

Department of Education
Colorado State Board of Education

1 Colorado Code of Regulations 301-8

RULES FOR THE ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT

2220-R-1.00 STATEMENT OF BASIS AND PURPOSE

- 1.00 (13) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 102, 103, 106, and 108. The purposes of these amendments are: A) to replace the definition of Administrative Unit that was inadvertently deleted through previous emergency rulemaking; B) to repeal Section 2.08(6)(b)(i) and renumber, because by operation of rule the language has expired; and C) to bring the State into compliance with recent legislation adopting a Tier 1 Due Process Hearing System (SB11-061).

- 1.00 (14) The statutory authority for these Rules is found in Title 22, Article 20, Sections 104(1)(b) and 107(1)(c). In October 2010, the Rules regarding standards for new and reorganized administrative units, which had been in place since 1973, were revised via emergency rules repealing language in the rules pertaining to variances from approved administrative unit standards while the Department developed recommendations for revised rules establishing new administrative standards in conjunction with a task force formed for that specific purpose. The emergency rules expired in February 2011. The purpose of these Rules is to implement the recommendations of the task force and to establish permanent rules regarding standards for new and reorganized administrative units that reflect current demographic, legal and financial conditions in the State.

2220-R-2.00

DEFINITIONS USED IN THESE RULES

2.02 Administrative Unit

Administrative Unit (AU) means a school district, board of cooperative services, a multi-district consortium approved by the Department prior to January 1, 2011, or the State Charter School Institute, that is providing educational services to exceptional children and that is responsible for the local administration of these Rules. In order to qualify as an administrative unit, school districts and boards of cooperative services shall meet all minimum standards established in Section 3.01 of these Rules. The Charter School Institute shall meet all minimum standards established in Section 3.01 of these Rules. All administrative units shall be approved by the Department of Education.

ADMINISTRATION

3.01 Standards For Administrative Units

3.01 (1) ~~Minimum standards for special education administrative units.~~

~~To qualify as a~~ A special education administrative unit, ~~a school district or a board of cooperative services~~ shall satisfy the following standards.

3.01 (1) (a) ~~The administrative unit shall be deemed to be of sufficient size and geographic makeup if it fulfills the requirements of the IDEA, the ECEA and their implementing regulations. Administrative unit compliance with these requirements shall be measured by:~~

3.01 (1) (a) (i) ~~The administrative unit's performance as determined by monitoring activities conducted by the Department including: desk audits; focused and comprehensive on-site monitoring; dispute resolution findings; and verification activities to ensure timely correction of noncompliance;~~

3.01 (1) (a) (ii) ~~The administrative unit's performance as determined by its annual determination issued by the Department consistent with 34 CFR § 300.604 and related indicators under Colorado's IDEA Part B State Performance Plan;~~

3.01 (1) (a) (iii) ~~A federal application, approved by the Department, for IDEA Part B and Preschool grant funds;~~

3.01 (1) (a) (iv) ~~Compliance with all federal and state reporting requirements, including fiscal and data reporting requirements;~~

3.01 (1) (a) (v) ~~Compliance with IDEA Part B and IDEA Preschool grant fiscal requirements, including maintenance of effort, excess costs and "supplement not supplant" requirements;~~

3.01 (1) (a) (vi) ~~Maintaining auditable documentation to track expenditures of state and federal special education funds, to ensure that the funds are used solely for allowable uses, as defined by federal and state law;~~

3.01 (1) (b) ~~Provide for~~ Employment of sufficient instructional and related services staff to identify and evaluate children who are suspected of having a disability, and plan for and provide appropriate services for all children with disabilities as defined by ECEA Rule 2.08. ~~who have been determined to have a disability.~~

3.01 (1) (c) Employment of a ~~qualified and certificated full-time~~ properly licensed and endorsed professional who ~~has the flexibility to will~~ function at least half time as director of special education and who has the authority and responsibility to assure that all the duties and responsibilities of the administrative unit as specified in these Rules are carried out.

3.01 (1) (d) Development and implementation of ~~an approved~~ a compliant special education comprehensive plan as required by IDEA and approved by the Department.

