating agency shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

11. **Parental Consent**

- a. Parental consent must be obtained before personally identifiable information is disclosed to parties, other than official of participating agencies unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR Part 99. Except as provided in (a) (1) and (2) of this section, parental consent is not required before personally identifiable information is released to officials

of participating agencies for purposes of meeting a requirement of this part.

1. Parental consent, or the consent of an eligible child who has reached the age of majority under Territorial law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with the IDEA and these Rules.
2. If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA of the parent's residence.

12. Safeguards

- a. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- b. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
- c. All persons collecting or using personally identifiable information must receive training or instruction regarding the Territory's policies and procedures in this section and 34 CFR Part 99.
- d. Each participating agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency, who may have access to personally identifiable information for children with disabilities. The listing shall include:
 1. Name of district or public agency;
 2. Name of school;
 3. School year;
 4. Persons having access; and
 5. Name of records manager.
- e. The above listing, where appropriate must provide for the access of regular

teachers for their children with disabilities, and also must include the names and positions of consultants employed by the district who may require access, for legitimate educational reasons, to child records. This also includes child teachers or practicum children from universities, under the direction and supervision of school officials.

13. Destruction of Records

- a. The public agency shall inform parents when personally identifiable information collected, maintained or used under this part is no longer needed to provide education services to the child.
- b. The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the child's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

- 14. Children's rights.** All of the foregoing parental rights regarding educational records under Part B of the Act are transferred to the child at age 18 (the age of majority), unless the child has been declared incompetent by court order. If the rights accorded to parents under Part B of the Act are transferred to a child who reaches the age of majority consistent with §300.520, the rights regarding educational records in §§300.613-300.624 must also be transferred to the child. However, the public agency must provide any notice required under section 615 of the Act to the children and the parents, including those rights under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR §99.5a).

15. Enforcement

- a. Confidentiality requirements are reviewed and approved as part of the LEA eligibility process under Part B of IDEA.
- b. Confidentiality is monitored through the Part B monitoring process at least once every two years and includes sanctions to ensure these requirements are met.
- c. If the VIDE- SOSE determines that a LEA or other participating agency is noncompliant with this Rule, the following shall occur:
 1. A letter specifying the correct actions that should be taken to be in compliance with this Rule shall be forwarded to the respective administrator of the agency.
 2. If upon further review the LEA or participating agency continues to

violate the Rule, the SOSE will impose special conditions requiring the staff of the agency to participate in training.

3. In addition, the entity will be required to issue a public notice of said violation and their procedures to correct each.
4. Continued flagrant violation of these Rules will result in interruption of federal funds.

16. Disciplinary Information

- a. The VIDE requires that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child, and transmit the statement to the same extent that the disciplinary information is included in and transmitted with the child records of non-disabled children.
- b. The statement must include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

17. US Department of Education use of Personally Identifiable Information

If the US Department of Education or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to FERPA, the secretary applies the applicable federal statute, and the implementing regulations, those provisions found in 34 CFR Part 5b.

V. DISCIPLINE PROCEDURES

V. A. DISCIPLINE PROCEDURES FOR CHILDREN WITH DISABILITIES

Consistent with the requirements of Part B of the IDEA and these Rules, each public agency shall adopt these policies and establish, maintain and implement procedures for disciplining children with disabilities.

V. B. DEFINITIONS

For purposes of these sections, 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 (21U.S.C. 812(c)).
2. *Illegal Drug* means a controlled substance; but does not include a 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. *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.
4. *Substantial evidence* means beyond a preponderance of the evidence.
5. *Serious bodily injury* means a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

V. C. CHANGE OF PLACEMENT FOR DISCIPLINARY REMOVALS

For the purpose of removals of a child with a disability from the child’s current educational placement described in this section, a change of placement occurs if:

1. The removal is for more than ten consecutive school days; or
2. The child is subjected to a series of removals that constitute a pattern because—

- a. the series of removals total more than 10 school days in a school year;
 - b. because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - c. because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- 3. Subject to review through due process and judicial proceedings, this determination is made on a case-by-case basis whether a pattern of removals constitutes a change in placement.
 - 4. The determination is subject to review through due process and judicial proceedings.

V. D. AUTHORITY OF SCHOOL PERSONNEL- REMOVALS TEN SCHOOL DAYS OR LESS

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. School personnel 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 in that same school year for separate incidents of misconduct, and for additional removals of not more than ten 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 Rule V. C.).

V. E. REQUIRED SERVICES--NO CHANGE OF PLACEMENT

- 1. A participating agency need not provide services during periods of removal, under Rule V. D. 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 services are not provided to a child without disabilities who has been similarly removed.
- 2. In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in the same school year, the public agency, during any subsequent days of removal, must provide services to enable the child to the extent necessary to appropriately progress in the general education curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

3. School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general education curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under Rule V. D.
4. The child's IEP team shall meet to determine the extent to which services are necessary to enable the child to appropriately progress in the general education curriculum and appropriately advance towards achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with 34 CFR §300.530.

V. F. REMOVALS FOR WEAPONS OR DRUGS

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--

1. The child 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. The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or a school function under the jurisdiction of a SEA or an LEA;
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the LEA or SEA.

When a child is removed to an interim alternative educational setting, the child's IEP team must determine the alternative educational setting and 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 IV F of these Rules.

V. G. FUNCTIONAL BEHAVIORAL ASSESSMENT AND INTERVENTION PLAN

Within ten business days after first removing a child for more than ten school days in a school year, or commencing a removal that constitutes a change of placement under these rules including a removal for weapons violations, drugs violation or behavior that is substantially likely to result in injury to the child or others, the following actions shall be taken by the public agency.

1. The LEA, parent, and relevant members of the child's IEP Team (as determined by the LEA and the parent) 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—
 - a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - b. 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, parent and relevant members of the child's IEP team determine that a condition in either (1) (a) or (b) was met.

