

**MISSOURI STATE BOARD OF EDUCATION AGENDA ITEM:****February 2016**

CONSIDERATION OF AN ORDER OF RULEMAKING TO AMEND RULE 5 CSR 20-300.110, MISSOURI STATE PLAN FOR PART B, REGULATIONS IMPLEMENTING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

**STATUTORY AUTHORITY:**

Sections 161.092 and 162.685, RSMo

Consent  
ItemAction  
ItemReport  
Item**DEPARTMENT GOAL NO. 1:**

All Missouri students will graduate college and career ready.

**SUMMARY:**

The Department recommends approval of the Part B State Plan with the proposed changes outlined in the Summary of Part B State Plan Changes Proposed November 2015 document.

The proposed state regulations were posted at <http://dese.mo.gov/special-education/proposed-state-plan-changes-2016> for public review and comment on November 20, 2015. The comment period closed on January 19, 2016. No comments were received during this time period. The Department conducted two public hearing webinars regarding the proposed changes during the comment period.

A copy of the final proposed Part B state regulations is included.

**PRESENTER:**

Stephen Barr, Assistant Commissioner, Office of Special Education, will assist with the presentation and discussion of this agenda item.

**RECOMMENDATION:**

The Department recommends the State Board of Education authorize publication in the *Missouri Register* of an order of rulemaking to amend Rule 5 CSR 20-300.110, relating to the Missouri State Plan for Part B of the Individuals with Disabilities Education Act and that the State Board finds this amendment necessary to carry out the purpose of Sections 161.092 and 162.685, RSMo.

## Summary of Part B State Plan Changes Proposed November 2015

Reg/Page	Proposed Change	Reason
VI/ 98	2 U.S.C. 1135a to 2 U.S.C. 135a	Citation was incorrect
VII/113	<p>Add the word “Facility” to the bullet under 5) Lease Expenditures to read</p> <ul style="list-style-type: none"> <li>• <b>Facility</b> lease payments are made in accord with 5 CSR 30-640.200</li> </ul>	Clarifies the intent of the rule
VII/113	<p>Delete section 6 Capital Outlay (Lease Purchase, Purchase, New Construction, Renovation Expansion) Expenditures</p> <p><del>1) Capital Outlay (Lease Purchase, Purchase, New Construction, Renovation/Expansion) Expenditures</del></p> <ul style="list-style-type: none"> <li><del>○ Prior approval by the Financial and Administrative Services Section is required on all capital outlay expenditures. Applications must be submitted annually to be considered for reimbursement during that school year.</del></li> <li><del>○ Facility reimbursement for facility lease purchases, purchases, and new construction is calculated based on the following formula.</del></li> </ul> <p style="margin-left: 40px;"><del>Eligible Count * 60 Square Feet per Student = Amount of ECSE Reimbursable Space</del></p> <p style="margin-left: 40px;"><del>Total Facility Cost / Total Facility Square Footage = Cost per Square Foot</del></p> <p style="margin-left: 40px;"><del>Amount of ECSE Reimbursable Space * Cost per Square Foot = ECSE Reimbursement Amount</del></p> <p style="margin-left: 40px;"><del>ECSE Reimbursement Amount / 8 Years = Reimbursement per Fiscal Year</del></p> <p><del>Eligible count is the number of ECSE eligible students and non-disabled peers integrated into the ECSE classroom. The formula will be applied at the beginning of the agreement and remain consistent over the eight year period (renovation/expansion is reimbursed over a four year period) unless the district experiences a significant increase in students.</del></p>	Funding will not be provided for any new requests on ECSE Capital Outlay, including: facility renovation, facility construction, facility purchase, and vehicles/buses.

## Summary of Part B State Plan Changes Proposed November 2015

VII/113	<p><b>New 6) Funding for ECSE Capital Outlay, including but not limited to: facility renovation, facility construction, facility purchase, copiers and vehicles/buses is not permitted and will not be reimbursed unless the LEA had an approved ECSE capital cost purchase agreement with the Department prior to July 1, 2015.</b></p>	<p>Funding will not be provided for any new requests on ECSE Capital Outlay, including: facility renovation, facility construction, facility purchase, and vehicles/buses.</p>
VII/114	<p>In section 8) Professional Development Expenditures delete “up to” in both bullets</p> <p>8) Professional Development Expenditures</p> <ul style="list-style-type: none"> <li>○ Teachers, administrators, and other direct services staff (OT, PT, SLPs, Interpreters, etc.) are allotted <b>up to at a minimum</b> \$300 per FTE for professional development activities. Part-time staff must be prorated based on these flat rate amounts.</li> <li>○ Paraprofessionals are allotted <b>up to at a minimum</b> \$150 per FTE for professional development activities. Part-time staff must be prorated based on these flat rate amounts.</li> </ul>	<p style="text-align: center;">Clarify available funding</p>
VII/114	<p>In section 9) Start-Up Costs/New Classrooms Requirements “up to” in both bullets</p> <p>9) Start-Up Costs/New Classrooms Requirements</p> <ul style="list-style-type: none"> <li>○ Start-up costs <b>up to at a minimum</b> of \$10,000 are allotted for a new classroom when the district has an increase from the prior year to the current year in either the December 1 Child Count or the End of the Year Count that meets the minimum caseload</li> </ul>	<p style="text-align: center;">Clarify available funding</p>

## Summary of Part B State Plan Changes Proposed November 2015

	<p>requirement.</p> <ul style="list-style-type: none"> <li>○ A district that previously contracted for ECSE services with a private agency or cooperative and is starting a program in-house may utilize start-up funds even if minimum caseload requirements are not met.</li> <li>○ Start-up costs <del>up to at a minimum</del> of \$1,200 per FTE are allotted for each new itinerant position that meets minimum caseload requirements.</li> </ul>	
IX/135	<p>In Section 5) Administrative Hearing Process section a) delete the referend to hearing panel</p> <p>a) Implementation: As the subgrantee under IDEA, it is a matter of direct compliance for the special school district to implement the hearing process outlined under state statute. This includes designation of the individual to hold the resolution meeting pursuant to Section 162.961 RSMo. <del>and choosing a hearing panel member pursuant to Section 162.961 RSMo.</del></p>	Conflicts with current law (162.961) on hearing procedure

## **VI. DEPARTMENT RESPONSIBILITIES**

### **1. GENERAL SUPERVISION RESPONSIBILITIES**

It is the policy of the Missouri Department of Elementary and Secondary Education (Department) that the requirements of Part B of the Individuals with Disabilities Education Act are implemented by public agencies in this state responsible for the education of children with disabilities.

The Department ensures that each educational program for children with disabilities administered in the State, including each program administered by another State or local agency, is under the general supervision of the Office of Special Education, Department of Elementary and Secondary Education, and that their programs meet the educational standards of the Department.

#### Monitoring, Technical Assistance, and Enforcement (34 CFR 300.600, 300.602, 300.604)

The Department of Elementary and Secondary Education (Department) shall, through monitoring and enforcement, assure that each public agency responsible for providing services to children with disabilities has in effect policies, practices and procedures that enable the agency to comply with the implementation of all provisions of Part B of IDEA. The primary focus of the State's monitoring activities shall be on:

- A. improving educational results and functional outcomes for all children with disabilities, and
- B. ensuring that public agencies meet the program requirements under Part B of IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

As part of its general supervision responsibilities, the Department will use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the following indicators and the indicators established by the U. S. Department of Education for the State Performance Plans:

- A. provision of FAPE in the least restrictive environment;
- B. State 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.

In the event a responsible public agency is unwilling or unable to comply with the provisions of IDEA, including progress toward meeting the targets in the State Performance Plan, the Department of Elementary and Secondary Education shall take one or more of the following enforcement actions or any other action deemed necessary within the Department's discretion:

- A. Advise the agency of available sources that may help the agency address the areas in which assistance is needed, which may include assistance from the Office of Special Education, other offices of the Department of Elementary and Secondary Education, other state agencies, and/or other technical assistance providers approved by the Department and require the agency to work with appropriate entities. Such technical assistance may include:
- 1) the provision of advice by experts to address the areas in which the agency needs assistance, including explicit plans for addressing the area or areas of concern within a specified period of time;
  - 2) assistance in identifying and implementing professional development, instructional strategies and method of instruction that are based on scientifically based research;
  - 3) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers and administrators to provide advice, technical assistance, and support; and,
  - 4) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, state and national centers of technical assistance, and private providers of scientifically based technical assistance.
- B. Require the agency to prepare a corrective action plan which incorporates all of the required elements for such plan.
- C. Require the agency to prepare an improvement plan which incorporates all of the required elements for such plan.
- D. Direct the use of State and/or Federal funds on the area or areas in which the agency needs assistance.
- E. Identify the agency as a high-risk grantee and impose special conditions on the agency's Part B grant.
- F. Initiate action to withhold, in whole or in part, State and/or Federal funds paid to the agency to support the provision of services to children with disabilities.
- G. Initiate action to withhold, in whole or in part, any State or Federal funds paid to the agency.
- H. Initiate action to recover funds paid to the agency to support the provision of services to children with disabilities.

