CHAPTER 7

SERVICES FOR CHILDREN WITH DISABILITIES

Section 1. **Authority.**

(a) These rules are authorized by W.S. § 21-2-202(a)(xviii) and have been adopted by the Wyoming State Superintendent of Public Instruction as authorized by the Wyoming Administrative Procedure Act, W.S. §§ 16-3-101 through 16-3-115.

(b) These rules govern the operation of all special education programs and services provided to children with disabilities ages three (3) through the completion of the school year in which the child turns twenty-one (21), pursuant to Wyoming law, by a school district, by State and local juvenile and adult correctional facilities, and by other public agencies within the State of Wyoming.

Section 2. **Scope.**

(a) All provisions under the Individuals with Disabilities Education Act 2004 (IDEA) (20 U.S.C. §1400 *et seq.*) and all federal regulations pertaining to the IDEA, including any subsequent amendments or revisions of the law, regulations, and/or rules, apply to each political subdivision in Wyoming, regardless of whether the political subdivision received any federal IDEA Part B funds. The IDEA requires the state educational agency, or the Wyoming Department of Education (WDE), ensure the requirements of the IDEA and Wyoming educational standards are met in all education programs administered by the State or any school district or other public agency within Wyoming providing services to children with disabilities.

(b) For purposes of services to children with disabilities between the ages of three (3) through completion of the school year in which the child turns twenty-one (21), unless specifically addressed in these rules, WDE hereby adopts all requirements in the IDEA and supporting federal regulations at 34 C.F.R. Parts 300 and 301, including the 2008 Amendments. The public may view the IDEA and federal regulations on WDE's website at www.k12.wy.us/se.asp. All references to a specific rule include, but are not limited to, any applicable provision in the IDEA and the federal regulations. The requirements of the IDEA are binding on each school district or public agency that has direct or delegated authority to provide special education and related services to children with disabilities in Wyoming. This does not limit the responsibility of any school district or public agency for providing or paying appropriate costs for a Free Appropriate Public Education for children with disabilities in Wyoming.

(c) WDE shall ensure that federal special education funds are appropriated to and spent by school districts or public agencies in accordance with these rules, the IDEA, including but not limited to 34 C.F.R. §§300.200 through 300.230 and that school districts or public agencies submit a plan to provide assurances to WDE that they provide for the education of children with disabilities within their jurisdiction, having in effect policies, procedures, and programs that are consistent with the Wyoming policies and procedures established under Part B of the IDEA. These funds shall be recovered

by WDE for services to any child determined to be erroneously classified and reported to WDE as a child with a disability. WDE may use whatever State, local, federal or private sources of support that are available to meet the requirements of the IDEA.

Section 3. **Definitions.**

(a) All terms defined in the following federal laws and regulations and any other federally defined terms are incorporated herein by reference for purposes of these rules:

(i) The Individuals with Disabilities Education Act of 2004 (IDEA), 20 U.S.C. §1400 *et seq.; and,*

(ii) The IDEA regulations at 34 C.F.R. Part 300 (governing Part B programs for school-aged children with disabilities), and 34 C.F.R. Part 301 (governing programs for preschool children with disabilities).

(b) The following definitions are specifically defined by WDE for the purposes of these rules.

(i) **"Developmental Delay"** means a child with a disability ages three (3) through nine (9) who is determined, through appropriate diagnostic instruments and procedures, to be experiencing delays in the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and who, by reason thereof, needs special education and related services.

(ii) **"Elementary school"** means a school consisting of kindergarten through grade five (5), or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the board of trustees, including a nonprofit institutional day or residential school or a public elementary charter school that provides elementary education as determined by Wyoming law. [*See* 34 C.F.R. § 300.13 and W.S. 21-13-101(a)(iv)]

(iii) **"High school"** means a school consisting of grades nine (9) through twelve (12), or any combination of grades within this range, as determined by the plan of organization for schools authorized by the district board, including a nonprofit institutional day or residential school or a public secondary charter school as determined by Wyoming law, except that it does not include education beyond grade 12. [*See* 34 C.F.R. § 300.36 and W.S. 21-13-101(a)(vi)]

(iv) **"Home based education"** means a program of educational instruction provided to a child by the child's parent or legal guardian or by a person designated by the parent or legal guardian. An instructional program provided to more than one family unit does not constitute a home-based educational program. [*See* W.S. §21-4-101(a)(v)]

(v) **"Middle school"** means a school, consisting of grades six (6) through eight (8) or any combination of grades within this range, as determined by the plan of organization for schools authorized by the district board of trustees, including a nonprofit

institutional day or residential school or a public charter school. [*See* 34 C.F.R. §§300.13 and 300.36 and W.S. 21-13-101(a)(vii)]

(vi) **"Preschool children with disabilities"** means children three (3) through five (5) years of age in Wyoming identified as eligible for special education and related services. [*See* W.S. §21-2-701]

(vii) **"Private school"** means, for the purpose of these rules, any nonpublic, elementary or secondary school providing basic academic educational programs for children and may include parochial and church or religious schools and home-based educational programs. [*See* W.S. §21-4-101(a)(iii)]

Section 4. **Identification, Evaluation, and Eligibility Determinations.**

(a) Child find. Consistent with 34 C.F.R. §300.111, each school district or public agency shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the school district's or public agency's educational jurisdiction, including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are highly mobile, and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of special education and related services, are located, evaluated and identified in compliance with all applicable requirements of IDEA, including but not limited to 34 C.F.R. §§ 300.111, 300.131, 300.301 through 300.306 and these WDE rules and standards.

(i) School districts or public agencies must provide parents with public notice of its child find activities pursuant to 34 C.F.R. §300.612(b).

(ii) School districts or public agencies must implement procedures to ensure protection of the confidentiality of any personally identifiable information collected, used, or maintained in child find activities in accordance with the federal regulations, including but not limited to 34 C.F.R. §§300.32, 300.134 and 300.610 through 300.627.

(iii) Consistent with 34 C.F.R. §§300.130 through 300.144, if a child is parentally enrolled in a private elementary or secondary school outside the boundaries of the school district or public agency in which the student is living, the school district or public agency where the private school is located is responsible for child find activities, evaluations, and provision of services.