3. As soon as practicable after developing the plan described in V.G.1 of this section, and completing the assessments required by the plan, the public agency shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.
4. If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than ten school days in a school year, is subjected to a removal that does not constitute a change of placement under Rule V.C., the IEP Team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

If one or more of the IEP Team members believe that modifications are needed, the IEP Team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

V. H. AUTHORITY OF HEARING OFFICER

1. A hearing officer under Part B of the IDEA and these Rules hears, and makes a determination regarding an appeal under these Rules. In making the determination of an appeal, the hearing officer may—
 - a. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of V. D. of these Rules or that the child's behavior was a manifestation of the child's disability; or
 - b. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty five school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
2. The procedures under paragraphs 1. (a) and (b) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

V. I. DETERMINATION OF INTERIM ALTERNATIVE EDUCATIONAL

SETTING

Any interim alternative educational setting in which a child is placed under Rules V. F. and V. H. must:

1. Be selected so as to enable the child to continue to progress in the general education curriculum, although in another setting and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and
2. Include services and modifications to address the behavior described in Rules V. F. and V. G., which are designed to prevent the behavior from recurring.

The IEP team must determine the interim alternative educational setting referred to under Rule V. F.

V. J. MANIFESTATION DETERMINATION REVIEW REQUIREMENT

If a public agency removes or contemplates removing a child for weapons violations, drug violations, or behavior that is substantially likely to result in injury to the child or to others, or other behavior that violates any rule or code of conduct that applies to all children which results in a change of placement under Rule V. C., the following actions shall be taken by the public agency:

1. Not later than the date on which the decision to remove the child is made, the parent(s) must be notified of that decision and provided the procedural safeguards notice described under these Rules; and

Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action. The IEP Team and other qualified personnel in a meeting must conduct the review.

V. K. PROCEDURES FOR CONDUCTING A MANIFESTATION DETERMINATION REVIEW

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 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—

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - b. 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 paragraph 1 (a) or 1 (b) 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 1. (b) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

V. L. DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION OF DISABILITY

1. 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-
 - a. Either 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
 - b. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - c. Except as provided in V.F. 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.
2. 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 IV. F. of these Rules.

V. M. DETERMINATION THAT BEHAVIOR WAS NOT A MANIFESTATION OF DISABILITY

1. If the results of the manifestation determination review indicate that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except that FAPE shall continue to be made available to those children consistent with Rule V. E. 2.
2. The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general education curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not be a manifestation of the child's disability.
3. If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
4. If a parent requests a hearing to challenge a determination that the behavior of the child was not a manifestation of the child's disability, then the child shall remain in the child's current education placement as described in Rule IV. R., or in an interim alternative educational setting consistent with Rule V. N. whichever applies.

V. N. APPEAL

1. The parent of a child with a disability who disagrees with any decision regarding placement under these Rules, or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may appeal the decision by requesting a hearing.
2. The hearing is requested by filing a complaint pursuant to IV. H. of these Rules.

V. O. PLACEMENT DURING APPEAL

1. If a parent or LEA requests a hearing or an appeal regarding a disciplinary action described in Rule V. F and Rule V. H. to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for indicated in Rule V. F. and V. H, whichever occurs first, unless the parent and the public agency agree otherwise.
2. If a child is placed in an interim alternative educational setting pursuant to Rule V. F. or Rule V. H., and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in this section.
3. If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal of the interim alternative education setting) during the pendency of the due process proceedings, the public agency may request an expedited due process hearing.
4. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards under "Authority of Hearing Officer", Rule V.H.
5. A placement ordered pursuant to this section, may not be longer than forty-five days. The procedure in V.N.3 of this section may be repeated as necessary.

V. P. PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

1. A child who has not been determined to be eligible for special education and related services under these Rules and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in this section, may assert any of the protections provided for in Rule V.D., V.F., and V.H. if the public agency has knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
2. A public agency must be deemed to have knowledge that a child is a child with a disability if:

- a. The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services.
 - b. The parent of the child has requested an evaluation of the child pursuant to Rule II. D; or
 - c. The teacher of the child, or other personnel of the public agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.
- 3. A public agency would not be deemed to have knowledge under this section, if
 - a. The parent of the child has not allowed an evaluation of the child pursuant to II. D. or;
 - b.. The parent of the child has not allowed an evaluation of the child pursuant to the IDEA and these Rules; or
 - c. Refused services under the IDEA and these Rules; or
 - d. The child has been evaluated in accordance with these Rules and determined to not be a child with a disability.
- 4. If public agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to child without disabilities who engage in comparable behaviors consistent with this section.
- 5. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Rule V, the evaluation must be conducted in an expedited manner.
- 6. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- 7. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related

services in accordance with the provisions of these Rules, including the discipline requirement and FAPE requirements.

V. Q. EXPEDITED DUE PROCESS HEARINGS

1. Whenever a hearing is requested under V. N. of these Rules, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of IV. H. and I of these Rules except as provided in V. Q. (2) and (3) of this section.
2. The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
3. Unless the parents and LEA agree in writing to waive the resolution meeting described in (3) (a) or agree to use the mediation process described in these Rules.
 - a. A resolution meeting must occur within seven days of receiving notice of the due process complaint; and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
4. The decisions on expedited due process hearings are appealable consistent with IV. P. of these Rules.