#### Failure to Provide FAPE

The Missouri Department of Elementary and Secondary Education (Department) may withhold, in part or whole, and may seek to recover, in part or whole, State and/or Federal special and general education funds when a responsible public agency is determined to be either unwilling or unable to provide FAPE. Such determination will be based on the agency's refusal or failure to comply with a corrective action or hearing decision as ordered by the Department in:

- A. a monitoring report stemming from a monitoring for compliance with IDEA, Part B; or,
- B. a child complaint decision in which the agency has been found out of compliance; or,
- C. a due process hearing decision of a state level hearing.

In each of the above, corrective actions are expected to be achieved within a given timeline, or in the case of a due process decision, implementation is expected to be achieved within a given timeline. Such timelines in the case of a monitoring report or a child complaint decision may be extended by the Department. However, if the Department determines it is unreasonable to further extend, or if the Department attempted to provide technical assistance to the agency to accomplish the corrective action to no avail, the Department may determine the agency is unable or unwilling to provide FAPE.

The Department will determine the amount of funding to be withheld or recovered on a case-by-case basis. The Department will determine the amount deemed necessary to enforce the decisions rendered in the actions described above. The Department will notify the LEA in writing of the specific action it has failed to correct, the source and amount of funds that will be withheld or recovered, and the date that the withholding or recovery of funds will begin.

The hearing procedure described in Regulation VII of this State Plan, for LEA eligibility, is incorporated herein by reference.

## **2. APPLICATION, EVALUATION, AND APPROVAL OF PRIVATE EDUCATIONAL AGENCIES (See also Regulation VIII on Private Schools)**

### Statutory Authority

Pursuant to State law, a responsible public agency may, if no adequate program is available in nearby districts or through public agencies, contract with any organizations within the state which meet the standards established by the State Board of Education for services for students with disabilities. Agencies will be approved and monitored by the Department of Elementary and Secondary Education.

### Agency Defined

For the purpose of these provisions, a private organization is defined as any organization which has programs meeting the standards established by the State Board of Education with the exception of any organization established for a sectarian purpose or whose governance is controlled by any religious creed, church, or sectarian denomination.

### Agency Policies and Procedures

Agencies shall be organized and operated according to written policies and procedures. Those written policies and procedures must include statements that the agency will:

- A. comply with the provisions of IDEA, including all of the procedural safeguards provided for in that Act;
- B. provide all services to students with disabilities under contract from a public agency in accordance with the student's Individualized Education Program (IEP);
- C. provide all services at no cost to the parents;
- D. ensure that the student has the same rights as a student with a disability served by the public agency with whom the contract is negotiated;
- E. have a written Code of Conduct which has been shared with the parents of the students with a disability and the public agency with which the contract has been negotiated; and,
- F. have a written procedural plan which coordinates the evaluation of all programs and services provided to students with disabilities which includes:
  - 1) program goals and objectives for each program and service, and
  - 2) evaluation criteria and procedures for each offered program/service.

Special educational services provided by the agency, pursuant to contract with public school(s), shall conform to the aforementioned policies. To document that those services will conform, each agency must sign an "Assurances" statement provided by the Department of Elementary and Secondary Education.

Private agency approval may be withdrawn by the Department of Elementary and Secondary Education if the agency's written policies and procedures, as they relate to IDEA, are not being followed by the agency and the agency fails to correct the situation in a timely manner.

#### Administration of Programs

The educational programs provided by agencies shall be provided administrative direction by a person who has certification in an area of special education or related area which is appropriate for the educational program(s) the agency provides.

#### Provision of Free Appropriate Public Education (FAPE)

The curricula of private educational agencies shall include all the areas for which instruction is provided, per the contract and the student's IEP. It shall be in writing and revised, as necessary. Agencies shall provide instruction and related services:

- A. in conformance with their contractual arrangement with the public agency;
- B. in conformance with an IEP that meets the requirements of IDEA;
- C. at no cost to parents;

- D. that meets the standards that apply to education provided by the public agency including access to the general education curriculum, as determined appropriate by the IEP team; and,
- E. in accordance with the provisions of the Procedural Safeguards as referenced in Regulation V. of this State Plan as they apply to private agencies.

#### Facilities, Transportation, Equipment, and Materials

Agencies shall provide appropriate facilities, equipment, and materials to effectively deliver special education and related services to all students serviced via contract.

Agencies shall comply with appropriate health and environment, occupancy, fire safety, transportation, and accessibility standards as are warranted by the services which the agency has contracted to provide.

#### Certificated and Licensed Professional Staff

Agencies shall retain appropriately certificated staff according to the personnel standards in this Section to deliver the services for which school districts have contracted. Personnel records shall be maintained for all certificated and licensed professional staff.

#### Agency and Student Records

Agencies shall maintain an organized system of accurate and current records which pertain to the administration of the agency and the delivery of special education and related services. Student records shall be maintained consistent with the provisions of the Family Educational Rights and Privacy Act, 34 CFR 99.1-99.67. Agencies shall provide a contracting school system, upon written request, complete and timely access to all agency records which pertain to the delivery of services to student(s) served through contractual agreement with that school system. Agencies shall maintain sufficient and accurate records to document the delivery of appropriate special education and related services.

#### Administrative and Support Services

Agencies shall provide appropriate administrative and support services, as needed, for the effective delivery of special education and related services for contract students.

#### Professional Development

Agencies shall assure that all personnel receive in-service training, as appropriate, to be effective in the delivery of special education and related services.

### Agency Approval

Initial applicants will submit a written application for approval to the Office of Special Education and shall be reviewed on-site. Disposition will be one (1) of the following: approved without condition, conditional approval, or not approved.

All agencies will annually submit a written assurance statement/program update to the Office of Special Education.

### Nondiscrimination

Agencies shall ensure equal employment/educational opportunities regardless of race, color, creed, national origin, sex, disability, or age in its programs and services.

### Appeal Procedure for Private Agencies

An agency will be provided with notice and an opportunity for a hearing upon disapproval of an application under these provisions. This notice shall contain:

- A. a statement of the basis upon which the Department has disapproved the application;
- B. a description of the corrective action needed to resolve the issue;
- C. advisement that a hearing may be requested before the Department not later than thirty (30) days from receipt of the notice of disapproval; and,
- D. information about the procedures applicable to the hearing process.

An applicant requesting a hearing pursuant to this section must do so in writing directed to the Assistant Commissioner for the Office of Special Education. Within thirty (30) days of the date of receipt of the request, the Assistant Commissioner or a designee shall schedule and conduct the hearing. Not later than thirty (30) days after the formal close of the hearing, a written ruling shall be forwarded to the applicant.

Appeal of the Assistant Commissioner's ruling is authorized pursuant to Chapter 536, RSMo.

## **3. CHILD COMPLAINT PROCESS**

### Statement of Jurisdiction

The Department of Elementary and Secondary Education, as a grantee under Part B of the Individuals with Disabilities Education Act (IDEA), must maintain procedures for receiving, investigating, and resolving complaints alleging that statutes and/or regulations implementing IDEA have been violated. This process is known as the child complaint process.

The Department of Elementary and Secondary Education disseminates information on this process to parents and other interested individuals, including parent training and

information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

#### Limitations (34 CFR 300.153(c))

A complaint must allege a violation by a responsible public agency that occurred not more than one (1) year prior to the date that the complaint is received

#### Filing a Complaint (34 CFR 300.153)

An organization or individual may file a signed written complaint. The complaint must include:

- A. a statement that a public agency has violated a requirement of Part B of the Act;
- B. the facts on which the statement is based (state facts describing an alleged violation of state and/or federal regulations implementing IDEA);
- C. the signature and contact information for the complainant; and
- D. if alleging violations with respect to a specific child, the name and address of the residence of the child and the name of the school that the child is attending. If the child is a homeless child or youth, the available contact information for the child and the name of the school the child is attending must be provided;
- E. a description of the nature of the problem of the child, including the facts relating to the problem; and,
- F. a proposed solution of the problem to the extent known and available to the party at the time the complaint is filed.

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. Failure to provide a copy to the LEA or public agency will delay the starting of the timeline for the investigation of the complaint to the date the SEA sends a copy of the complaint to the LEA.

If the party fails to provide a description of the nature of the problem of the child, including the facts relating to the problem at the time the complaint is filed, the SEA may, in its discretion, dismiss the complaint and grant the party the opportunity to refile with the required information included.

#### Processing of Complaint Record

Upon receipt, the complaint shall be reviewed and necessary staff assigned to investigate it. The complaint shall also be entered into the complaint tracking process.

### Investigation of the Complaint

The process of investigation shall include: staffing the complaint, providing written notice of the complaint to the responsible public agency, written acknowledgment to the complainant, data collection, and on-site visits where appropriate.