(iv) School districts and public agencies shall coordinate child find responsibilities for children ages birth through two (2) with early intervention providers or agencies.

(b) Initial evaluation.

(i) In accordance with 34 C.F.R. §300.301, either a parent, school district, or public agency may initiate a request for a full and individual initial evaluation.

(A) A school district or public agency shall establish procedures for requesting an initial evaluation.

(B) If a comprehensive initial evaluation is determined warranted, consent must be obtained consistent with 34 C.F.R. §300.300, and the evaluation must be conducted consistent with 34 C.F.R. §§300.301 through 300.311.

(C) A comprehensive evaluation shall include, as needed, evaluative services 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. [*See* 34 C.F.R. §300.34(c)(5)]

(D) If the school district or public agency does not suspect that the child has a disability and refuses a parent's request for an initial evaluation, the school district or public agency must provide written notice to the parent consistent with 34 C.F.R. §300.503. The parent may challenge the refusal by utilizing the dispute resolution procedures in these rules.

(c) Eligibility under the IDEA.

(i) Consistent with 34 C.F.R. §300.8, to be eligible for special education and related services under the IDEA a child must meet the criteria for one (1) or more of the disability categories listed in this section, and the disability must adversely affect the student's educational performance such that the student needs special education, as defined in 34 C.F.R. §300.39, and related services, as defined in 34 C.F.R. §300.34.

(ii) Limitation. Speech Language Impairment is the only disability category that would be considered either:

(A) A special education service if eligibility criteria is met, or

(B) A related service if the eligibility criteria for one (1) of the other disability categories is satisfied.

(d) Disability categories and eligibility criteria.

(i) **Autism Spectrum Disorder.** Autism Spectrum Disorder means a developmental disability significantly affecting verbal and nonverbal communications and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with Autism Spectrum Disorder are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism Spectrum Disorder does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disability as defined in this section.

(A) Autism Spectrum Disorder eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include recommendations for instruction from a qualified diagnostician, such as a licensed psychologist, psychiatrist or other qualified professional. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with the requirements of these rules, a child is

identified as a child with Autism Spectrum Disorder if four (4) out of five (5) following criteria are satisfied:

(I) Impaired communication: The child is unable to use expressive and receptive language for social communication in a developmentally appropriate manner; lacks nonverbal communication skills or uses abnormal nonverbal communication; uses abnormal form or content when speaking; or is unable to initiate or sustain conversation with others;

(II) Inappropriate relationships: The child exhibits deficits relating to people; marked lack of awareness of others' feelings; abnormal seeking of comfort at times of distress; absent or abnormal social play; or inability to make friends. The child does not relate to or use objects in an age appropriate manner;

(III) Abnormal sensory processing: The child exhibits unusual, repetitive, or non-meaningful responses to auditory, visual, olfactory, taste, tactile or kinesthetic stimuli;

(IV) Impaired cognitive development: The child has difficulty with concrete versus abstract thinking, awareness, judgment or the ability to generalize. The child may exhibit perseverative thinking or impaired ability to process symbolic information; or

(V) Abnormal range of activities: The child demonstrates a restricted repertoire of activities, interests, and imaginative development evident through stereotyped body movements, persistent preoccupation with parts of objects, distress over trivial changes in the environment, unreasonable insistence on routines, restricted range of interests, or preoccupations with one (1) narrow interest.

(ii) **Cognitive Disability.** Cognitive Disability 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.

(A) Cognitive Disability eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with these rules, a child is identified as a child with a Cognitive Disability if all of the following criteria are met:

(I) Documentation on an individual test of intelligence that the child's intellectual functioning is two (2) or more standard deviations below the mean, taking into consideration the standard error of measurement. In the event that an individual test of intelligence is not able to be administered to the child, the evaluation team shall document how they determined that the child's profile of intellectual functioning indicates sub-average performance in a majority of areas;

(II) Documentation on an individually administered test or assessment that the child's academic or pre-academic skills are coexistent with the child's deficits in

intellectual functioning. Behavior observations, criterion-referenced tests, or documentation of classroom performance may be used when a child's level of functioning cannot appropriately be measured by standardized tests; and

(III) Documentation on standardized adaptive behavior measurements, that includes information gathered from parents and school staff, that the child's deficits in adaptive behavior are coexistent with the child's deficits in intellectual functioning.

(iii) **Deaf-Blindness.** 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 a child with deafness or a child with blindness.

(A) Deaf-Blindness eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with these rules. The initial evaluation process shall include a licensed audiologist, certified teacher of the visually impaired, and other qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with the requirements of these rules, a child is identified as a child with Deaf-Blindness if all of the following criteria are met:

(I) Eligibility criteria for Hearing Impairment, Including Deafness, are met;

(II) Eligibility criteria for Visual Impairment, Including Blindness, are met; and

(III) The child's current level of performance indicates significant problems with motor functioning, communication, self-help/adaptive skills, social skills, or pre-academic or academic skills.

(iv) **Developmental Delay.** Developmental Delay means a child with a disability ages three (3) through nine (9) who is determined through appropriate diagnostic instruments and procedures to be experiencing developmental delays in the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, that adversely affects educational performance and who, by reason thereof, needs special education and related services. Developmental Delay is a category available to children ages three (3) through nine (9) who do not qualify in other categories under these rules, but meet the Developmental Delay criteria. School districts or public agencies are free to utilize Developmental Delay as a disability category if adopted by the local governing board and annual assurances are provided to WDE that the criteria is implemented consistent with these rules.

(A) Developmental Delay eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In

accordance with these rules, a child is identified as a child with a Developmental Delay if the following criteria are met:

(I) The child's performance is significantly below the mean of expected performance, measured at 1.75 standard deviations below the expected performance for children of comparable chronological age in one (1) area (physical, cognitive, social/emotional, communication, or adaptive functioning); or

(II) The child's performance is markedly below the mean of expected performance, measure at 1.5 standard deviations below the expected performance for children of comparable chronological age in two (2) or more areas (physical, cognitive, social/emotional, communication, or adaptive functioning); and

(III) Results of hearing and vision screening that provide evidence that the child's performance is not the result of hearing or vision impairments.

(B) Exceeding the age of eligibility: Consistent with 34 C.F.R. §300.305(e)(1), the school district or public agency must evaluate the child before determining the child is no longer a child with a Developmental Delay.