V. R. REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

1. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
2. An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.
3. An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

VI. RESPONSIBILITIES OF THE STATE OFFICE OF SPECIAL EDUCATION

VI. A. GENERAL SUPERVISORY AUTHORITY

The United States Virgin Islands statutes, rules and regulations and policies pertaining to special education clearly designated the Department of Education or SEA as the entity responsible for establishing and exercising general supervision over all educational programs for children with disabilities administered within the territory. By resting authority for general supervision in the SEA, those documents which are listed below assure a single line of responsibility with regard to the education of children and youth with disabilities:

1. The Virgin Islands Board of Education assures that the Department of Education; State Office of Special Education is responsible for the following areas regarding general supervision:
 - a. Ensuring the requirements of IDEA Part B, including a manner consistent with the McKinney-Vento Act regarding homeless children and Act 4667 are carried out;
 - b. Ensuring that each educational program for children with disabilities (ages 3 - 21) administered within the Virgin Islands, including each program administered by any other public agency:
2. Meets SEA standards that include IDEA, Part B requirements.
 - a. Ensuring that each public agency in the Virgin Islands, which provides special education or related services, follows the requirement of IDEA, Part B and Act 4667. This includes other agencies providing or paying for some or all of the costs for FAPE do so consistent with the Act and Part B of the IDEA and standards set forth by the VIDE.
 - b. If at any time the State assigns responsibility for services through a method other than statute, regulation or signed agreement, the Secretary must approve the other method.

VI. B. PROGRAM MONITORING, ENFORCEMENT, CONFIDENTIALITY AND PROGRAM INFORMATION.

1. The State Office of Special Education monitors, enforces and reports annually on performance of the Virgin Islands Department of Education, on the performance of each LEA using the categories as outlined in Part B of the IDEA and on other public agency's performance under the IDEA and these Rules. The primary purpose of the SEA's monitoring activities is on improving educational and functional outcomes for all children with disabilities and ensuring that public agencies meet the program requirement under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities. In performing its function to monitor, enforce and maintain confidentiality, the SEA uses quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas as provided by the Secretary for State Performance Plans.

Enforcement:

The State Office of Special Education enforces these Rules and Part B of the IDEA using appropriate enforcement mechanisms, including; technical assistance, conditions on funding the LEA, requiring a corrective action or improvement plan, and withholding funds, in whole or in part.

In exercising its monitoring responsibilities, the VIDE ensures that when it identifies noncompliance with the requirements of these Rules or Part B of the IDEA, the noncompliance is corrected as soon as possible, and in no case later than one year after the identification of the noncompliance.

As part of its monitoring priorities, the SEA monitors the LEAs using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in these areas:

- a. Provision of a Free Appropriate Public Education in the Least Restrictive Environment;
- b. SEA exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services; and
- c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

2. State Performance Plan

The Virgin Islands Department of Education must have in place a performance plan that evaluates the Territory's efforts to implement the requirements and purposes of Part B of the Act. The State Performance Plan must—

- a. Be developed by a broad group of stakeholders in the community involved in the education of children with disabilities, ages three through twenty one.
- b. Submit the Plan to the Secretary for approval in accordance with the approval process described in section 616 (c) of the Act.
- c. Establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §300.600 (d); and
- d. Review the Plan at least once every six years, and submit any amendments to the Secretary.

3. Data Collection

The SEA must annually collect valid and reliable information as needed to report progress on the indicators established by the Secretary in the Territory's Annual Performance Report. All data collected by the SEA will be evaluated prior to reporting through the Department's Data Verification Policy.

4. Reporting on Measurable and Rigorous Targets

Annually, the SEA must report to the Secretary and to the public through its Annual Performance Report, an analysis of each LEA's performance on the targets in the State Performance Plan and make the Performance Plan available through public means, including posting on its Web site, distribution to the media and distribution through public agencies. As part of its public reporting responsibility, the SEA must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

5. The Virgin Islands will, through public notice, take such actions as may be necessary to notify the public within the Territory on the pendency that the Secretary of Education is proposing to take or is taking an enforcement action against the Territory.

VI. C. PERFORMANCE GOALS AND INDICATORS

1. The VI-SOSE has established goals for the performance of children with disabilities in the territory that promote the purposes of Part B of IDEA and these Rules as specified in Rule I.A., and are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the territory.
2. The VI-SOSE has established performance indicators that the territory will use to assess progress toward achieving those goals that are the same as the Territory's definition of adequate yearly progress, including the Territory's objectives for progress by children with disabilities, and address graduation and dropout rates.
3. The performance goals and indicators are contained in the State Performance Plan. Included in the State Performance Plan are goals, indicators and rigorous and measurable targets which address graduation rates and dropout rates. The VI-SOSE will annually report to the Secretary, United States Department of Education and the public on the progress of the Territory and of children with disabilities in the territory, toward meeting the goals established in the State Performance Plan as soon as practicable but no later than 60 days following the VIDEs submission to the Secretary.
4. Each year the VIDE makes available to the public: the State Performance Plan, Annual Performance Report, and an annual report on the performance of each LEA in the Territory.

VI. D. PARTICIPATION IN ASSESSMENTS

1. The Virgin Islands State Office of Education:
 - a. Maintains information demonstrating that all children with disabilities are included in general territory wide assessment programs with appropriate accommodations and modifications in administration, if necessary.
 - b. Has developed guidelines for the participation of children with disabilities in alternate assessments for those children with disabilities who cannot participate in territory wide assessment programs with accommodations as indicated in their respective individualized education programs.
 - c. Has developed guidelines that provide alternate assessments that are aligned with the Territories challenging academic content standards and challenging student academic achievement standards and alternate assessments against alternate achievement standards.

VI. E. REPORTS RELATING TO ASSESSMENTS

1. In implementing the requirements under Part B of the IDEA and these Rules relating to territory wide assessments the VI-SOSE shall make available to the public and report to the public with the same frequency and in the same detail as it reports on the assessment of non-disabled children, the following information:
 - a. The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments and the number participating in alternate assessments.
 - b. The performance results of the children described in this section, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children, compared with the achievement of all children including children with disabilities, on those assessments:
2. Reports to the public relating to territory wide assessments must include:
 - a. Aggregated data that include the performance of children with disabilities

together with all other children.