- A. Assigned staff will review the complaint to determine the parameters of the investigation. This would include determining whether an on-site visit will be necessary or whether the information may be obtained through the use of a data request and phone interviews.
- B. Upon receipt of a complaint, notice shall be sent to the responsible public agency against which the complaint is filed. The notice shall include a copy of the complaint, statement of the elements of the complaint, a description of the investigation process, and, if possible, the details of any on-site visits, data requests, or phone interviews that are planned. The responsible public agency shall be invited to respond to the complaint, which could include 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.
- C. Upon receipt of a complaint, a written acknowledgment shall be sent to the complainant and shall include a statement of the elements of the complaint, a description of the investigation process, and an invitation to provide any additional information either orally or in writing, about the allegations in the complaint.
- D. Documentation requests and phone interviews will be the primary methods of data collection in the complaint investigation. The data request should include documents relevant to the complaint and should be forwarded to a designated contact with the responsible public agency. It is the purpose of the data requests and phone interviews to attempt, where possible, to resolve the complaint without an on-site visit.
- E. If the investigation requires an on-site visit, separate notice to the responsible public agency shall be given. This notice may be given by phone, but should preferably be in writing. If the notice is given by phone, then a confirmation in writing should follow-up the phone conversation. The notice shall include a statement of the records to be made available, staff to be interviewed, and any need for access to school or agency facilities.

### Investigation Timelines

The Department of Elementary and Secondary Education shall have, upon receipt of the completed complaint, sixty (60) calendar days to investigate and resolve the complaint. Extension of this time limit may be granted by the Commissioner of Education, or a designee, if exceptional circumstances exist with respect to the particular complaint, or the parent (or individual or organization) and the public agency involved agree in writing to extend the time limit to engage in mediation. If such an extension is given, notice shall be given to the complainant and the responsible public agency under investigation, with documentation of that notice to be maintained within the child complaint file.

### Resolution of the Complaint

Resolution of a child complaint shall be through the issuance of a Decision letter from the Commissioner of Education, or a designee, Department of Elementary and Secondary Education. The Decision letter shall include findings of fact and conclusions, and provide reasons for the Decision. These findings would include a review of the investigation results, including any information in an on-site investigation or from a data request. The basis for resolution may be any of the following:

- A. a decision that the responsible public agency is not out of compliance;
- B. a decision that the responsible public agency is out of compliance, but that voluntary corrective action has been taken by the public agency to bring the public agency into compliance; or,
- C. a decision that the responsible public agency is out of compliance, and ordering a corrective action with a timeline for submission to the Department of Elementary and Secondary Education. Corrective actions ordered by the Commissioner of Education, or a designee, may include, but are not limited to, technical assistance activities, negotiations, or other actions to achieve compliance.

### Final Decision

The findings of the Commissioner of Education, or a designee, related to the complaint shall constitute a final decision of the Department of Elementary and Secondary Education. No further appeal is available.

Permission from a child's parent or the adult student is required to share the final decision with a non-parent complainant. If permission is not given, the non-parent complainant will receive a copy of the final decision with all personally identifiable information redacted. In cases where it is impossible to remove personally identifiable information, the decision will not be provided to a non-parent complainant.

### Complaints Filed Under This Section and Due Process Hearings

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described above.

If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the SEA must inform the complainant to that effect.

#### **4. FULL EDUCATIONAL OPPORTUNITIES GOAL**

The State of Missouri has established a goal of providing a full educational opportunity for all students with disabilities, ages birth through twenty-one (21) years, within the State.

The State began provision of full educational opportunities for all students with disabilities between the ages of five (5) and twenty-one (21) years on July 1, 1974.

The State began provision of full educational opportunities for all students with disabilities between the ages of three (3) and twenty-one (21) years on July 1, 1991.

The State began provision of full educational opportunities for all infants and toddlers (birth through age two (2)) with disabilities on October 1, 1995. The State goal is to begin provision of full educational opportunities for students through the age of twenty-one (21) in 2017.

Full implementation of the goal will include the provision of a free appropriate public education for all students with disabilities ages three (3) through twenty-one (21) years, and the provision of early intervention services for infants and toddlers with disabilities (birth through age two (2)) and their families.

#### **5. METHODS OF ENSURING SERVICES**

##### Methods of Ensuring Services (34 CFR 300.154)

##### Establishing Responsibility for Services

The Assistant Commissioner of Special Education for the Department of Elementary and Secondary Education (Department) ensures that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency and the Department, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any interagency dispute. The agreement or mechanism must include the following:

- A. agency financial responsibility: An identification of or a method for defining the financial responsibility of each agency for providing services to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency, including the State Medicaid 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);
- B. conditions and terms of reimbursement: The conditions, terms, and procedures under which the responsible agency must be reimbursed by other agencies;

- C. interagency disputes: Procedures for resolving interagency disputes (including procedures under which the responsible public agency may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism; and,
- D. coordination of services procedures: Policies and 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.

#### Obligation of Noneducational Public Agencies

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR 300.6 relating to assistive technology devices, 34 CFR 300.5 relating to assistive technology services, 34 CFR 300.34 relating to related services, 34 CFR 300.42 relating to supplementary aids and services, and 34 CFR 300.43 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. If a public agency other than an educational agency fails to provide or pay for the special education and related services, the LEA (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 LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse in accordance with the terms of the interagency agreement or other mechanism and the conditions and terms of reimbursement.

#### **6. PERFORMANCE GOALS AND INDICATORS (34 CFR 300.157)**

The State of Missouri has established goals for the performance of children with disabilities in Missouri. These goals promote the purposes of IDEA and are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the objectives for progress by children with disabilities. These goals address graduation rates and dropout rates, as well as other factors. These goals are consistent, to the maximum extent appropriate, with goals and standards that have been established by the State for all children.

The State has established performance indicators that the State will use to assess progress toward achieving the goals, including measurable annual objectives for progress by children with disabilities.

Annually, the State will report to the Secretary and the public on the progress of the State and of children with disabilities in the State, toward meeting the State

Performance Plan (SPP) goals (indicators) as established by the U. S. Department of Education, Office of Special Education Programs. The SPP goals (indicators) may be found on the Office of Special Education’s website.

**7. PUBLIC PARTICIPATION (34 CFR 300.167-300.169)**

The State of Missouri ensures that, prior to the adoption of any policies and procedures needed to comply with the Individuals with Disabilities Education Act, or prior to submitting a State Plan to the Secretary, there are public hearings, 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.

**8. PUBLIC ATTENTION (34 CFR 300.606)**

If the State receives notice that an enforcement action is proposed or is being taken against the State by the Secretary of Education, the Department must take such actions as may be necessary to notify the public within the State of the pendency of that enforcement action. At a minimum, the State must post a notice on the Department website and distribute the notice to the media and through public agencies.

**9. STATE ADVISORY PANEL (34 CFR 300.168)**

The State of Missouri maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State. The advisory panel is appointed by the Commissioner of the Department of Elementary and Secondary Education (Department). The Panel is a public governmental body as defined by Missouri’s Open Meetings and Records Law and complies with the “Sunshine Law.”

Membership (34 CFR 300.651)

The membership of the State advisory panel is representative of the State population and is composed of individuals involved in or concerned with the education of children with disabilities, including:

- A. parents of children with disabilities (ages birth through twenty-six (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 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 and public charter 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. a representative from the State child welfare agency responsible for foster care; and,
- K. representatives from the State juvenile and adult corrections agencies.

A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through twenty-six (26)).

#### Advisory Panel Duties (34 CFR 300.169)

The State advisory panel must:

- 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; and,
- F. advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons.

#### Advisory Panel Procedures

- A. The advisory panel shall meet as often as necessary to conduct its business.
- B. Official minutes must be kept on all panel meetings and must be made available to the public on request.
- C. 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.
- D. Interpreters and other necessary services must be provided at panel meetings for panel members or participants.
- E. 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.

### **10. SUSPENSION AND EXPULSION RATES (34 CFR 300.170)**

The State of Missouri shall examine data including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local education agencies in the State or compared to the rates for nondisabled children within the agencies.

If the discrepancies are occurring, the Department of Elementary and Secondary Education shall review and, if appropriate, revise (or require the affected State agency or local education agency to revise) its 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 these policies, procedures, and practices comply with IDEA.

## **11. ACCESS TO INSTRUCTIONAL MATERIALS (34 CFR 300.172)**

The State of Missouri has adopted the National Instructional Materials Accessibility Standard (NIMAS) for the purpose of providing instructional materials to blind persons or other persons with print disabilities in a timely manner. “In a timely manner” means that the responsible public agency has taken all reasonable steps to ensure that students with print disabilities have accessible materials at the same time their fellow students without disabilities have their materials.

In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

### Definitions

Blind persons or other persons with a print disability means children served under this part who may qualify to receive books and other publication produced in specialized formats in accordance with the Act entitled “An Act to provide books for adult blind” approved March 3, 1931, 2 U.S.C. ~~1135a~~ **135a**.

National Instructional Materials Access Center or NIMAC means the center established through the American Printing House for the Blind to receive and maintain a catalog of print instructional materials; to provide access to print instructional materials; and, to develop, adopt, and publish procedures to protect against copyright infringement.

National Instructional Materials Accessibility Standard or NIMAS means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

Specialized formats means Braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities and with respect to print materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.

These definitions apply to the State and each LEA.

## **12. OVERIDENTIFICATION AND DISPROPORTIONALITY (34 CFR 300.173)**

The State has in effect policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities.