(v) **Emotional Disability.** Emotional Disability means a condition exhibiting one (1) 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 or teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or 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 they have an Emotional Disability as defined in these rules.

(A) Emotional Disability eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include recommendations for social, emotional, or behavioral instruction from a qualified diagnostician, such as a licensed psychologist, school psychologist, psychiatrist, or other qualified professional. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with the requirements of these rules, a child is identified as a child with an Emotional Disability if the following criteria are met:

(I) Documentation from regular education positive behavioral interventions evidences that the behavior adversely affects the child's educational performance.

(II) The child continues to exhibit behavioral or emotional characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance as evidence by one (1) or more of the following:

(1.) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(2.) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(3.) Inappropriate types of behavior or feelings under normal circumstances;

(4.) A general pervasive mood of unhappiness or depression; or

(5.) A tendency to develop physical symptoms or fears associated with personal or school problems.

(III) The term does not apply to children who are socially maladjusted, unless it is determined that they have an Emotional Disability consistent with the criteria above.

(vi) **Hearing Impairment, Including Deafness.** Hearing Impairment, Including Deafness means a hearing impairment including deafness that, with or without amplification, adversely affects educational performance, may be permanent or fluctuating, and may be so severe that the child is impaired in processing linguistic information through hearing, with or without amplification.

(A) Hearing Impairment, Including Deafness eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with these rules. The initial evaluation process shall include a licensed audiologist and other qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with these rules, a child is identified as a child with a Hearing Impairment, Including Deafness, if the following criteria are met:

(I) Documentation of the child's potential requirement for amplification and one (1) of the following hearing losses:

(1.) Sensorineural hearing loss; or

(2.) Conductive hearing loss.

(II) Documentation that the hearing loss interferes with the student's ability to function in an educational program using traditional materials and techniques due to the child's difficulty in using or understanding spoken language.

(vii) **Multiple Disabilities.** Multiple Disabilities means concomitant impairments (such as Cognitive Disability-Blindness; Traumatic Brain Injury-Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one (1) of the impairments. The term does not include Deaf-Blindness unless eligibility criteria in an additional disability category are satisfied.

(A) Multiple Disabilities eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The

initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability.

(viii) **Orthopedic Impairment.** 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 (*e.g.*, poliomyelitis, bone tuberculosis), and impairments from other causes (*e.g.*, cerebral palsy, amputations and fractures or burns that cause contractures).

(A) Orthopedic Impairment eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with the requirements of these rules, a child is identified as a child with an Orthopedic Impairment if the following criteria are met:

(I) Documentation of an Orthopedic Impairment from a physician within the previous twelve (12) months for an initial evaluation; and

(II) Documentation that the child's impaired motor functioning significantly interferes with educational performance; and either

(III) Documentation that the child exhibits deficits in muscular or neuromuscular functioning that significantly limit the child's ability to move about, sit, or manipulate materials required for learning; or

(IV) Documentation that the child's bone, joint, or muscle problems affect ambulation, posture, or gross and fine motor skills.

(ix) **Other Health Impairment.** 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 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, sickle cell anemia, and Tourette Syndrome, and adversely affects a child's educational performance.

(A) Other Health Impairment eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with the requirements of these rules, a child is identified as a child with an Other Health Impairment if the criteria below are met:

(I) Subject to the provision below regarding attention deficit disorder or attention deficit hyperactivity disorder, documentation of an acute or chronic health problem from a licensed physician within the previous twelve (12) months for an initial evaluation;

(1.) In concert with the above provision, as determined appropriate by a school district or public agency, a licensed psychologist or certified psychologist, in lieu of a physician may document the child meets eligibility requirements for an Other Health Impairment with respect to attention deficit disorder or attention deficit hyperactivity disorder for an initial evaluation; and

(II) Documentation that educational performance is adversely affected due to acute or chronic limited strength, vitality, or alertness.

(x) **Specific Learning Disability (SLD).** Specific Learning Disability means a disorder in one (1) 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. A Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, cognitive disability, emotional disability, or of environmental, cultural or economic disadvantage.

(A) Specific Learning Disability eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by a group of qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with these rules, a child is identified as a child with a Specific Learning Disability if the criteria in this section are satisfied.

(B) Consistent with 34 C.F.R. §300.308, the determination of whether a child suspected of having a Specific Learning Disability is a child with a disability as defined in 34 C.F.R. §300.8, must be made by a group, which includes the child's parents and qualified professionals, including:

(I) 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

(II) For a child of less than school age, an individual qualified by Wyoming to teach a child of his or her age; and

(III) At least one (1) person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(C) With respect to the evaluation described in paragraph (A) above, and consistent with 34 C.F.R. §300.310, the school district or 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 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. The group, in determining whether a child has a Specific Learning Disability, must decide to:

(I) Use information from an observation in a routine classroom instruction and monitoring of the child's performance that was done before the child was referred for evaluation; or

(II) Have at least one (1) member of the group 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, consistent with 34 C.F.R. §300.300(a), is obtained.

(D) Consistent with 34 C.F.R. §300.309(a), the group determines that a child has a Specific Learning Disability if:

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

(1.) Oral expression;

(2.) Listening comprehension;

(3.) Written expression;

(4.) Basic reading skill;

(5.) Reading fluency skills;

(6.) Reading comprehension;

(7.) Mathematics calculation;

(8.) Mathematics problem solving; and

(II) The child does not make sufficient progress to meet age or Wyoming grade-level standards in one (1) or more of the above areas when using a process based on the child's response to scientific, research-based intervention.

(E) The group shall use either the Wyoming Severe Discrepancy Formula or a response to intervention process when determining whether a child is not making sufficient progress to meet age or Wyoming grade-level standards.

(I) Wyoming Severe Discrepancy Formula: The group may determine that the child demonstrates a severe discrepancy between current achievement level and expected achievement level of at least 22 points upon an initial evaluation, utilizing Appendix A of these rules. Expected achievement is based on the correlation between tests of the child's composite intellectual standard score compared to the child's composite achievement score in one (1) or more core achievement areas.

(1.) The Wyoming Severe Discrepancy Formula in Appendix A of these rules must be utilized when making an eligibility determination based on a severe discrepancy between intellectual ability and achievement.