- b. Disaggregated data on the performance of children with disabilities.
- 3. Data related to the performance of children described in 1.b. must be disaggregated:

VI. F. PERSONNEL QUALIFICATIONS

- 1. **General Requirements.** The Virgin Islands Department of Education State Office of Special Education has developed and is implementing a plan to ensure that personnel necessary to carry out the requirements of Part B of the IDEA are appropriately trained, including that those personnel have the content knowledge and skills to service children with disabilities.
- 2. The qualifications under paragraph (1) of this section include qualifications for related service personnel and paraprofessionals that—
 - a. Are consistent with any State approved or State recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
 - b. Ensure that related services personnel who deliver services in their discipline or profession meet the requirements of (a) of this section and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - c. Allow paraprofessional and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of the IDEA to be used to assist in the provision of special education and related services.
- 3. Each person employed as a special education teacher in the Virgin Islands who teaches elementary school, middle school, junior high school or secondary school is highly qualified by the end of school year 2005-2006.
- 4. **Improvement strategies.** In its plan, the VIDE describes the strategies it is currently using and those it plans to use in taking measurable steps to recruit, hire, and train highly qualified personnel. These strategies include how it will address identified needs for in-service and pre-service preparation to ensure that all personnel who work

with children with disabilities (including professional and paraprofessional personnel who provide special education, general education, related services or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities. The plan includes a description of how the VIDE will:

- a. Prepare general education, special education personnel and paraprofessionals with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the VIDE will work with other states on common certification criteria.
- b. Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities.
- c. Work with institutions of higher education and other entities that on both a preservice and an in-service basis; prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet state and local needs.
- d. Work to develop collaborative agreements with other states for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single state to justify support or development of a program of preparation.
- e. Work in collaboration with other states, particularly neighboring states, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel.
- f. Enhance the ability of teachers and others to use strategies, such as behavioral interventions to address the conduct of children with disabilities that impedes of learning of children with disabilities and others.
- g. Acquires and disseminates to teachers, administrators, school board members and related service personnel significant knowledge derived from educational research, demonstration projects, and other sources and how the VIDE will, if appropriate, adopts, promising practices, materials, and technology.
- h. Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services.
- i. Integrate the plan, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed

and carried out under other state and federal laws addressing personnel recruitment and training.

- j. Provide for joint training of parents and special education, related services and general education personnel.
- 5. Notwithstanding any other individual right of action that a parent or student may maintain under the IDEA and these Rules, nothing in this section shall be construed to create a right of action on behalf of an individual student for the failure of a particular SEA or LEA staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State Educational Agency as provided for in these Rules.

VI. G. PERSONNEL STANDARDS

- 1. Consistent with the provision of Part B of the IDEA, the VIDE has established and maintains standards to ensure that personnel necessary to carry out the purposes of Part B, are appropriately and adequately prepared and trained. The VIDE's system for ensuring that personnel are appropriately and adequately prepared and trained includes conformance to the following definitions.
 - a. "Appropriate professional requirements" are those entry-level requirements that are based on the highest requirements in the state applicable to the profession or discipline in which a person is providing special education or related services, and that establish the qualifications for personnel providing such services under Part B of the IDEA, to children with disabilities who are served by state, local and private agencies.
 - b. "Highest requirement in the state applicable to a specific profession or discipline" are the highest entry-level academic degrees needed for any State approved or State recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline.
 - c. "Profession or discipline" is a specific occupational category that:
 - 1. Provides special education and related services to children with disabilities under Part B of the IDEA.
 - 2. Has been established or designated by the state.
 - 3. Has a required scope of responsibility and degree of

supervision.

4. Is not limited to traditional occupational categories.
 - d. "Qualified personnel," means personnel who have met VI Board of Education (VIBOE) approved or VIBOE recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services as required by the IDEA and NCLB Act.
 - e. State approved or recognized certification, licensing, registration, or other comparable requirements are the requirements that the Legislature of the Virgin Islands have authorized the Commissioner of Education to promulgate through rules and regulations for approval and acceptance by the VIBOE and governor to establish entry level standards for employment in a specific profession or discipline in the Territory.
 - f. "Policies and procedures" refer to those relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of Part B of the IDEA are appropriately and adequately prepared and trained. The policies and procedures must provide for the establishment and maintenance of standards that are consistent with any state-approved or state-recognized certification, licensing, registration or other comparable requirement that apply to the profession or discipline in which a person is providing special education and related services.
2. The VIDE has determined the specific occupational categories required to provide special education and related services within the Territory and shall revise or expand those categories as needed.
3. Nothing in this section requires a state to establish a specified training standard (e.g., a masters' degree) for personnel who provide special education and related services under Part B of the IDEA.
4. For employment of personnel in specific professions or disciplines that have only one entry level academic degree, the VIDE may modify that standard as necessary to ensure the provision of FAPE to all children with disabilities in the state.
5. To the state's standards for a profession or discipline, including standards for temporary or emergency licensure, are not based on the highest requirements in the state applicable to a specific profession or discipline, the VIDE shall provide procedures for notifying applicable agencies and personnel of the steps and timelines it has established for retraining or hiring of personnel to meet appropriate professional requirements in the state.

The VIDE takes the following steps:

- a. Notification of agencies via written correspondence regarding professional standards;
 - b. Invitation to stakeholders to formulate task force to develop timelines and obtain consensus on professional standards;
 - c. Identification of training needs via survey and file review;
 - d. Development of programs to meet identified training needs;
 - e. Implementation of programs;
 - f. Evaluation.
6. In meeting the requirements of this section, the VIDE maintains, on file and available to the public, current information describing the status of applicable standards for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the state for that profession or discipline. These standards are consistent with the highest requirements in the state.
7. In identifying the highest requirements in the state for purposes of this section, the requirements of all state statutes and the Rules of all state agencies applicable to serving child with disabilities must be considered.
8. Policy to Address Shortage of Personnel
 - a. In implementing these Rules, the VI- SOSE requires that LEAs and other public agencies make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the territory where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the VIDE standards within three (3) years.