## **13. PROHIBITION ON MANDATORY MEDICATION (34 CFR 300.174)**

The State prohibits State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202 (c) of the Controlled Substances Act (21 U.S.C. 812 (c )) for a child as a condition of attending school or receiving an evaluation or services under IDEA. This does not prohibit teachers or other school personnel from 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.

## **14. STATE ADMINISTRATION (34 CFR 300.199)**

As a condition of receipt of funds under Part B of the Act, Missouri must:

- A. ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part;
- B. identify, in writing, to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State imposed requirement that is not required by Part B of the Act and Federal regulations; and,
- C. minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject to under Part B of the Act.
- D. make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the IDEA.

State rules, regulations, and other policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

## **15. PERSONNEL QUALIFICATIONS (34 CFR 300.156)**

### Policies and Procedures

The Missouri Department of Elementary and Secondary Education has established and maintains qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

The qualifications for personnel, includes related services personnel that 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.

The qualifications for related services personnel ensures that related services personnel who deliver services in their discipline or profession, meet the requirements and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis and allow assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, to be used to assist in the provision of special education and related services to children with disabilities.

#### Special Education Teachers

Qualifications for teachers ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA (Elementary and Secondary Education Act).

LEAs must take measurable steps to recruit, hire, and retain highly qualified personnel to provide special education and related services to children with disabilities.

#### Rule of Construction

Nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular LEA or SEA employee to be highly qualified or to prevent a parent from filing a complaint about staff qualifications with the SEA.

#### Use of Paraprofessionals

Missouri allows paraprofessionals who are appropriately trained and supervised to be used to assist in the provision of special education and related services to children with disabilities.

Responsible public agencies must provide each paraprofessional with the orientation and training necessary for the individual to perform the duties associated with the work assignment. At a minimum, such training shall include information and experiences related to:

- A. the type of disabilities displayed by the students with whom they will work;
- B. basic principles of behavior modification;
- C. basic instructional techniques expected to be used (demonstration, modeling, cueing, reinforcement, correction, etc.); and,
- D. other areas as necessary (positioning, lifting and transferring techniques, feeding procedures, etc.).

Paraprofessionals who do not hold a teaching certificate shall receive a minimum of fifteen (15) hours of training during their initial year of employment and a minimum of ten (10) hours of training in subsequent years.

### Personnel Standards

The Personnel Standards outlined in the following pages list the Titles, Responsibilities, Educational Qualifications, and appropriate Missouri Licensure or Certification requirements for the personnel providing special education and related services for students with disabilities. The Titles listed are not intended to be a finite listing of occupational categories.

The descriptions listed under Responsibilities are not an all inclusive list. Districts should review applicable Practice Acts, code of ethics, and content of an individual's preparation program to determine if a designated individual can deliver specific services. Services must be provided consistent with the appropriate guidelines and requirements specified by the individual licensure requirements. In addition, the administration of some standardized assessments have specific requirements for administration. Personnel, with the appropriate education and training, may be qualified to administer these assessments and may hold a variety of job titles.

The Educational Qualifications indicate the highest entry-level academic degree needed for state approved licensure or certification. Districts may employ individuals with qualifications that exceed these requirements. Licensure and Certification requirements are those currently in place and are subject to change by the appropriate governing agency. Specific requirements are available from the appropriate licensing or certifying agency that is listed.

Telepractice is a service delivery model using technology to deliver professional services at a distance by linking professional to student or professional to professional for assessment, intervention, and/or consultation. Utilization of telepractice is governed by the Missouri professional licensing boards and by the policy, procedures, and practices for each profession (i.e. The American Speech-Language-Hearing Association, The American Occupational Therapy Association, The American Psychological Association, etc.)

## 16. PERSONNEL STANDARDS

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Adaptive Physical Education teacher	Direct instruction, consult with teachers, assist in developing IEPs, individualized assessments	Bachelor's Degree	Certification in the area of physical education or special education by the State Board of Education
Audiologist	Plans and implements screening, evaluation/diagnosis, and special education services for hearing impaired students.	Master's Degree	License issued by the State Board of Registration for the Healing Arts
Audiology Aide	Works under direct supervision of a licensed audiologist.	High school diploma or GED or HSE (High School Equivalency Certificate)	Registration certificate issued by the State Board of Registration for the Healing Arts
Casemanager	An administrative function that includes oversight of the IEP process on an individual student basis.	Bachelor's Degree	Any special education certificate issued by the State Board of Education
Counselor <ul style="list-style-type: none"> <li>• high school</li> <li>• middle school</li> <li>• elementary</li> </ul>	Provides direct guidance and counseling to eligible students with disabilities not routinely provided to the entire school population.	Master's Degree	Counselor certification by the State Board of Education
Counselor, Licensed Professional	Provides individual and group counseling techniques, methods or procedures for the purposes of assessing, understanding or influencing behavior. Conducts assessments for aptitudes, intelligence, attitudes, abilities, achievement, interests or personal characteristics. Provides Therapeutic vocational/personal rehabilitation.	Master's Degree	Licensed by the Division of Professional Registration
Educational Diagnostician*	Administers educational evaluations and assists in determining eligibility for special education.	Master's Degree	<ol style="list-style-type: none"> <li>1. Must have one of the following certificates issued by the State Board of Education: <ul style="list-style-type: none"> <li>• Special education</li> <li>• Guidance Counselor</li> <li>• School Psychological Examiner</li> <li>• School Psychologist</li> </ul> </li> <li>2. Licensed Professional Counselor licensed by the Division of Professional Registration</li> </ol>
Interpreter of the Deaf	Facilitates communication between students with hearing impairments and hearing persons.	High school diploma or GED or HSE (High School Equivalency Certificate)	Certified by the Commission for the Deaf and licensed by the Division of Professional Registration. After January 1, 2003, an intermediate certificate issued by the Commission for the Deaf and license issued by Professional Registration.

\*For more specific information concerning test administration, see the introduction to this section.

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Music Therapist	Participates in the development and implementation of IEPs.	Bachelor's Degree	Certification recognized by the American Music Therapy Association
Occupational Therapist	Provides occupational therapy and evaluation services to eligible students with disabilities.	Bachelor's Degree	License issued by the Missouri Board of Occupational Therapy
Occupational Therapy, Certified Assistant (COTA)	Provides occupational therapy services under the direction of a licensed occupational therapist.	AA degree	License issued by the Missouri Board of Occupational Therapy
Orientation and Mobility Specialist	Provides orientation and mobility services to eligible students with visual impairments.	Bachelor's Degree with specialization in orientation and mobility, teaching the blind and visually impaired, rehabilitation teaching, special education, occupational therapy, physical therapy or closely related area	<ul style="list-style-type: none"> <li>• Certified by the Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP)</li> </ul>
Orientation and Mobility Paraprofessional	Provides orientation and mobility services under the direction of an Orientation and Mobility Specialist.	High school diploma or GED or HSE (High School Equivalency Certificate)	<ul style="list-style-type: none"> <li>• Demonstrated proficiency in O&amp;M as determined by the supervisory O&amp;M Specialist</li> </ul>
Paraprofessional	Assists with the implementation of IEPs under the direction of the teacher. Additional responsibilities may include meeting the physical needs of the student, preparation of materials and providing other supports that may be necessary based on the students needs and disability.	High school diploma or GED or HSE (High School Equivalency Certificate) OR If assigned to a school-wide Title I building, meets the paraprofessional requirements of the No Child Left Behind Act.	None
Paraprofessional for Braille Instruction	Assists with the implementation of IEPs under the direction of a teacher for the visually impaired.	High school diploma or GED or HSE (High School Equivalency Certificate) OR If assigned to a school-wide Title I building, meets the paraprofessional requirements of the No Child Left Behind Act.	Demonstrated proficiency in Braille as determined by the supervisory teacher for the visually impaired

<b>TITLE</b>	<b>RESPONSIBILITIES</b>	<b>EDUCATIONAL QUALIFICATIONS</b>	<b>CERTIFICATES OR LICENSE</b>
Physical Therapist	Provides physical therapy and evaluation services to eligible students with disabilities.	Bachelor's Degree OR Master's Degree if graduated after December 31, 2002	License issued by the State Board of Registration for the Healing Arts
Physical Therapist Assistant	Provides Physical Therapy services under the direction of a physical therapist.	60 hours prescribed course of study, Associate's degree	License issued by State Board of Registration for the Healing Arts
Physician	Provides medical, evaluative, and diagnostic services, and assists in planning and implementing special education services for students with disabilities.	Medical Degree	Physician licensed by the State Board of Registration for the Healing Arts
Psychologist, School	Administers psychological tests, participates on evaluation teams, provides psychological services to students with disabilities as specified on the IEP, and assists in planning an implementing special education services.	Master's Degree	School Psychologist certification by the State Board of Education
Psychologists	Administers psychological tests, participates on evaluation teams, provides psychological services to eligible students with disabilities as specified on the IEP, and assists in planning and implementing special education services.	Master's Degree	Licensed by the Division of Professional Registration as a Psychologist
Recreational Therapist	Participates in the development and implementation of IEPs.	Bachelor's Degree	Certification recognized by the Recreational Therapy Association
School Nurse, LPN	Provides health services under the direction of an RN or Physician.	One year course of study in practical nursing	Licensed by the State Board of Nursing
School Nurse, RN	Provides screening, evaluative, and diagnostic health information. This person provides health services to eligible students with disabilities as specified on the student's IEP. The health services would include only those not routinely provided to the entire school population.	Associate's Degree	Licensed by the State Board of Nursing
School Psychological Examiner	Coordinates and/or participates on the multidisciplinary evaluation team. Conducts individual evaluations and assists in determining whether a student is a student with a disability	Master's Degree	School Psychological Examiner certification by the State Board of Education
School Social Worker	Provide services to parents of students with special education needs, assists in the development and implementation of IEPs. Assist in identification and assessment of individual's educational needs including social, emotional, behavioral, adaptive needs; develops and implements behavior intervention plans; provides individual, group, parent, and family counseling and consultation; serves as a liaison with home, school, and community.	Master's Degree	Completion of an approved course of study in school social work accredited by CSWE or a School Social Work Specialist credential issued by National Association of School Social Workers (NASSW)