(2.) A severe discrepancy exists when application of the Wyoming Severe Discrepancy Formula results in a difference between expected and actual achievement greater than or equal to 1.5 standard deviations (See Appendix A).

(II) Response to intervention process: The group may determine that the child does not make sufficient progress to meet age or Wyoming grade-level standards in one (1) or more of the areas in paragraph (D)(I)) of this section when using a process based on the child's response to scientific, research-based intervention.

(F) Consistent with 34 C.F.R. §300.309, 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, as part of the evaluation the group must consider:

(I) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(II) 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.

(G) Consistent with 34 C.F.R. §300.309, the group must determine that underachievement of a child suspected of having a Specific Learning Disability is not primarily the result of:

(I) A visual, hearing, or motor disability;

(II) Cognitive disability;

(III) Emotional disability;

(IV) Cultural factors;

(V) Environmental or economic disadvantage; or

(VI) Limited English proficiency.

(H) Consistent with 34 C.F.R. §300.309(c), a school district or 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 in 34 C.F.R. §§300.301 through 300.303, unless extended by mutual written agreement of the child's parents and the group of qualified professionals under the following circumstances:

(I) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction described in (F) above, and

(II) Whenever a child is referred for an evaluation.

(I) Specific documentation required for the eligibility determination. Consistent with 34 C.F.R. §300.311, for a child suspected of having a Specific Learning

Disability, the documentation of the determination of eligibility must contain a statement of each of the following:

(I) Whether the child has a Specific Learning Disability;

(II) The basis for making the determination, including an assurance that the determination has been made in accordance with 34 C.F.R. §300.306(c)(1);

(III) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(IV) The educationally relevant medical findings, if any;

(V) Whether:

(1.) The child does not achieve adequately for the child's age or to meet Wyoming grade-level standards consistent with 34 C.F.R. §300.309(a)(1); and

(2.) The child does not make sufficient progress to meet age or Wyoming grade-level standards consistent with 34 C.F.R. §300.309(a)(2)(i).

(VI) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disability cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level.

(VII) If the child has participated in a process that assesses a child's response to scientific, research-based intervention:

(1.) The instructional strategies used and the student-centered data collected; and

(2.) The documentation that the child's parents were notified about:

a. Wyoming's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

b. Strategies for increasing the child's rate of learning; and

c. The parents' right to request an evaluation.

(VIII) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not, the group member must submit a separate statement presenting the member's conclusions.

(xi) **Speech or Language Impairment.** Speech or Language Impairment means a communication disorder, such as Stuttering, impaired Articulation, a Language Impairment or a Voice Impairment, that adversely affects a child's educational performance.

(A) Speech or Language Impairment eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by a Speech Language Pathologist (SLP) and other qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with the requirements of these rules, a child is identified as a child with a Speech or Language Impairment in the qualifying area(s) of Articulation, Stuttering, Language Impairment, or Voice Impairment if the following specific criteria are met.

(I) Articulation eligibility criteria. Articulation means speech sound production or phonological errors atypical of a child of comparable age and development.

(1.) Eligibility criteria: One (1) of the following criteria must be met:

a. Documentation that the child exhibits errors of speech sound production beyond the age at which 85% of typically developing children have achieved mastery (based on current developmental norms);

b. Documentation that the child's performance on a standardized evaluation instrument is 1.5 standard deviations or greater below the mean for the child's chronological age based on a norm-referenced test of articulation or phonology;

c. Documentation that one (1) or more phonological patterns of sound are significantly disordered and evidence that the child's conversational intelligibility is affected; or

d. Documentation that the child's scores are at a moderate, severe, or profound rating on appropriate evaluation instruments.

(II) Stuttering eligibility criteria. Stuttering means abnormal flow of speech evident in interruptions by hesitations, repetitious or prolongation of sounds, syllables, words or phrases or articulary positions or by avoidance and struggle behaviors.

(1.) Eligibility criteria: Either criteria a. or b. must be met in addition to criteria c.

a. Documentation that the child demonstrates at least a moderate rating or its equivalent on a formal fluency rating scale; or

b. Documentation that the child exhibits stuttering on 5% or more of words spoken in a representative language sample or demonstrates stuttering in varied speaking situations; and

c. An observation documenting that the child's stuttering interferes with communication and calls attention to itself.

(III) Language Impairment eligibility criteria. Language Impairment means a deficiency in language comprehension or production evident in the content, form or use of oral communication or its equivalent.

(1.) Eligibility criteria: Both of the following criteria must be met:

a. The child demonstrates on standardized measures an understanding and use of morphologic, syntactic, semantic, or pragmatic patterns at 1.5 standard deviations below the mean for the child's chronological age; and

b. Documentation that receptive or expressive language interferes with the child's oral communication or primary mode of communication.

(IV) Voice Impairment. Voice Impairment means a significant deviation in pitch, intensity or quality, which significantly interferes with communication for an extended period of time and is atypical for a child of comparable age and development.

(1.) Voice Impairment eligibility criteria: Voice Impairment must be evidenced by:

a. Documentation that the child exhibits significantly abnormal voice quality, pitch, resonance, loudness, or duration; and

b. Documentation that the condition is present for an extended period of time.

(B) The evaluation process must take into account that the child does not exhibit any one (1) of the following exclusionary factors:

(I) Mild, transitory, or developmentally appropriate speech or language difficulties that children experience at various times to various degrees;

(II) Speech or language difficulties resulting from dialectical difference or from learning English as a second language, unless the child has a Language Impairment in his or her native language;

(III) Difficulties with auditory processing without a concomitant impairment in speech sound production;

(IV) A tongue thrust which exists in the absence of a concomitant impairment in speech sound production; or

(V) Elective or selective mutism or school phobia without a documented oral Speech or Language Impairment.

(xii) **Traumatic Brain Injury.** Traumatic Brain Injury means 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 (1) 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.

(A) Traumatic Brain Injury eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with these requirements, a child is identified as a child with a Traumatic Brain Injury if the following criteria are satisfied:

(I) Documentation from a physician, within the previous twelve (12) months, that the child has sustained a brain trauma (e.g., skull fracture, contusions, and/or bullet wound, etc.) resulting in the onset of an impairment; and

(II) Documentation that the Traumatic Brain Injury adversely affects the child's educational performance in one (1) or more of the following areas: cognitive ability, social behavior, use of adaptive skills, physical ability, vision, hearing, or ability to communicate.