- b. If the established three-year timeline has been reached, the VIDE shall continue to exercise options specified in 8. (a) above for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the state.
- c. If instructional needs exceed available personnel who meet appropriate professional requirements in the territory for the specific profession or discipline, the VIDE shall exercise the mechanism described below for serving children with disabilities by:
 - 1. Reviewing recommendations from LEAs and other public agencies as to the most qualified available individual(s)' qualifications, and tailoring an individual plan by which the individuals(s)' shall meet the required standards.
 - 2. Utilizing temporary or emergency certification for personnel consistent with this section.
- d. The VIDE assures that paraprofessionals and assistants are appropriately trained and supervised in accordance with these Rules, and may be used in meeting the requirements of Part B of the IDEA and these Rules, to assist in the provision of special education and related services to children with disabilities.

VI. H. INTERAGENCY COLLABORATION

- 1. In accordance with the Territory's Educational Bill of Rights for Handicapped Children, Act 4667 Section 293, the VI-SOSE is to ensure cost effective provision of services and supports through the coordination of agencies that provide services and supports to persons with disabilities.
 - A. All signed interagency agreements between the VIDE and other state and local agencies that provide or pay for services for children with disabilities, as required under Part B, will:
 - 1. Describe the role each agency plays in providing or paying for

services required under Part B;

2. Provide for the development and implementation of interagency agreements that:
 - a. Define the financial responsibilities of each agency for providing FAPE.
 - b. Establish procedures for resolving interagency disputes among agencies that are the parties to these agreements.
 - c. Establish procedures under which public agency may initiate proceedings to secure reimbursement from agencies that are parties to the agreement or otherwise implement the agreements.
 - d. Establish procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.
2. If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state/territorial policy or pursuant to the Rules to provide or pay for any services that are also considered special education or related services as defined by these Rules, such as, but not limited to, related services assistive technology devices and services, supplementary aids and services and transition services that are necessary for ensuring FAPE to children with disabilities within the territory, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.
3. The financial responsibility of each non-educational public agency described in the section, including the state Medicaid/ Medical Assistance agency and other public insurers of children with disabilities, must precede the financial responsibility of the public agency (or the state agency responsible for developing the child's IEP).
4. Any non-educational public agency described in this section may not disqualify an eligible service for Medicaid or Medical Assistance because that service is provided in a school context.
5. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this Rule the public agency or State agency responsible for developing the child's IEP shall provide or pay for these services to the child in a timely manner. The public agency or State agency

may then claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency shall reimburse the public agency or State agency in accordance with the terms set forth in this section.

B. Children with disabilities who are covered by public insurance

1. A LEA or other public agency may use Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this section, as permitted under the public insurance program except as provided in (b)(1-3) below.
2. With regard to services required to provide FAPE to an eligible child as described in this section, the LEA or other public agency:
 - a. May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;
 - b. May not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided as described in this section. The public agency may use its Part B funds to pay the cost that the parent otherwise would be required to pay; and
 - c. May not use a child's benefits under a public benefits or insurance program if that use would:
 1. Decrease available lifetime coverage or any other insured benefit.
 2. Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school.
 3. Increase premiums or lead to the discontinuation of insurance.
 4. Risk loss of eligibility for home and community based waivers, based on aggregate health-related expenditures
 - d. The public agency must obtain parental consent each time that access to public benefits or insurance is sought and must notify parents that the parent's refusal to allow access to their public

benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

C. Children with disabilities who are covered by private insurance

1. With regard to services required to provide FAPE to an eligible child as described in these Rules a public agency may access a parent's private insurance proceeds only if the parent provides informed consent, consistent with Rule IV. F. Each time the public agency proposes to access the parent's private insurance proceeds, it must:
 - a. Obtain parental consent as described in this section.
 - b. Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no costs to the parents.

D. Use of Part B Funds.

1. If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under these Rules, to ensure FAPE the public agency may use its Part B funds to pay for the service.
2. To avoid financial cost to parents who otherwise would consent to use private insurance or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

E. Proceeds from public or private insurance.

1. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
2. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under these Rules, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in these Rules.

F. Prohibition on Mandatory Medication

1. SEAs and LEAs are prohibited from requiring a child to obtain a

prescription for a controlled substance as a condition of attending school, receiving an evaluation, or receiving services under the IDEA or these Rules.

2. Nothing in (F)(1) Shall be construed to create a prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

G. Construction.

Nothing in this section should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under Title XIX or Title XXI of the Social Security Act, or any other public insurance program.

VI. I. REPORTING ON SUSPENSION AND EXPULSION RATES AND DISPROPORTIONALITY

1. Annually, SEAs, LEAs and other public agencies shall report to the VI-SOSE on the rates of long-term suspensions and expulsions of children with disabilities and non-disabled children disaggregated by race and ethnicity for the preceding school year. The VI-SOSE shall examine these data to determine if significant discrepancies are occurring.
 - a. Among LEAs and public agencies in the Territory; or
 - b. Between non-disabled children and children with disabilities within a LEA or public agency
2. If discrepancies as referenced in paragraph (1) of this Rule are occurring the VI-SOSE shall review and if appropriate, require revisions in state agency and LEA or public agency policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure compliance with Part B of IDEA.
3. Annually, the Territory must collect and analyze data to determine if significant disproportionality based on race and ethnicity is occurring in the Territory and LEAs with respect to—
 - a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment; and

- b. The placement in particular educational settings of these children.
- 4. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, the Territory must-
 - a. Review and, if appropriate revise the policies procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the IDEA.
 - b. Require any LEA identified under Paragraph (3) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified; and
 - c. Require the LEA to publicly report on the revision of policies, practices and procedures under (4) (a) of this section.