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Social Worker, Licensed Clinical	Provides methods, principles, and techniques of casework, group work, client centered advocacy community organization, administration, planning, evaluation, consultation, research, psychotherapy and counseling methods and techniques to persons, families, and groups in assessment, diagnosis, treatment, prevention, and amelioration of mental emotional conditions. Delivers services that are billable to Medicaid.	Master's Degree	License issued by Missouri State Committee for Social Workers
Special Education Administrator	Directs, coordinates, and supervises the district's special education services.	Master's Degree	Special Education Administrator Certification by the State Board of Education.
Special Education Process Coordinator	Supervises the special education process from referral through placement and provision of services, appropriate identification and placement of students with disabilities; and, district compliance with state and federal requirements for special education.	Master's Degree	Certification in at least one area of special education or certification or licensure in a related area and knowledge of special education process requirements
Special Education Supervisor/PK-12 <ul style="list-style-type: none"> <li>• high school</li> <li>• middle school</li> <li>• elementary</li> <li>• early childhood special education ECSE</li> <li>• early childhood education/ early childhood special education (ECE/ECSE)</li> </ul>	Directs and assists special education teachers and paraprofessional, grades PK-12, or any combination thereof, in providing special education services to students with disabilities.	Bachelor's Degree	Any special education certification issued by the State Board of Education for the area and grade level for which supervision is provided
Speech Implementer	Assists with the implementation of IEPs under the direction of a speech/language pathologist.	Bachelor's Degree in Communications Disorders, Elementary Education, or Secondary Education	Missouri teaching certificate and annual approval by the Department of Elementary and Secondary Education
Speech/Language Pathologist	Provides direct instruction, consultation with teachers, develops IEPs, writes evaluation reports, and may provide evaluation services and any other duties permitted by state law.	Master's Degree	Speech and Language Pathologist certificate issued by the State Board of Education or License issued by the State Board of Registration for the Healing Arts
Speech/Language Pathologist, Diagnostic	Provides evaluation services for students with suspected speech/language disabilities. This person does not have a caseload of students for provision of direct services.		

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Speech/Language Pathology Aide	Works under the direct supervision of a licensed speech/language pathologist. Additional responsibilities may include preparation of materials and providing other supports that may be necessary based on the student's needs and disability.	High school diploma or GED or HSE (High School Equivalency Certificate)	Registration certificate issued by the State Board of Registration for the Healing Arts
Speech/Language Pathology Assistant	Assists with the implementation of IEPs under the direction of a licensed speech/language pathologist.	Bachelor's Degree	Registration certificate issued by the State Board of Registration for the Healing Arts
Teacher • Early childhood special education	Direct instruction, consultation with teachers, develop IEPs, writing evaluation reports, travel training, co-teaching, individualized assessments.	Bachelor's Degree	Special Education certification by the State Board of Education in • Early childhood special education
Teacher • Specialized instruction	Direct instruction, consultation with teachers, develop IEPs, writing evaluation reports, travel training, co-teaching, individualized assessments, sign language instruction.	Bachelor's Degree	Any special education certificate issued by the State Board of Education
Teacher • Visually Impaired	a. Direct instruction, consultation with teachers, develop IEPs, writing evaluation reports, travel training, co-teaching, individualized assessments. b. Specialized instruction in Braille or other related instruction.	Bachelor's Degree	a. Any special education certificate issued by the State Board of Education b. Blind and partially sighted certificate
Vocational Resource Educator (VRE)	Assists with the development and implementation of IEPs and the placement of students with disabilities in vocational programs.	Bachelor's Degree	• Special Education Certificate or • Counselor or Vocational Certificate and additional coursework as determined by the Vocational Division
Work Experience Coordinator (WEC) Vocational Adjustment Coordinator (VAC)	Plans, develops, implements, and supervises work experience programs for students with disabilities. Provides direct instruction, participates in IEP meetings, conducts screenings and work assessments.	Bachelor's Degree	Any special education certification issued by the State Board of Education

## **VII. LOCAL EDUCATIONAL AGENCY (LEA) ELIGIBILITY**

### **A. GENERAL REQUIREMENTS**

#### **1. SUBGRANTS TO LEAs (34 CFR 300.705)**

For each year for which funds are allocated to states under 34 CFR 300.703, it is the policy of the Department of Elementary and Secondary Education to award subgrants to responsible public agencies as described in 34 CFR 300.705.

#### **2. CONDITION OF ASSISTANCE (34 CFR 300.200)**

A responsible public agency is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a budget application and provides assurances to the SEA that the responsible public agency has a Board approved local compliance plan that meets each of the conditions in 34 CFR 300.201 through 300.213.

#### **3. CONSISTENCY WITH STATE POLICIES (34 CFR 300.201)**

The responsible public agency, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under 34 CFR 300.101 through 300.163 and 300.165 through 300.177.

The responsible public agency may:

- a) adopt the State model local compliance plan, in which case the agency does not have to submit its plan to the SEA for approval, OR
- b) adopt the State model local compliance plan, with revisions to allow for unique agency characteristics or local requirements, in which case the agency must submit the plan to the SEA for approval, OR
- c) write a local compliance plan which meets all of the requirements listed above, in which case the agency must submit the plan to the SEA for approval.

#### **4. INFORMATION FOR SEA (34 CFR 300.211)**

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act including information relating to the performance of children with disabilities participating in programs carried out under Part B of IDEA.

#### **5. HEARINGS RELATED TO LEA ELIGIBILITY (34 CFR 300.221 and 300.155)**

It is the policy of the Department to provide a local school district or public agency with notice and an opportunity for a hearing prior to determination of ineligibility for Part B funds under the Individuals with Disabilities Education Act.

Appeal by an applicant must be based upon an allegation that these actions by the Department of Elementary and Secondary Education violate state or federal statute or regulation. The Department shall provide a local school district or public agency with notice of intent to determine ineligibility. That notice shall contain:

- a) a statement of the basis upon which the Department proposes to determine ineligibility;
- b) possible options for resolving the issue;
- c) how the applicant can request a hearing not later than thirty (30) days from receipt of the notice of proposed ineligibility; and,
- d) information about the proposed procedures to be followed in the hearing.

This notice shall be transmitted to the applicant by certified mail with return receipt requested.

Requests for a hearing pursuant to this section shall be in writing and shall be directed to the Office of the Commissioner of Education.

Within thirty (30) days of the date of receipt of the appeal request, the Commissioner of Education or a designee shall conduct a hearing on the record on the proposed action. No later than ten (10) days after the hearing, the Commissioner or a designee shall issue a written ruling, including findings of fact and a reason for the ruling. If the Department of Elementary and Secondary Education determines that its action was contrary to state or federal statutes or regulations, which govern the applicable program, the Department of Elementary and Secondary Education, shall rescind its action.

The ruling by the Commissioner of Education or a designee shall be final unless appealed pursuant to Education Division General Administrative Regulations (EDGAR) which provides that notice of appeal must be filed with the Office of the Secretary of Education within twenty (20) days after the applicant receives notice of the decision. The decision of the Commissioner of Education shall contain a description of the applicant's right of appeal and shall be forwarded by certified mail with return receipt requested.

The Department shall make available at reasonable times and places to each applicant all records pertaining to any review or appeal that the applicant is conducting under this section, including the records of other applicants.

## **6. FAILURE TO PROVIDE FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

The hearing procedure described in this section will be used when a district is determined to be unwilling or unable to provide a Free Appropriate Public Education (FAPE) as described in Regulation IV.

### **B. FISCAL REQUIREMENTS**

#### **1. USE OF AMOUNTS (34 CFR 300.202)**

The amounts provided to the LEA under Part B of the Act must be:

- a) expended in accordance with applicable provisions of Part B of IDEA;
- b) used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with the excess cost provision of this section;
- c) used to supplement State, local, and other Federal funds and not to supplant those funds;
- d) expended in accordance with the LEA's Part B Budget Application; and,
- e) directed 100% towards special education unless otherwise allowed.