3.01 (1) (e) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.

3.01 (1) (f) Governance by a board which may be a local ~~school board of education or a Board of Cooperative Educational Services~~ as follows:

3.01 (1) (f) (i) In the case of a single district administrative unit, the local board of education;

3.01 (1) (f) (ii) In the case of an administrative unit that is a board of cooperative services, the board of cooperative services;

3.01 (1) (f) (iii) In the case of a multi-district consortium approved by the Department prior to January 1, 2011, a local board comprised of representatives from each of the member school districts; and

3.01 (1) (f) (iv) In the case of the Charter School Institute, the Institute Board.

3.01 (2) Organization of Administrative Units

~~3.01 (2)~~ Every school district and Board of Cooperative Services that provides services to children with disabilities shall be an administrative unit or a part of an administrative unit.

3.01 (2) (a) ~~Small-d~~Districts that do not meet the qualifications of an administrative unit and are not a part of a board of cooperative services shall contract enter into an operating agreement to become part of an approved administrative unit that is a board of cooperative services and shall abide by all policies and procedures contained in that unit's comprehensive plan. Such contract shall be approved by the Department of Education. Multi-district administrative units shall have signed operating agreements entered into by the administrative unit with its member districts. Such operating agreements shall clearly set out the special education responsibilities of the administrative unit and each member district and shall be binding throughout the period of the operating agreement, regardless of change in governance of the member school districts, change in composition of the administrative unit, or personnel changes in a member district or the administrative unit. The operating agreement shall also address the special education fiscal arrangement between the AU and its member districts.

3.01 (2) (b) The administrative unit shall provide special education services to all children with disabilities within its responsibility as defined in Section 8.00 of the Rules.

3.01 (2) (c) Existing units that do not meet the qualifications and/or for the efficient administration of or provision of services stipulated in these Rules shall be subject to revocation of unit status and loss of all state and federal special education funds. Notice of such revocation shall be in writing from the Department of Education and subject to the appeal process.

3.01 (3) Applications for new or reorganized Administrative Units

3.01 (3) (a) Administrative units or member school districts of administrative units desiring to form new or reorganized administrative units shall submit an application to the State Director of Special Education and the AU of which the district is currently a member, by September 1 of the year preceding the fiscal year in which the new administrative unit proposes to begin operation. This application will demonstrate it has the capacity to meet the standards of 3.01 and shall include:

3.01 (3) (a) (i) A letter of intent that:

3.01 (3) (a) (i) (A) Specifies the objectives to be sought by the change:

3.01 (3) (a) (i) (B) Outlines how the proposed administrative unit will comply with the requirements of the ECEA Rules, including the operating agreement requirement for multi-district administrative units:

3.01 (3) (a) (i) (C) Includes a proposed compliant comprehensive plan for the newly reorganized administrative unit(s):

3.01 (3) (b) For any applicant(s) that has not met its current maintenance of effort requirement, the application must demonstrate that the current and the proposed administrative units will satisfy the maintenance of effort requirement;

3.01 (3) (c) For any applicants(s) that has or creates an average cost per student with disabilities greater than or equal to the 93rd percentile or less than or equal to the 7th percentile of the state's average cost per student with disabilities, an explanation in its application of legitimate reasons for the deviations (e.g., impact of high cost students, geographic constraints, staffing costs) and/or how the proposed administrative unit will efficiently deliver special education services.

3.01 (3) (d) For any applicant(s) that has not met the federal and state requirements for provision of special education services to students with disabilities, the application must demonstrate that the proposed administrative unit will have the capacity to meet those requirements.

3.01 (3) (e) Either the Department or any entity impacted by an application for a new or reorganized administrative unit may request the entity seeking the change to secure and pay for a report prepared by a Department-approved independent third party, which report shall describe the anticipated revenues and expenditures for all affected administrative units. The independent third party shall possess sufficient expertise in the following areas: accounting, special education budget development and projection, and special education fiscal requirements. The request for the third party report must be made within 30 calendar days of the day the Department notifies the applicant and affected entities that the application is complete (see Rule 3.01(4)).