VI. J. PUBLIC PARTICIPATION

- 1. The VI-SOSE assures that prior to the adoption of any policies and procedures needed to comply with Part B of the IDEA, there are public hearings, and adequate notice of the hearings and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. The notice shall be in sufficient detail to inform the general public about—1) the purpose and scope of the State policies and procedures and their relation to Part B of the Act; 2) the availability of the State’s policies and procedures; 3) the date, time and location of each public hearing; 4) the procedures for submitting written comments about the policies and procedures; and 5) the timetable for submitting the policies and procedures to the Secretary for approval. The notice must be published or announced—1) in newspapers or other media, or both with circulation adequate to notify the general public about the hearings; and 2) enough in advance of the date of the hearings to afford interested parties throughout the state a reasonable opportunity to participate.
- 2. The SEA shall conduct the public hearings at times and places that afford interested parties throughout the Territory a reasonable opportunity to participate. The policies and procedures must be available for comment for a period of at least 30 days following the date of the notice described in paragraph 1 above.
- 3. After the Secretary approves a State’s policies and procedures, the SEA shall give notice in newspapers or other media, or both, that the policies and procedures are approved. The notice must name places throughout the State where the policies and procedures are available for access by any interested person.

4. Before adopting the policies and procedures, the SEA shall—
 - a. Review and consider all public comments; and
 - b. Make any necessary modifications in those policies and procedures.

VI. K. STATE ADVISORY PANEL

The United States Virgin Islands Department of Education has established and maintains the Virgin Islands Advisory Panel on Special Education (VIAPSE) for the purpose of advising the SOSE with respect to special education and related services for children with disabilities as delineated in this section.

1. The State Advisory Panel is a representation of the Virgin Islands population and that is composed of individuals involved in, or concerned with the education of children with disabilities. The members, appointed by the Governor based on recommendation from the State Director of Special Education serve for a three year term.

The State Advisory Panel will be composed of representatives from:

- a. Parents of children with disabilities ages birth through 26;
- b. Individuals with disabilities;
- c. Teachers;
- d. Representatives of institutions of higher education that prepare special education and related services personnel;
- e. State and local education officials, including officials who carry out activities under subtitle B or title VII of the McKinney-Vento Homeless Assistance Act;
- f. Administrators of programs for children with disabilities;
- g. Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
- h. Representatives of private schools,
- i. At least one (1) representative of a vocational,

community or business organization concerned with the provision of transition services to children with disabilities;

j. Representatives from the State juvenile and adult corrections agencies;

k. Representative of the Department of Human Services responsible for foster care.

Special rule: A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities from birth through age twenty six.

2. The State Advisory Panel will:

- a. Advise the SEA of unmet needs within the State in the education of children with disabilities;
- b. Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
- c. Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;
- d. Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act;
- e. Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities;
- f. Advise on the education of eligible children with disabilities who have been convicted as adults and incarcerated in adult prisons, even if, the Territory assigns general supervision responsibility for those children to a public agency other than an SEA.

3. The specific procedures of the State Advisory Panel will include:

- a. The advisory panel shall meet as often as necessary to conduct its business;
- b. By July 1 of each year, the advisory panel shall submit an

annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act;

- c. Official minutes must be kept on all panel meetings and must be made available to the public on request.
 - d. All advisory panel meetings and agenda items must be announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be open to the public.
 - e. Interpreter and other necessary services must be provided at panel meetings for panel members or participants.
4. The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties

VI. L. ALLOCATION AND USE OF PART B FUNDS

1. The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of the Act—
- a. Will be expended in accordance with the applicable provisions of the Act;
 - b. Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with 34 CFR §§300.202 through 300.204; and
 - c. Will be used to supplement State, local, and other federal funds and not to supplant those funds.

The general administration and disbursement of Part B funds by the VI-SOSE conforms to the following policy:

- 1. Federal funds paid to the state for children with disabilities under Part B of the IDEA shall be used to supplement and must not supplant the level of federal, state, and local funds including funds that are not under the direct control of the VI-SOSE, LEA or public agency expended for special education and related services to children with disabilities.
- 2. The state will not reduce, on a total or per-capita basis, the amount of state financial support for special education and related services for children with disabilities or otherwise made available because of the excess costs of education those children, below the amount of that support for the preceding fiscal year.

3. Procedures governing the use of Part B funds for state administration LEA entitlements, and state discretionary support of a free and appropriate public education that consists of special education and related services are as follows:

A. State Administration

1. The VI-SOSE shall use the allowable funds as determined by the US Office of Special Education Programs Fiscal Year for administrative costs related to carrying out the provisions of Part B of the IDEA. The VI-SOSE shall utilize state administrative funds available under Part B for:
 - a. Administration of state activities under Part B of the IDEA and for planning at the state level including planning or assisting in the planning, of programs or projects for the education of children with disabilities.
 - b. Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities
 - c. Technical assistance to LEAs with respect to the requirements of Part B of the IDEA.
 - d. Leadership service for the program supervision and management of special education activities for children with disabilities.
 - e. Other state leadership activities and consultative services.

- B. Sub-grants to LEAs for capacity building and improvement shall be based upon the availability of federal funds for any given fiscal year. The VI-SOSE may establish priorities in awarding these sub-grants on a competitive or targeted basis. In any case, sub grants are to be used by LEAs to assist them in providing direct services and in making systemic changes to improve results for children with disabilities through one or more of the following:

1. Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities and children enrolled in state-operated or state –supported schools.
2. Addressing needs or carrying out improvement strategies identified in the Territory’s Improvement Plan under sub-part d of the IDEA.

3. Adopting promising practices, materials, and technology, based on knowledge derived from educational research and other sources.
4. Establishing, expanding or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to children with disabilities and their families
5. Increasing cooperative problem-solving between parents and school personnel, and promoting the use of alternative dispute resolution.

C. State Discretionary Funds for Support Services

1. The Virgin Islands State Office of Special Education Programs shall use the portion if its allocation it does not use for administrative costs for support services, including technical assistance and personnel development and training.
2. These funds may also be used for the administrative costs of the VI-SOSE's monitoring and complaint investigations to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during Fiscal Year 1985.