(xiii) **Visual Impairment, Including Blindness.** Visual Impairment, Including Blindness means an impairment in vision, even with correction, that adversely affects a child's educational performance. The term includes both partial sight and blindness.

(A) Visual Impairment eligibility criteria: Eligibility is established through a comprehensive evaluation in accordance with these rules. The initial evaluation team shall consist of a certified teacher of the visually impaired and other qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability. In accordance with the requirements of these rules, a child is identified as a child with a Visual Impairment, Including Blindness if criteria in paragraph (I) is met in addition to one (1) additional criteria in paragraphs (II) through (V).

(I) Documentation of loss of vision which adversely affects the child's educational performance and requires the use of specialized tests, techniques, materials, or assistive technology devices; and

(II) Documentation of visual acuity in the better eye with the best possible correction of:

(1.) 20/200 or less (blind); or

(2.) 20/50 or less (partially sighted);

(III) Documentation of reduced visual field to 20 degrees or less in the better eye;

(IV) Documentation of a progressive loss of vision which may, in the future, affect the child's ability to learn; or

(V) Visual acuity, which cannot be measured, but in which the child has a functional loss of vision as determined through a functional vision assessment.

Section 5. **Special Education Process.**

(a) Free Appropriate Public Education (FAPE).

(i) Consistent with 34 C.F.R. §§300.101 and 300.102 and W.S. §21-2-501, school districts and public agencies shall ensure that a Free Appropriate Public Education (FAPE) is available to all children with disabilities residing in Wyoming no later than the child's third (3rd) birthday through the completion of the school year the child turns twenty-one (21), including those children who have been suspended or expelled from school.

(ii) Preschool children with disabilities means children age three (3) through five (5) in Wyoming who are identified as eligible for special education and related services under the IDEA, federal regulations and these rules.

(iii) Any preschool children with disabilities who are five (5) years of age on or before September 15th and who are receiving services from a school district shall be the responsibility of that school district for the purpose of ensuring the provision of FAPE. [*See* W.S. §21-2-704.]

(b) Least Restrictive Environment (LRE).

(i) Consistent with 34 C.F.R. §§300.114 through 300.120 and any Wyoming LRE policy or procedure adopted pursuant to 34 C.F.R. §300.165, except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), WDE must ensure that school districts and public agencies have policies and procedures in place to ensure that:

(A) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(B) 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.

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

(iii) The continuum of alternative placements must include the alternative placements listed in 34 C.F.R. §300.39 and make provisions for supplementary services, defined in 34 C.F.R §300.42, to be provided in conjunction with regular class placement.

(iv) The placement decision: In determining the educational placement of a child with a disability, including a preschool child with a disability, the school district or public agency must ensure that:

(A) The placement decision:

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

(II) Is made in conformity with the LRE provisions above and 34 C.F.R. §§300.114 through 300.118.

(B) The child's placement:

(I) Is determined at least annually;

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

(III) Is as close as possible to the child's home.

(v) Unless the IEP of a child requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled.

(vi) In selecting the LRE, consideration shall be given to any potentially harmful effect on the child or on the quality of services that he or she needs.

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

(c) Extended School Year (ESY).

(i) Consistent with 34 C.F.R. §300.106 and any Wyoming ESY policy or procedure adopted pursuant to 34 C.F.R. §300.165, each school district or public agency must ensure that extended school year services are available as necessary to provide FAPE.

(A) ESY services means special education and related services that:

(I) Are provided to a child with a disability:

(1.) Beyond the normal school year of the school district or public agency;

(2.) In accordance with the child's IEP; and

(3.) At no cost to the parents of the child; and

(II) Meet the standards of Wyoming.

(B) ESY services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. In implementing the requirements of this section, the school district or public agency must consider a multi-factor approach in determining whether ESY services are necessary, and may not:

(I) Limit extended school year services to particular categories of disability; or

(II) Unilaterally limit the type, amount, or duration of those services.

(d) Individualized Education Program (IEP) and placement decisions.

(i) School districts and public agencies shall develop, implement, review and revise IEPs consistent with 34 C.F.R. §§300.320 through 300.328.

(ii) IEP teams shall make placement decisions in accordance with the rules herein and with the least restrictive environment provision at 34 C.F.R. §§300.114 through 300.118.

(e) Reevaluations. A school district or public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 C.F.R. §§300.303 through 300.311.

(f) IEPs for transfer students.

(i) Procedures for children with disabilities who transfer between school districts or public agencies in Wyoming in the same school year shall be consistent with 34 C.F.R. §300.323(e).

(ii) Procedures for children with disabilities who transfer to Wyoming school districts or public agencies from another state shall be consistent with 34 C.F.R. §300.323(f).

(iii) Procedures for preschool children with disabilities transitioning from developmental preschool centers in the state of Wyoming to school districts or other public agencies shall be consistent with 34 C.F.R. §300.323(e).

(iv) Procedures for children identified as Developmentally Delayed who transfer to a school district or public agency that has not adopted the Developmentally Delayed criteria shall be consistent with the procedures in 34 C.F.R. §300.323(f) for students who transfer from another state.

(A) The school district or public agency, consistent with the consent requirements, shall:

(I) Conduct an evaluation and eligibility determination consistent with 34 C.F.R. §§300.301 through 300.311; and

(B) Meet the requirements above with respect to continuing to provide FAPE to the child, including services comparable to those described in the child's IEP from the previous public agency until completion of the evaluation and eligibility determination consistent with these rules and IDEA.

(g) Inter-district placements. Each school district or public agency shall provide FAPE to children with disabilities residing within its boundaries. If the school district or public agency is unable to provide the programs and services necessary for the child with a disability to receive FAPE, the school district or public agency shall

contract with another school district or public agency to provide those programs and/or services. [*See* W.S. §21-2-502.]

(h) Residential placement by another entity.

(i) If a child with a disability has been placed in a residential treatment facility or psychiatric hospital by another public agency or court, the residential treatment facility or hospital shall initiate action to develop, review, or revise the child's IEP consistent with IDEA and these rules, or if necessary, evaluate and identify the child as a child with a disability according to IDEA and these rules.