## 2. PERMISSIVE USE OF FUNDS (34 CFR 300.208)

Funds provided to an LEA under Part B of the Act may be used for the following activities:

- a) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more children will benefit from these services.
- b) *Coordinated Early Intervening services.* 34 CFR 205(d), 34 CFR 208 (a)(2), 34 CFR 226). To develop and implement coordinated, early intervening educational services in accordance with 34 CFR 300.226. A LEA may not use more than fifteen (15) percent of the amount the agency receives under Part B for any fiscal year, less any amount reduced by the agency under adjustments to local fiscal effort, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment. In implementing coordinated, early intervening service, a responsible public agency may carry out activities that include:
  - professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically-based academic instruction and behavioral interventions, including scientifically-based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
  - providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.

Nothing in this section shall be construed to either limit or create a right to FAPE under Part B or to delay appropriate evaluation of a child suspected of having a disability. The amount of funds expended by an LEA for early intervening services under 34 CFR 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce local effort.

- c) High cost special education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperative for the LEA itself or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services. In Missouri this is known as the “High Need Fund.”
- d) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities that is needed for the implementation of those case management activities.
- e) Schoolwide Programs under Title I of the Elementary and Secondary Education Act (ESEA) 34 CFR 300.206. LEAs may use funds received under Part B for any fiscal year to carry out a school-wide program under section 1114 of the ESEA. The amount used in any school-wide program may not exceed the amount received by the LEA under Part B for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the school-wide program. Part B funds used in this manner, must be considered Federal Part B funds for purposes of calculations required for determining excess costs. All other requirements of Part B of the Act must be met by an LEA using Part B funds in a school-wide program, including ensuring that children with disabilities in school-wide program receive services in accordance with a properly developed IEP and are afforded all of the rights and services guaranteed to children with disabilities under the Act.

### **3. ACCOUNTING AND PAYMENT PROCEDURES**

- a) Each LEA shall submit a budget application for Part B funds on or before the required due date. Part B funds may not be obligated until the budget application has been substantially approved, which occurs upon submission.
- b) LEAs shall submit payment requests for Part B funds by the required due dates. Payment requests must be based on actual expenditures to date or expenditures that will occur within three days of receiving the funds.
- c) LEAS must create a system for tracking Part B funds separately from state/local funds.
- d) Capital outlay purchases with Part B funds must be prior approved by the Department. This includes equipment, construction/renovation and vehicles/buses.
- e) Each LEA shall submit a final expenditure report (FER) for Part B funds on or before the required due date.
- f) Appropriate records shall be maintained to verify all expenditure of funds received under Part B of IDEA.

### **4. EXCESS COST (34 CFR 300.202)**

- a) A responsible public agency may not use funds provided under Part B of IDEA to pay for all of the costs directly attributable to the education of a child with a disability ages six (6) through seventeen (17).
- b) A responsible public agency may use Part B funds to pay for all of the costs directly attributable to the education of a child with a disability ages three (3) through five

(5) and ages eighteen (18) through twenty (20), if no local or State funds are available for nondisabled children of these ages. However, the agency must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

- c) A responsible public agency meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B are used.
- d) Excess costs must be calculated in accordance with 34 CFR 300.16 and may not include capital outlay or debt service.

## **5. MAINTENANCE OF EFFORT (34 CFR 300.203)**

a) Funds provided to an LEA under Part B of the Act:

- must 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, and
- must be used to supplement State, local, and other Federal funds and not to supplant those funds as described in 34 CFR 300.202(a)(3).

b) Exceptions to Maintenance of Effort (34 CFR 300.204)

The total amount or average per capita amount of either local only or the combined State and local school funds budgeted by the LEA for expenditures in the current fiscal year for the education of students with disabilities must be at least equal to the total amount or average per capita amount of state and local school funds actually expended for the education of students with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

- the voluntary departure, by retirement or otherwise, or departure by just cause, of special education or related services personnel;
- a decrease in the enrollment of children with disabilities;
- the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child has left the jurisdiction of the agency, has reached the age at which the obligation of the agency to provide FAPE to the child has terminated, or no longer needs the program of special education;
- the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; and,
- the assumption of cost by the high cost fund operated by the SEA under 34 CFR 300.704(c).

c) Adjustment to Local Fiscal Effort (34 CFR 300.205)

In any fiscal year for which a district's Federal allocation exceeds the amount the

district received in the previous fiscal year, the district may reduce the level of expenditures required for the education of children with disabilities from state and local funds by not more than fifty (50) percent of the amount in excess.

If a responsible public agency exercises the authority to reduce their local effort, the agency must use an amount of local funds equal to the reduction in expenditures to carry out activities that could be supported with funds under the ESEA regardless of whether the agency is using funds under the ESEA for those activities.

If the SEA determines that a responsible public agency is unable to establish and maintain programs of FAPE that meet the requirements of section 613 (a) of the Act and this part or the SEA has taken action against the local educational agency under section 616, the SEA must prohibit the LEA from reducing the level of expenditures for that fiscal year.

The amount of funds expended by the responsible public agency for early intervening services under 34 CFR 300.226 shall count toward the maximum amount of expenditures that the responsible public agency may reduce maintenance of fiscal effort.

## **6. WITHHOLDING OF PAYMENTS**

When the Department finds a failure to comply with any provision of applicable state or federal law, the Department may notify the LEA of restriction of funds under Part B until compliance is met.

## **7. EARLY CHILDHOOD SPECIAL EDUCATION (ECSE) EXPENDITURE REQUIREMENTS**

- a) Early Childhood Special Education expenditures must be reported annually through an Expenditure Report for service provided during the previous school year. ECSE reimbursement may be paid through the monthly payment transmittal and may include both state and federal funds.
- b) ECSE expenditures may be claimed under the following categories: contractual expenditures, personnel, equipment, extended school year, leases/capital outlay, operation of plant, professional development, mileage, transportation, start-up costs, supplies/program maintenance.
  - 1) General Requirements
    - o All expenditures must follow the public agency's procurement guidelines.
    - o Public agencies may not collect or charge tuition costs for allowable ECSE services; however, the public agency may charge for tuition related to general early childhood education that is not part of the Individualized Education Program (IEP).

- 2) Contractual Expenditures
 

Placement of students outside of the district for instructional services must be through an approved private agency (Section VIII) or another public agency. Private agency tuition costs must be prorated if services other than ECSE are included in the tuition cost, unless the other service is part of the IEP goals.
- 3) Personnel Requirements
 

ECSE personnel must meet all personnel standards (Section VI.15) and caseload requirements as stated herein.
- 4) Equipment Expenditures
  - o Equipment is defined as items that have a useful life of at least one year and a cost of \$1,000 or more per unit.
  - o All equipment items purchased with ECSE funds are the property of the district's ECSE program and must remain with the program.
  - o All individualized equipment purchases must be IEP driven.
- 5) Lease Expenditures
  - o Leases are allowed for facilities, modular units, buses, vehicles, and office equipment.
  - o **Facility** Lease payments are made in accord with 5 CSR 30-640.200.
- ~~6) Capital Outlay (Lease Purchase, Purchase, New Construction, Renovation/Expansion) Expenditures~~
  - ~~o Prior approval by the Financial and Administrative Services Section is required on all capital outlay expenditures. Applications must be submitted annually to be considered for reimbursement during that school year.~~
  - ~~o Facility reimbursement for facility lease purchases, purchases, and new construction is calculated based on the following formula:~~

$$\begin{aligned} &\text{Eligible Count} * 60 \text{ Square Feet per Student} = \text{Amount of ECSE Reimbursable Space} \\ &\text{Total Facility Cost} / \text{Total Facility Square Footage} = \text{Cost per Square Foot} \\ &\text{Amount of ECSE Reimbursable Space} * \text{Cost per Square Foot} = \text{ECSE Reimbursement Amount} \\ &\text{ECSE Reimbursement Amount} / 8 \text{ Years} = \text{Reimbursement per Fiscal Year} \end{aligned}$$

~~Eligible count is the number of ECSE eligible students and non-disabled peers integrated into the ECSE classroom. The formula will be applied at the beginning of the agreement and remain consistent over the eight year period (renovation/expansion is reimbursed over a four year period) unless the district experiences a significant increase in students.~~

**6) Capital Outlay**

**Funding for ECSE Capital Outlay, including but not limited to: facility renovation, facility construction, facility purchase, copiers, and vehicles/buses is not permitted and will not be reimbursed unless the LEA had an approved ECSE capital cost purchase agreement with the Department prior to July 1, 2015.**

7) Operation of Plant Expenditures

- For ECSE programs in stand-alone facilities with no other programs, all utilities and custodial costs may be charged to the ECSE program.
- For ECSE programs in facilities with other programs/grades, a prorated portion of the utilities and custodial costs may be charged to the ECSE program.

8) Professional Development Expenditures

- Teachers, administrators, and other direct services staff (OT, PT, SLPs, Interpreters, etc.) are allotted **up to at a minimum** \$300 per FTE for professional development activities. Part-time staff must be prorated based on these flat rate amounts.
- Paraprofessionals are allotted **up to at a minimum** \$150 per FTE for professional development activities. Part-time staff must be prorated based on these flat rate amounts.