3.01 (4) Timelines for Review of Application for a New or Reorganized Administrative Unit

Upon receipt of an application to form a new or reorganized administrative unit, the Department shall review the application to determine whether it contains the documentation and information required by this Rule. The Department shall have 15 calendar days from the date of receipt of the application to determine whether the application is complete. The Department shall provide the applicant and affected entities with written notification of its determination by the 16th day following the receipt of the application.

3.01 (4) (a) If an applicant to form a new or reorganized administrative unit fails to timely submit a complete application containing the documentation and information required by this Rule, the application shall be deemed incomplete and shall be denied.

3.01 (4) (b) If an applicant to form a new or reorganized administrative unit timely submits a complete application and the Department determines that it does not require additional information or documentation, the Department shall have 60 calendar days from the day it provides the applicant with the notification required by this section in which to approve or deny the application.

~~3.01 (4) (c) If an applicant timely submits a complete application but the Department or another entity determines it requires additional information or documentation, the Department's notification shall identify the specific information or documentation requested, including, as necessary, information from affected administrative units. The applicant shall provide the requested information or documentation to the Department by October 1. The Department shall have 60 calendar days from the day it receives the supplemental information or documentation to approve or deny the application.~~

~~3.01 (4) (d) Existing units which do not meet the qualifications and/or for the efficient administration of or provision of services stipulated in these Rules shall be subject to revocation of unit status and loss of all state and federal special education funds. Notice of such revocation shall be in writing from the Department of Education and subject to the appeal process.~~

~~3.01 (5) Department of Education Approval of Application for a New or Reorganized Administrative Unit~~

~~3.01 (5) (a) The Department shall approve an application for a new or reorganized administrative unit only if the application materials submitted by the applicant demonstrate by clear and convincing evidence:~~

~~3.01 (5) (a) (i) That the proposed administrative unit will be able to meet all of its obligations, including maintenance of effort, under state and federal special education law; and~~

~~3.01 (5) (a) (ii) That the existing or remaining administrative unit will be able to meet all of its obligations, including maintenance of effort, under state and federal special education law.~~

~~3.01 (5) (b) In reviewing an application, the Department shall also consider the impact of approving additional administrative units on the efficiency and effectiveness of all existing AUs and on the Department.~~

~~3.01 (5) (c) The Department shall present its decision approving or denying an application in writing to the applicant and affected entities, including its reasons for denying an application, as applicable.~~

~~3.01 (5) (d) If an affected entity disagrees with the determination of the Department, the affected entity may appeal the decision to the Commissioner of the Department of Education. In hearing an appeal, the Commissioner shall only overturn a decision by the Department upon a finding that that in approving or denying the application, the Department or the applicant violated the application procedures or processes required by the ECEA, or that the Department's decision was not supported by clear and convincing evidence presented in the application. The party bringing the appeal bears all burdens of proof, presentation and persuasion to demonstrate that the decision of the Department should be overturned.~~

~~3.01 (5) (d) (i) The affected entity shall submit its appeal to the Commissioner within 60 days of the entity's receipt of the Department's decision to approve or deny the application.~~

~~3.01 (5) (d) (ii) The Commissioner shall consider the appeal and make a determination concerning the appeal within 60 days of the date the appeal is submitted.~~

The Commissioner shall provide written notice of the decision on appeal to the affected entity.

3.01 (5) (d) (iii) The decision of the Commissioner shall be final and shall not be subject to further review. Neither the decision of the Department nor the Commissioner's decision on an appeal shall be appealable to the State Board of Education pursuant to ECEA Rule 7.07.

7.07 Appeals

- 7.07 (1) Unless otherwise specified by these Rules, Aany decision of the Department relating to an administrative unit, a state-operated program or an eligible facility may be appealed by the affected entity to the state board within 60 days of the entity's receipt of the written notice from the Department.
- 7.07 (2) The State Board of Education will conduct a hearing and make a determination concerning the appeal within 60 days from the date of request. The decision of the State Board shall be final.
- 7.07 (3) A written notice of denial or approval shall be prepared and delivered to the administrative unit, state-operated program or eligible facility.