(ii) The facility or hospital shall notify the child's resident school district or public agency of the child's placement at the facility or hospital. The resident school district or public agency shall participate in planning and implementing FAPE for the child.

(iii) In the event that the residential treatment facility is unable or unwilling to provide FAPE to the child as required under the IDEA, the resident school district or public agency is responsible for ensuring that the child receives FAPE. (*See* W.S. §21-2-502.)

(i) Court-ordered placements.

(i) The Department of Family Services (DFS) shall pay residential and treatment costs excluding educational and medical costs of court ordered placements of children in private residential treatment facilities and group homes located in Wyoming.

(ii) Programs providing education services including programs for children with disabilities provided by a Board of Cooperative Educational Services (BOCES), shall bill WDE directly for educational costs of court ordered placements.

(iii) All costs billed to WDE under this section shall be in the manner and form required by WDE, and consistent with W.S. §21-13-315 and Chapter 14 of WDE Rules and Regulations.

Section 6. **Procedural Safeguards.** Each school district or public agency shall implement procedural safeguards consistent with the requirements of 34 C.F.R §§300.500 through 300.536, including dissemination of a procedural safeguards notice that meets the requirements of 34 C.F.R. §300.504.

(a) Parent participation and involvement. The parents of a child with a disability must be afforded an opportunity to participate in the special education process and examine educational records pursuant to 34 C.F.R. §300.501.

(b) Parental consent. The school district or public agency shall implement parental consent and the revocation of parental consent procedures consistent with 34 C.F.R. §§300.9 and 300.300 (including the 2008 Amendment and any subsequent amendments).

(c) Independent educational evaluation (IEE). Consistent with 34 C.F.R. §300.502, the parents of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

(d) Prior written notice. Prior written notice shall be given to the parents of a child with a disability a reasonable time before the school district or public agency proposes to, or refuses to, initiate or change the identification, evaluation, educational placement of the child, or the provision of FAPE to the child consistent with 34 C.F.R. §300.503.

(e) Discipline procedures. Discipline of a child with a disability shall be implemented consistent with the requirements of 34 C.F.R. §§300.530 through 300.536 and any Wyoming discipline policy or procedure adopted pursuant to 34 C.F.R. §300.165.

(f) Surrogate parents. The procedures for appointment of a surrogate parent shall comply with 34 C.F.R. §§300.30 and 300.519.

(g) Transfer of parental rights at age of majority. When a student reaches the age of 18, parental rights under the IDEA shall transfer to the student in accordance with 34 C.F.R. §§300.320(c) and 300.520. [*See* W.S. §14-1-101.]

(h) Unilateral private placements. Requirements for unilateral placement by parents of children with disabilities in private schools shall be consistent with 34 C.F.R. §§300.129 through 300.144 and §300.148.

(i) Special education records. The school district or public agency must protect the confidentiality of student education records consistent with the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 C.F.R. §99, and consistent with the IDEA and 34 C.F.R. §§300.610 through 300.627.

Section 7. **Dispute Resolution.** In compliance with 34 C.F.R. §§300.151, 300.506, and 300.508, WDE shall ensure the adoption of dispute resolution policies and/or procedures pursuant to 34 C.F.R. §300.165.

(a) Mediation. In accordance with the procedures specified in 34 C.F.R. §300.506 WDE shall offer parties to disputes involving any matter arising under Part B of the IDEA, including disputes arising prior to a due process hearing request, an opportunity to resolve the dispute through mediation.

(b) Wyoming state complaint procedures. In compliance with 34 C.F.R. §§300.151 through 300.153, WDE shall resolve any state complaint, including a complaint filed by an organization or individual from another state, that alleges a violation of Wyoming or Federal laws, and meets the requirements of the above referenced complaint provisions.

(i) In resolving a state complaint in which a failure to provide appropriate services has been found, WDE, pursuant to its general supervisory authority under Part B of the IDEA, shall address:

(A) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and

(B) The appropriate future provision of services for all children with disabilities.

(c) Due process hearing procedures. A parent or public agency may file a due process complaint on any of the matters relating to the identification, evaluation, educational placement, or provision of FAPE to the child consistent with procedures outlined in 34 C.F.R. §§300.507 through 300.518 and 300.532.

(d) Child's status during proceedings. Except as provided in 34 C.F.R. §300.533 (regarding disciplinary removals), during the pendency of any administrative or judicial proceeding regarding a due process hearing, unless the Wyoming school district, or public agency and the parents of the child agree otherwise, the child that is the subject of the dispute must remain in his or her current educational placement consistent with 34 C.F.R. §300.518.

Section 8. **Special Education Funding.**

(a) School district or pubic agency eligibility. School district or public agency Part B funding shall be implemented in accordance with 34 C.F.R. §§300.200 through 300.230 and any other applicable provisions.

(b) Compliance with applicable laws and regulations. Each school district or public agency shall adopt and implement appropriate policies, procedures, programs and services to ensure that children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions are identified and evaluated, and have access to FAPE in compliance with all applicable requirements of Wyoming laws and any applicable federal laws and regulations.

(c) Condition of assistance. A school district or public agency is eligible for federal funding under Part B of the IDEA for a fiscal year if the school district or public agency submits a plan that provides assurances to the WDE that the school district or public agency meets each of the conditions set forth in this section and these rules.

Section 9. **General Supervision.**

(a) Pursuant to its general supervisory responsibility, WDE shall ensure that the requirements of the IDEA and federal regulations are carried out and that each school district or public agency implements programs that meet the standards of Wyoming, consistent with 34 C.F.R. §300.149 and any formally adopted Wyoming policy or procedure.

(b) In accordance with W.S. §§21-2-701(a)(1) and 21-2-703 the Department of Health, Developmental Disabilities Division (Division), is assigned responsibility for ensuring the provision of FAPE to preschool children with disabilities. Pursuant to W.S.

§21-2-702, the Division shall be deemed an intermediate educational unit, and as such, shall function as an educational service agency consistent with 34 C.F.R. §300.12(c). [*See* 34 C.F.R. §300.12 and W.S. §§21-2-701 through 21-2-703.]