9) Start-Up Costs/New Classrooms Requirements

- Start-up costs **up to at a minimum** of \$10,000 are allotted for a new classroom when the district has an increase from the prior year to the current year in either the December 1 Child Count or the End of the Year Count that meets the minimum caseload requirement.
- A district that previously contracted for ECSE services with a private agency or cooperative and is starting a program in-house may utilize start-up funds even if minimum caseload requirements are not met.
- Start-up costs **up to at a minimum** of \$1,200 per FTE are allotted for each new itinerant position that meets minimum caseload requirements.

10) Supplies/Program Maintenance Expenditures

- The public agency is allotted at a minimum \$75 per the December 1 Child Count or the End of the Year Child Count (whichever is higher).

11) Transportation Expenditures

- Public agencies with dedicated ECSE routes may charge the full cost of the bus driver, bus aides, contracted transportation costs, supplies, and equipment to the program. A prorated cost may be charged for mechanics, dispatchers, bus barns, contracted maintenance, and insurance.
- Public agencies that do not have dedicated ECSE routes may only charge a prorated portion of the cost for the bus driver, bus aides, contracted transportation (not including maintenance) costs, supplies, and equipment.

The public agency may not charge the program for mechanics, contracted maintenance, dispatchers, bus barns, and insurance.

12) Caseload Requirements

Caseloads for ECSE are mandatory and tied to funding requirements. The number of personnel approved for each district will be based upon a review of the district’s data for early childhood special education. ECSE funding will not be provided for staff serving children who are age 5 and kindergarten age eligible.

<b>Position/Full Time Equivalent</b>	<b>Caseload/ Class Size</b>
Teacher of Early Childhood Special Education Classroom	10-20*
Teacher of Integrated Classroom	10-20*
Itinerant Teacher (teachers who move from class to class within a facility or travel to other facilities)	12-22
Teacher of Severe/Low Incidence Classrooms	4-10*
Paraprofessional in ECSE Centerbased Self Contained Classroom or Integrated Classroom	10-20*
Paraprofessional in ECSE Severe/Low Incidence Classrooms	4-10*
Diagnostic Staff – for each position	160
Related Services Staff Employed by District (Occupational Therapist, Physical Therapist, Speech Therapist)	35-50
ECSE Dedicated Program or Process Coordinator (Administrator)	180
ECSE Secretary	180
Nurse (FTE can be increased if additional nursing needs are specifically addressed in IEPs)	175
Social Worker	
General	175
Diagnostic	160
Related Services	35-50

\*Based on two half day sessions.

**C. COMPLIANCE REQUIREMENTS**

**1. SIGNIFICANT DISPROPORTIONALITY 34 CFR 300.646**

A. The State ensures the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies (LEAs) with respect to:

1. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment;
2. The placement in particular educational settings of these children; and,

3. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.
- B. 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, including disciplinary action resulting in suspension or expulsion, the State shall:
1. Provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.
  2. Require any LEA identified with significant disproportionality to reserve the maximum amount of funds specified under the IDEA 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,
  3. Require the LEA to publicly report on a revision of policies, practices, and procedures described in C.1.B.1. of these regulations.

## **2. PURCHASE OF INSTRUCTIONAL MATERIALS (34 CFR 300.210)**

LEAs that choose to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those materials in the same manner and under the same conditions as an SEA. See Regulation VI.

LEAs are not required to coordinate with the NIMAC. If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. “In a timely manner” means that the responsible public agency has taken all reasonable steps to ensure that students with print disabilities have accessible materials at the same time their fellow students without disabilities have their materials.

Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

## **3. RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES (34 CFR 300.213)**

The LEA must cooperate with efforts of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging health and educational information among the states for these children.

#### **4. PERSONNEL (34 CFR 300.201)**

LEAs must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared and meet the requirements outlined in Regulation VI.

Personnel paid in full or in part from Part B funds must be appropriately prepared and trained as outlined in Regulation VI, Personnel Standards of this State Plan.

Personnel paid in full or in part from Part B funds must maintain time and effort documentation prescribed in OMB Circular A-87 with either semi-annual certifications or Personal Activity Reports (PARS).

#### **5. CLASS SIZE AND CASELOADS**

Caseloads and Class Size Requirements differ between Early Childhood Special Education (ECSE) and grades K-12. Caseloads for ECSE are mandatory and tied to funding requirements. The standards for grades K-12 are desirable and should not exceed the maximum case load outlined in the Caseload guidance on the Office of Special Education website. Factors to consider when determining caseload for grades K-12 are listed below.

##### **a) Caseloads and Class Size Requirements for Early Childhood Special Education (ECSE)**

See Regulation VII Section 7 for ECSE requirements.

##### **b) Class Size/Caseload Standards for Grades K-Twelve (12)**

It is the responsibility of the public agency to assign students to classes and monitor student/teacher ratios for class size and caseload to ensure that there are adequate staff and that staff have adequate time to provide for the implementation of the IEP of each identified student with a disability.

Paraprofessionals/aides may be assigned to specific students and/or may be assigned to classrooms based upon the number and unique needs of students with disabilities being served in the class. While highly qualified teachers and licensed therapists must design and provide initial or original instruction, support personnel may provide reinforcement and practice of previously taught skills or content. Additionally, appropriately trained support personnel may provide assistance to students in response to specific needs related to:

- significant cognitive and/or sensory impairments;
- safety;
- mobility;
- personal care;
- behavior;
- medical/health; or,
- other unique circumstances.

Considerations when making staffing determinations include:

- instructional planning time (minimum of 250 minutes per week of instructional planning during the school day is required);
- data collection, observation, assessment, and report preparation;
- consultation and IEP planning with general educators;
- IEP case management;
- IEP Team meetings and meetings with parents;
- age of the children (younger children generally require more assistance with personal tasks such as toileting, dressing, and feeding); and,
- travel time between assignments.

When assigning students to a self-contained classroom, consideration should be given to the following:

- severity of the disability of the students assigned to the classroom;
- ages of students assigned to the classroom;
- range of needs of the students as specified in their IEPs;
- unique needs of the students as specified in their IEPs;
- other duties assigned to the classroom teacher (IEP case management, recess, lunch, etc.); and,
- level of paraprofessional support provided

When assigning students to a resource or general education classroom, consideration should be given to the following:

- The ages and grade levels of the students served
- The severity of the disabilities of the students served
- The unique needs of the students as identified in their IEPs
- The number of IEPs managed by the teacher
- Any assessment/evaluation responsibilities of the teacher
- Other duties assigned to the teacher

## **IX. SPECIAL SCHOOL DISTRICTS**

Under the Merry litigation settlement, Parkway School District has some joint compliance responsibilities that exceed responsibilities that apply to other component districts. Such responsibilities of the Merry case are incorporated herein by reference.

### **1. BASIS FOR COMPLIANCE**

The mandate to provide appropriate educational services to students with disabilities is a function of both federal and state statute. The purpose of this regulation is to define the scope of these requirements. In this and other portions of this regulation, reference is made, where possible, to the specific statutory or regulatory source of each of the stated requirements. References are made to the United States Code (USC), the Code of Federal Regulations (CFR), the Revised Statutes of Missouri (RSMo.) and the Missouri Code of State Regulations (CSR).

- A. Section 504 of the Rehabilitation Act of 1973: The foundation of the assurance of a free appropriate public education for students with disabilities is found under Section 504 of the Rehabilitation Act of 1973 (Section 504). 29 USC Sections 706(7), 794, 794a, 794b. This statute and its accompanying regulations, in part, require that elementary and secondary schools provide appropriate regular or special education and related aids and services necessary to meet the needs of students with disabilities as adequately as the needs of nondisabled students are met 34 CFR 104.33(b). The requirements of Section 504 are applicable to any recipient of federal financial assistance from the U. S. Department of Education and to any program or activity that receives or benefits from such assistance 34 CFR 104.2. This would include both the special school district and the component districts within the special district.
- B. Part B of IDEA: This statute represents a major federal initiative in special education. Part B of the Individuals with Disabilities Education Act (IDEA) provides specific grants of financial assistance to the states for the purpose of assuring appropriate special education and related services to students with disabilities 20 USC Sections 1400-1485.
- C. Code of State Regulations: State regulation found at 5 CSR 20.300.110 reflects the State Plan for Special Education, Regulations Implementing Part B of the Individuals with Disabilities Education Act (State Plan). This State Plan is the primary policy document adopted to assure compliance with IDEA. Submitted by the Department of Elementary and Secondary Education on behalf of the entire state, its provisions are applicable to each public agency that has direct or delegated authority to provide special education and related services. These requirements are binding regardless of whether an agency is a direct recipient of funds under IDEA 34 CFR 300.2.
- D. Revised Statutes of Missouri: Chapter 162 RSMo. contains the enabling legislation required, in conjunction with the provisions of this State Plan, to

meet the federal and state mandates for appropriate educational services for students with disabilities. One of the service options available under state statute is the creation of a special school district pursuant to Section 162.825 RSMo. The referendum establishing a special school district creates a distinct public school district for the purpose of providing special education and related services to students with disabilities within the component districts of which it is comprised.