D. Other uses of state agency allocations include:

1. The establishment and implementation of the mediation process required by Part B of the IDEA, including providing for the costs of mediators and support personnel.
2. Activities at the state and local levels to meet the performance goals established by the state under Rule VI.D. and to support implementation of the State Improvement Plan as described in Rule VI. G.
3. To supplement other amounts used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the state under Section 611 of the IDEA.

E. Funding for children with disabilities under Section 619 of Part B may only be expended for use in preschool special education programs, ages 3 through 5, inclusive.

F. The VI- SOSE may use the funds retained under this section directly or distribute them to

LEAs on a competitive, targeted or formula basis.

G. For the purposes of this section:

1. "Direct services" means services provided to children with disabilities by the VI-SOSE directly, by contract or through other arrangements.
2. "Support services" includes recruitment and retention of personnel, recruitment and training of mediators, hearing officers, and surrogate parents, and public information and parent-training activities related to a free appropriate public education for children with disabilities.
3. Annually, the VI-SOSE shall notify each eligible LEA of the availability of Part B funds. (See Rule VI. A., LEA Eligibility for Part B funds)
 - a. Annual requests for Part B funds shall be submitted to the State Office of Special Education for review and recommendation for approval.
 - b. Personnel designated by the State Office of Special Education shall review the request and chair the review meetings for each LEA request for consistency with federal requirements and will approve appropriate requests.
 - c. A LEA that receives approval for funding shall be notified in writing of:
 1. The amount of the grant.
 2. The period during which the district may obligate the funds.
 3. The federal requirements that apply to the grant.
4. If the VI-SOSE determines that a LEA is adequately providing FAPE to all children with disabilities residing in the area served by the LEA with state and local funds, the Part B federal funds may be reallocated (or portions of those funds which are not required to provide special education and related services) to other LEAs within the state that are not adequately providing special education service to all children with disabilities residing in the areas served by the other LEA.
5. The VI-SOSE shall not distribute funds to a school district in any fiscal year if the LEA:
 - a. Has not provided the information needed to establish the eligibility of the district under Part B of the IDEA.

- b. Is unable to establish and maintain programs of free appropriate public education that meet the requirements of these Rules.
 - c. Is unable to unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs
 - d. Has one or more children with disabilities who can best be served by a state program or service delivery system designed to meet the needs of these children.
 - e. Has not implemented the provisions of a due process hearing officer's decision, or the results of an expedited due process hearing under the Discipline Procedures Rule V, which was adverse to the district, a mediated agreement or a complaint resolution.
 - f. Has failed to develop an improvement plan satisfactory to the VI-SOSE to eliminate compliance deficiencies found through state monitoring, a complaint investigation, or a due process hearing order.
6. If the state does not distribute Part B funds to a LEA, the VI-SOSE shall use those funds to ensure the provision of a FAPE to children with disabilities residing in the area served by the LEA either directly, by contract, or through other arrangements. The state may provide special education and related services in the manner and at the location the state considers appropriate (including regional and state centers), consistent with the requirements of these Rules, including Rule III. R., LRE.
7. If the LEA is found to be in noncompliance with the provisions of the IDEA and the requirement for submission of local policies and procedures, as described in VI-SOSE policy, the LEA shall be given reasonable notice and provided an opportunity for a hearing.
- a. The VI-SOSE shall provide the LEA with notice and an opportunity for a hearing if it alleges that any of the actions taken by the LEA violated a state or federal statute or regulation when the VI-SOSE:
 - 1. Orders, in accordance with a final state monitoring report and audit resolution determination, the repayment of misspent or misapplied federal funds.
 - 2. Terminates further assistance for an approved project or application in whole or part.
 - 3. Declines to provide to the LEA funds in amounts in accordance

with the requirements of Part B.

- b. The VI-SOSE shall provide an opportunity for a hearing for any LEA, before disapproval of the LEA's eligibility, which is made under the provisions of Part B of the IDEA, or before withholding Part B funds resulting from noncompliance with provisions of the IDEA by the LEA.
- c. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or state agency that has been determined to be eligible under this section is failing to comply with an requirement described in §§300.200 through 300.230, the SEA shall reduce or may not provide any further payments to the LEA or state agency until the SEA is satisfied that the LEA or state agency is complying with that requirement.
- d. If a LEA disagrees with the decision of the VI-SOSE, it shall request a hearing within thirty days of the action.
- e. Within thirty days after it receives a request for a hearing, the VI-SOSE shall hold a hearing on the record and shall review its action.
- f. No later than ten days after the hearing, the VI-SOSE shall issue its written ruling, including findings of fact and reasons for the ruling.
- g. If the VI-SOSE determines that its action was contrary to state or federal statutes, regulations, or rules that govern the program, the VI-SOSE shall rescind its action.
- h. If the VI-SOSE does not rescind its final action after reviewing its decision, the LEA may; appeal the decision to the US Department of Education, Secretary of Education.
- i. The appeal must be filed within twenty days after the LEA is notified of the final actions of the VI-SOSE.
- j. If the VI-SOSE's findings of fact are supported by substantial evidence, then they are final.
- k. The US Secretary of Education may also issue such interim orders to the VI-SOSE as he or she may decide are necessary and appropriate, pending appeal or review.
- l. If the US Secretary of Education determines that the action of the VI-SOSE was contrary to federal statutes or regulations that govern the program, the Secretary shall issue an order that requires the VI-SOSE to take appropriate action.