(c) Monitoring focus. WDE shall enforce the requirements of the IDEA and monitor the implementation of these rules by school districts and public agencies in accordance with 34 C.F.R. §§300.600 through 300.608 (including the 2008 Amendment and any subsequent amendments). The primary focus of the monitoring activities shall be on:

(i) Improving educational results and functional outcomes for all children with disabilities; and

(ii) Ensuring that the school districts or public agencies meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(d) Priority areas. Consistent with 34 C.F.R. §300.600(d), WDE shall monitor school districts and public agencies using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure the performance in those areas:

(i) Provision of FAPE in the least restrictive environment;

(ii) Wyoming exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services defined in 34 C.F.R. §§300.43 and 300.124.

(iii) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation involves inappropriate identification, pursuant to data collected in accordance with 34 C.F.R. §300.646.

(e) Wyoming use of targets. WDE shall use the targets established in Wyoming's performance plan under 34 C.F.R. §300.601 and the priority areas described in 34 C.F.R. §300.600(d) to analyze the performance of each school district or public agency.

(f) Public reporting and privacy. Consistent with 34 C.F.R. §300.602 (including the 2008 Amendment and any subsequent amendments) WDE shall:

(i) Make Wyoming's performance plan, under 34 C.F.R. §300.601(a) available through public means.

(ii) Make Wyoming's annual performance report under 34 C.F.R. §300.602(b)(2) available through public means.

(iii) Report annually to the public on the performance of each school district or public agency in Wyoming under 34 C.F.R. §300.602(b)(1)(i)(A).

(g) Determinations. Based on the information provided by school district or public agencies, information obtained through monitoring visits, and any other public information made available, WDE shall determine if the school district or public agency:

(i) Meets the requirements and purposes of Part B of the IDEA;

(ii) Needs assistance in implementing the requirements of Part B of the IDEA;

(iii) Needs intervention in implementing the requirements of Part B of the IDEA; or

(iv) Needs substantial intervention in implementing the requirements of Part B of the IDEA.

(h) Enforcement. WDE shall enforce the requirements of the IDEA using appropriate enforcement mechanisms consistent with 34 C.F.R. §§300.600 through 300.606 (including the 2008 Amendment and any subsequent amendments):

(i) Needs assistance. If WDE determines, for two (2) consecutive years, that a school district or public agency needs assistance in implementing the requirements of Part B of the IDEA, WDE shall take one (1) or more of the following actions:

(A) Advise the school district or public agency of available sources of technical assistance that may help the school district or public agency address the areas in which it needs assistance. Such technical assistance may include:

(I) The provision of advice by experts to address the areas in which the school district or public agency needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

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

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

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

(B) Direct the use of school district or public agency Part B funds on the area or areas in which it needs assistance.

(C) Identify the school district or public agency as a high-risk grantee, and impose special conditions on the use of Part B funds by the school district or public agency.

(ii) Needs intervention. If WDE determines, for three (3) or more consecutive years, that a school district or public agency needs intervention in implementing the requirements of Part B of the IDEA, the following shall apply:

(A) WDE may take any of the actions described in paragraph (i) above.

(B) WDE shall take one (1) or more of the following actions:

(I) Require the school district or public agency to prepare a corrective action plan or improvement plan if WDE determines that the school district or public agency should be able to correct the problem within one (1) year.

(II) Require the school district or public agency to enter into a compliance agreement if WDE has reason to believe that the school district or public agency cannot correct the problem within one (1) year.

(III) For each year of the determination, withhold not less than 20% and not more than 50% of the school district's or public agency's IDEA Part B funds until WDE determines that the school district or public agency has sufficiently addressed the areas in which it needs intervention.

(IV) Seek to recover funds paid to the school district or public agency under Part B of the IDEA consistent with 34 C.F.R. §300.604(b)(2)(iv).

(V) Withhold, in whole or in part, any further payments to the school district or public agency made under Part B of the IDEA.

(VI) Refer the matter for appropriate enforcement action, which may include a referral to the Office of the Wyoming Attorney General or the United States Department of Justice.

(iii) Needs substantial intervention. Notwithstanding paragraphs (i) and (ii) above, at any time WDE determines that a school district or public agency needs substantial intervention in implementing the requirements of Part B of the IDEA or that there is a substantial failure to comply with any condition of the school district's or public agency's eligibility under Part B of the IDEA, WDE shall take one (1) or more of the following actions:

(A) Recover IDEA Part B funds consistent with 34 C.F.R. §300.604(c).

(B) Withhold, in whole or in part, any further payments to the school district or public agency under Part B of the IDEA.

(C) Refer the matter for appropriate enforcement action, which may include a referral to the Office of the Wyoming Attorney General or the United States Department of Justice.

(iv) In exercising its monitoring responsibilities under this section, WDE shall ensure that when it identifies noncompliance with the requirements of IDEA by a school district or public agency, the noncompliance is corrected as soon as possible, and in no case later than one (1) year after WDE's identification of the noncompliance in

accordance with 34 C.F.R. §300.600(e) (including the 2008 Amendment and any subsequent amendments).

(v) Findings of noncompliance: For the purpose of this section, a finding of noncompliance is a written notification that includes the citation of the statute, regulation, or rule and a description of the quantitative and/or qualitative data supporting the conclusion that there is noncompliance.

(vi) Correction of noncompliance: WDE must address all noncompliance, whether collected through the on-site monitoring system, other monitoring processes such as self-assessment or desk review of records, Wyoming complaint or due process hearing decisions, or data systems. In an effort to correct noncompliance, WDE may request that the state superintendent take appropriate administrative action with the state board, including but not limited to the changing of accreditation status against any school district or public agency failing to comply with any applicable laws. [*See* W.S. §§21-2-202(c)]

(vii) Opportunity for hearing. Prior to withholding any funds under Part B of the IDEA, WDE shall provide reasonable notice and an opportunity for hearing in accordance with 34 C.F.R. §§300.155, 300.221 and 300.222.

APPENDIX A

Wyoming Severe Discrepancy Formula

Consistent with 34 C.F.R. §300.307, a school district or public agency is not required to use the Wyoming Severe Discrepancy Formula in order to find a child eligible for special services under the category of Specific Learning Disability (SLD). In the event a school district or public agency elects to establish a child's eligibility under the category of SLD through use of a severe discrepancy model, the school district or public agency must use the Wyoming Severe Discrepancy Formula and document compliance on the eligibility report.

The assessment of intellectual ability and academic functioning level must include individually administered norm-reference tests that are reliable and valid, and administered by an individual specifically trained to administer and interpret the instruments. Criterion-referenced tests, informal measures, work samples, classroom observations, and the child's educational history may be used as needed to corroborate norm-referenced test scores.

A child whose disability is a Specific Learning Disability must demonstrate a severe discrepancy between current achievement level and expected achievement level of 22 points upon initial evaluation. Expected achievement level (obtained from Table A) is based on the correlation between tests of the child's composite intellectual standard score compared to the child's composite achievement score in one (1) or more core achievement areas.

Instructions:

In all cases, intellectual and achievement standard scores should be based on age norms rather than grade norms and, when available, on cluster scores rather than on subtest scores. Using the most current editions and norms of any chosen standardized tests is preferable to using older editions with outdated norms.

The table on the following page entitled Correlation Coefficient Between Ability and Achievement Test Scores should be used to determine the child's expected achievement level. This table takes into account the correlation between the intellectual and achievement measures being used as well as regression toward the mean. To use this table, the steps outlined below must be followed:

Step 1: Determine the correlation between the intellectual and achievement measures being used, if available. If the correlation between intellectual and achievement measures is not known, .65 may be used as an adequate median correlation between such measures.

Step 2: Locate the child's intellectual standard score in the side columns of Table A, entitled Correlation Coefficient Between Ability and Achievement Test Scores.

Step 3: Follow the row determined in Step 2 to the column with the correlation value closest to the correlation between the chosen measures of intellectual functioning and achievement or to a correlation of .65 if a specific correlation coefficient is not known.

Ability Score	Table A: Correlation Coefficient Between Ability and Achievement Test Scores											Ability Score
	0.4	0.45	0.5	0.55	0.6	0.65	0.7	0.75	0.8	0.85	0.9	
	Expected Achievement Score with Correction for Regression Toward the Mean											
130	112	114	115	117	118	120	121	123	124	126	127	130
129	112	113	115	116	117	119	120	122	123	125	126	129
128	111	113	114	115	117	118	120	121	122	124	125	128
127	111	112	114	115	116	118	119	120	122	123	124	127
126	110	112	113	114	116	117	118	120	121	122	123	126
125	110	111	113	114	115	116	118	119	120	121	122	125
124	110	111	112	113	114	116	117	118	119	120	122	124
123	109	110	112	113	114	115	116	117	118	120	121	123
122	109	110	111	112	113	114	115	117	118	119	120	122
121	108	109	111	112	113	114	115	116	117	118	119	121
120	108	109	110	111	112	113	114	115	116	117	118	120
119	108	109	110	110	111	112	113	114	114	116	117	119
118	107	108	109	110	111	112	113	114	114	115	116	118
117	107	108	109	109	110	111	112	113	114	114	115	117
116	106	107	108	109	110	110	111	112	113	114	114	116
115	106	107	108	108	109	110	111	111	112	113	114	115
114	106	106	107	108	108	109	110	111	111	112	113	114
113	105	106	107	107	108	108	109	110	110	111	112	113
112	105	105	106	107	107	108	108	109	110	110	111	112
111	104	105	106	106	107	107	108	108	109	109	110	111
110	104	105	105	106	106	106	107	108	108	109	109	110
109	104	104	105	105	105	106	106	107	107	108	108	109
108	103	104	104	104	105	105	106	106	106	107	107	108
107	103	103	104	104	105	105	105	105	106	106	106	107
106	102	103	103	103	104	104	104	105	105	105	105	106
105	102	102	103	103	103	103	104	104	104	104	104	105
104	102	102	102	102	102	103	103	103	103	103	104	104
103	101	101	102	102	102	102	102	102	102	103	103	103
102	101	101	101	101	101	101	101	101	102	102	102	102
101	100	100	101	101	101	101	101	101	101	101	101	101
100	100	100	100	100	100	100	100	100	100	100	100	100
99	100	100	100	99	99	99	99	99	99	99	99	99
98	99	99	99	99	99	99	99	99	98	98	98	98
97	99	99	99	98	98	98	98	98	98	97	97	97
96	98	98	98	98	98	97	97	97	97	97	96	96
95	98	98	98	97	97	97	97	96	96	96	96	95
94	98	97	97	97	96	96	96	96	95	95	95	94
93	97	97	97	96	96	95	95	95	94	94	94	93

Ability Score	Table A: Correlation Coefficient Between Ability and Achievement Test Scores											Ability Score
	0.4	0.45	0.5	0.55	0.6	0.65	0.7	0.75	0.8	0.85	0.9	
	Expected Achievement Score with Correction for Regression Toward the Mean											
92	97	96	96	96	95	95	94	94	94	93	93	92
91	96	96	96	95	95	94	94	93	93	92	92	91
90	96	96	95	95	94	94	93	93	92	92	91	90
89	96	95	95	94	93	93	92	92	91	91	90	89
88	95	95	94	93	93	92	92	91	90	90	89	88
87	95	94	94	93	92	92	91	90	90	89	88	87
86	94	94	93	92	92	91	90	90	89	88	87	86
85	94	93	93	92	91	90	90	89	88	87	86	85
84	94	93	92	91	90	90	89	88	87	86	86	84
83	93	92	92	91	90	89	88	87	86	86	85	83
82	93	92	91	90	89	88	87	87	86	85	84	82
81	92	91	91	90	89	88	87	86	85	84	83	81
80	92	91	90	89	88	87	86	85	84	83	82	80
79	92	91	90	88	87	86	85	84	83	82	81	79
78	91	90	89	88	87	86	85	84	82	81	80	78
77	91	90	89	87	86	85	84	83	82	80	79	77
76	90	89	88	87	86	84	83	82	81	80	78	76
75	90	89	88	86	85	84	83	81	80	79	78	75
74	90	88	87	86	84	83	82	81	79	78	77	74
73	89	88	87	85	84	82	81	80	78	77	76	73
72	89	87	86	85	83	82	80	79	78	76	75	72
71	88	87	86	84	83	81	80	78	77	75	74	71
70	88	86	85	84	82	80	79	78	76	74	73	70