- m. If the VI-SOSE does not comply with any provision of this Rule, or with any order of the US Secretary of Education under this Rule, the Secretary terminates all assistance to the State Educational Agency under the applicable program or issues such other orders as the Secretary deems appropriate to achieve compliance.
 - n. The VI-SOSE may appeal the decision of the Secretary to the courts for judicial review.
 - o. The VI-SOSE shall make available at reasonable times and places to each LEA, all records of the agency pertaining to any review or appeal, and the LEA shall be provided records of other applicants upon request.
 - p. The SEA shall reduce or may not provide any further payments to the LEA or state agency until the SEA is satisfied that the LEA or state agency is complying with that requirement.
 - q. Any LEA in receipt of a notice described in Rule 7.a. above shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.
8. If the VI-SOSE determines that an LEA is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities, a consolidated request for Part B funds shall be required in order to establish joint eligibility.
- a. Annually, the State Director of Special Education shall notify those LEAs within the state that are required to submit a consolidated request.
 - b. A consolidated request shall meet the same minimum requirements of a single district request, including adopting policies and procedures consistent with these Rules, and must be signed by the Superintendent of each participating LEA.
 - c. LEAs participating in a consolidated request shall be jointly responsible for implementing a program of FAPE for all their children with disabilities.
 - d. Each LEA participating in a consolidated request shall use an accounting system that permits identification of the costs paid for under its sub-grant.
 - e. The state shall not make a sub-grant that exceeds the sum of the

entitlements of the separate local school districts.

- f. The provision of services through the establishment of joint eligibility must be consistent with Rule III. R., LRE.
- 9. Except as noted below, funds provided to the LEA under Part B of the IDEA may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
- 10. Annually, the LEA must have on file with the VI-SOSE information to demonstrate that the maintenance of effort requirements of this section is met.
- 11. An LEA may reduce the level of expenditures by the LEA under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:
 - a. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff.

Note: In order for a LEA to invoke the above exception, the LEA must ensure that those voluntary retirements or resignations and replacements are in full conformity with existing governmental policies in the Territory, the applicable collective bargaining agreement in effect at that time, and applicable local and federal statutes.
 - b. A decrease in the enrollment of children with disabilities.
 - c. The termination of the obligation of the LEA, consistent with these Rules, to provide a program of special education to a particular child with a disability that is exceptionally costly as determined by the VIDE, because the child has left the jurisdiction of the LEA, has reached the age at which the obligation of the LEA to provide FAPE to the child has terminated, or no longer needs the program of special education.
 - d. The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.

VI. M. RECOVERY OF FUNDS FOR MISCLASSIFIED CHILDREN

- 1. These Rules describe procedures for determining the disability condition and eligibility for special education services. A child with disabilities whose diagnostic record does not support or substantiate the classification of a disability condition will

be considered erroneously classified child not eligible to be counted under the provisions of the state or federal requirements, or to receive federal or state funds.

- a. The State Office of Special Education established procedures to be utilized by public agencies in the districts in counting and reporting the number of children with disabilities receiving special education and related services. These guidelines and forms can be found in "The Guidelines and Procedures for Completing the Annual Statistical Reports" which is provided to each district by the State Office of Special Education's Compliance Management Unit.
 - b. The State Office of Special Education's Compliance Management Unit shall review child membership and the statistical reports as to determine whether the established criteria have been met by reviewing the required documentation of selected classified children. If a child is found to be misclassified and federal and/or state expenditures have been made for direct or related service to that child, a notification of exception will be given to the district. Reimbursement for expenditures made on a child erroneously classified, as having a disability will be made to the State Office of Special Education within ninety days.
 - c. If a district disagrees with the findings of the State Office, a hearing may be requested by following the procedures outlined in these Rules
 - d. The Virgin Islands Department of Education shall report to the Secretary of Education no later than February 1st of each year, the number of children with disabilities receiving special education and related services using appropriate data forms.
2. If the requested repayment is not received within thirty-five days of the initial request, the State Director, through the Commissioner of Education, shall provide written notification to the Attorney General's Office in the Territory.

VI. N. RECORDS RETENTION REQUIREMENTS

As required by federal regulations, all records related to federal grants funds and compliance shall be retained by the VI-SOSE and the LEA for four (4) years (or longer if an audit exception) after completion of the activity for which they used the funds.

1. Records related to grant funds shall be kept that fully show:
 - a. The amount of funds under the grant.
 - b. How the funds were used.

- c. The total cost of the project.
 - d. The share of that cost provided from other sources.
 - e. Other records to facilitate an effective audit.
2. Records related to program compliance shall include:
- a. Interim and final monitoring reports.
 - b. Negotiated action plans, including documentation of corrective actions taken by the LEA or public agency and the VI-SOSE.
 - c. Actions taken by an LEA to resolve a formal complaint with the VI-SOSE.
 - d. Supporting documentation regarding the implementation of a hearing officer's final decision in a due process hearing.
 - e. Child count and other required documents, to include but not limited to, entry/exit dates, locations and service codes.
 - f. Individual child records, including IEPs, evaluation data and required consent and prior notice forms.

VI. O. PRIVATE SCHOOL APPROVAL

The State Office of Special Education shall ensure that a child with disabilities who is placed in a private school or facility by an LEA, as a means of providing FAPE through an IEP, has all the rights of a child with disabilities who is served by a public agency. Prior to placement of the child, the VI-SOSE and the LEA will review the program of the private school and a member of the SEA Compliance Unit will visit the facility to determine its compliance with state and federal regulations for serving children with disabilities prior to admission.

VI. P. DISSEMINATION OF INFORMATION

The State Office of Special Education shall disseminate information throughout the state on program requirements and successful practices in the education of children with disabilities. This shall be ongoing and include activities such as conducting statewide in-service training, publishing annual committee reports, developing technical assistance papers, and sponsoring state conferences.

VI. Q. FISCAL AUDITING PROCEDURES

The State Office of Special Education shall adopt and implement fiscal auditing procedures consistent with federal single audit requirements. The Office of Management and Budget annually contracts with a firm to perform single audits on the use of Part B funds by each district.

VI. R. MAINTENANCE OF STATE FINANCIAL SUPPORT

- a. General- The State must have on file with the Secretary information to demonstrate, on either a total or per-capita basis, that the State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.
- b. Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) above by the same amount by which the State fails to meet the requirement.
- c. Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of the above section for a State, for one fiscal year at a time, if the Secretary determines that—1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or precipitous and unforeseen decline in the financial resources of the State; or 2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not supplant, funds received under Part B of the Act.
- d. Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section, must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.