- E. Compliance with Federal Requirements: Although the statutory authority to provide special education and related services under Section 162.825 RSMo. allows a special school district to become a subgrantee under IDEA, this does not relieve component districts from compliance responsibilities under Section 504. The requirements of Section 504 extend to both special and general education services to students with disabilities, and if not for the existence of a special school district, the component districts would be required to provide both special and general education services. Thus, it is through the compliance plan submitted by the special school district that the component districts not only benefit from the federal grants under IDEA, but also meet a major part of their obligations under Section 504.

## **2. STRUCTURE OF COMPLIANCE**

- A. Compliance Requirements to be Addressed: With regard to the compliance responsibilities of a special district and component districts, this regulation will reference other sections of this State Plan.
- B. Forms of Compliance: Based upon the division of responsibility for educational services resulting from the creation of a special school district, three (3) forms of compliance can be identified.
  - 1) Direct Compliance: Those requirements of IDEA that can only be complied with by the state's subgrantee will be defined as areas of direct compliance. Here a special school district will have immediate responsibility for both policy development and implementation of the federal requirements.
  - 2) Joint Compliance: Certain issues require joint cooperation between the special and component districts in order for there to be full compliance with the requirements of IDEA. Although the special district may have primary responsibility to develop policy in these areas, implementation shall be the joint responsibility of the special and component districts. This is required because, for most students with disabilities, special education services are provided in the general education setting. Where sufficient assurances as to these responsibilities are not possible through the compliance plan submitted by the special school district or, when they are a function of state statute, separate assurances may be required of the component districts.
  - 3) Separate Compliance: A third category of compliance will be matters of separate compliance in which each special or component district is

responsible for compliance. Here compliance can only be obtained by policy established by the board of each district. This would include the requirements under Section 504 that are not met through compliance with IDEA under this regulation and the requirements of the Family Education Rights and Privacy Act (20 USC Section 1232g).

Each of the compliance issues addressed in this regulation will be described in terms of one of these three (3) forms of compliance.

### **3. COMPLIANCE REQUIREMENTS**

The following sections outline specific amendments to the designated portions of the State Plan. Their purpose is to clarify compliance responsibilities for a special school district and the component districts of which it is comprised.

- A. Regulation III, Child Find addresses the planning and implementation of child find efforts. The specific compliance requirements of each element of the identification process are addressed separately.
  - 1) Awareness and Child Find: It is a matter of direct compliance for the special school district to develop and implement such policies and procedures needed to ensure the publication of appropriate notices through the print media, radio, and television. These policies and procedures must result in appropriate coverage throughout the service area of the special school district. The posting of notices and the distribution of written literature to school patrons is, of necessity, a matter of separate compliance, with each district responsible for distribution of materials within their own facilities.
  - 2) Joint Review Committee: The Joint Review committee shall determine if it is appropriate to refer and evaluate student's attending component districts to determine eligibility for special education services. This committee shall be composed of staff from both the special and component districts and the work of the committee shall be a matter of joint compliance. The determination to refer and evaluate would require an affirmative recommendation based upon a consensus of the committee and shall be binding upon both the special and component districts.
  - 3) Procedural Safeguards: If the Joint Review committee determines that the referral for evaluation is warranted, then a copy of the Procedural Safeguards and, when appropriate, an appropriate notice of Intent to Evaluate and request for consent to evaluate shall be forwarded to the parent or guardian, by the special school district as a matter of direct compliance. If the committee refuses to honor a parental or guardian request for evaluation, then appropriate notice of that refusal shall also be required by the

special school district to the parent or guardian. Further, these actions are subject to the procedural safeguards and hearing rights assured by the special district and provided under Subpart E of IDEA regulations and Regulation V of the State Plan, as modified by this regulation.

B. Regulation III, Procedures for Evaluation and Determination of Eligibility

The IEP of a student with a disability shall be based upon a full and comprehensive evaluation. Although policy development and implementation of evaluation procedures rests primarily with the special school district, each component district shall have specific responsibilities in support of the evaluation process.

- 1) Evaluation Procedure: IDEA Regulations (34 CFR 300.304) and Regulation III of this plan outline specific protections in the evaluation process to determine initial eligibility and subsequent reevaluation. It is a matter of direct compliance for the special school district to maintain appropriate procedures and allocate sufficient personnel to assure these protections.
- 2) Support of the Evaluation Process: Compliance responsibilities to be jointly implemented by the component districts include:
  - a) Providing reports, classroom assessments, or other resource materials from their general education staff to the group of individuals evaluating the student to determine eligibility.
  - b) Designating appropriate staff required to participate in the group of individuals evaluating the student for eligibility for special education services or to reevaluate the student on a periodic basis.
  - c) Designating appropriate staff to participate in the group that makes the eligibility determination.
- 3) Procedural Safeguards: Notice of intent to evaluate or reevaluate to the parent or guardian shall be a matter of direct compliance for the special school district. Notice of initial evaluation would be based upon the determination of the referral review committee. Notice of intent to reevaluate would be based upon recommendation of the IEP Team. Notice would be given both when the evaluation is requested by the IEP Team and when the evaluation is based upon parental request (34 CFR 300.504). This would include notice when a parental request for evaluation or re-evaluation has been refused. As with other elements in the process of providing special education and related services, procedural safeguards under Subpart E of IDEA apply to the evaluation process (34 CFR 300.504). Based

upon this notice and any subsequent disagreement with the proposed evaluation/reevaluation, the parent or guardian may invoke the administrative hearing process also provided under Subpart E. Implementation of these procedural safeguards shall be based upon the provisions of Regulation V of the State Plan as amended by this regulation, under the direction of the special school district.

### C. Regulation IV, Individualized Education Program

The Individualized Education Program (IEP) is a written statement summarizing the special education and related services necessary to provide the student with a Free Appropriate Public Education (FAPE). Compliance responsibilities for the development, implementation and review of a student's IEP are addressed in Regulation IV of the State Plan. The following relates these responsibilities to the special and component districts.

- 1) **Conducting IEP Meetings:** The special school district shall, as a matter of direct compliance, be responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising an IEP for each eligible student 34 CFR 300.320.
- 2) **IEP Meeting Excusal:** Any 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 team member's area of curriculum or related services if the parent, in writing, and the special and component school district consent to the excusal and the team member submits, in writing to the parent and IEP Team, input into the development of the IEP prior to the meeting.
- 3) **Participants of the IEP Meeting.**
  - a) **Staff:** The special and component districts will be responsible, as indicated, for identifying and assigning the following staff members to participate in IEP meetings. Such assignments shall be made with the understanding that the IEP Team decision are binding on both districts and may not be unilaterally changed at a higher administrative level in either district. Decisions relating to the IEP are appealable by the parent or guardian through the administrative hearing process authorized under Regulation V of the State Plan as amended by this regulation.

General Education Teacher (Component District): At least one general education teacher of the student must be present at IEP meetings for students who are or may be participating in the general education environment. Generally, a general education teacher will need to be identified to participate in IEP meetings for all but a very few children who are receiving services in

separate school buildings. However, the determination of whether or not a general education teacher will need to participate in any given meeting or part(s) of a meeting must be made on a child-by-child basis by the members of the IEP Team. The district cannot identify any specific group of students (i.e., those in separate buildings) for whom the participation of a general education teacher would not be required.

Local Education Agency (LEA) Representative (SSD): A representative of the SSD must be present to serve in the role of LEA. In accordance with provisions of IDEA, this person must be:

- i) Qualified to provide, or supervise the provision of, special education services;
- ii) Knowledgeable about the general curriculum; and,
- iii) Knowledgeable about the availability of resources of the LEA (SSD).

This person must also have the authority to commit the resources of the district. The special education teacher on the IEP Team may also assume this role.

Component District Representative (CD): The component district must be represented by a person who:

- i) Can assure implementation of the component district's responsibilities for the IEP. If there will be a general education teacher present at the IEP meeting, this role may be delegated to that person;
- ii) Is knowledgeable of the general education curriculum including extracurricular and non-academic programs; and,
- iii) Is knowledgeable of and can commit resources of the component district, as determined necessary.

Special Education Teacher (SSD): The child's special education teacher, or in the case of an initial IEP, a person qualified to provide special education services, must be present at the IEP meeting.

Individual who can interpret instructional implications of evaluation results (SSD): Person(s) identified above may also serve in this role.

- b) Parents (SSD): The special school district, in convening the IEP meeting, must also ensure, as a matter of direct compliance, appropriate parental or guardian participation in the development of the IEP 34 CFR 300.322. This includes appropriate notification

of the meeting with a copy of Procedural Safeguards, scheduling the meeting at a mutually agreed upon time and place, use of other methods of participation if the parent cannot attend, documenting attempts to schedule the meeting at an agreed upon time if the parents refuse to participate, taking those actions needed for the parent to understand the proceedings, and providing the parent a copy of the IEP.

- c) Student (SSD and CD): The SSD, in convening the IEP meeting, must ensure, as a matter of direct compliance, appropriate participation of the student, age 16+ in the development of the IEP, if a purpose of the meeting will be consideration of transition service needs. This includes inviting the student to the meeting and if the students will not participate, ensuring that the necessary steps have been taken to determine the student's needs, preferences, and interests. For students receiving services in a component district building, both the SSD and component district, as a matter of joint compliance, shall ensure that the student has the opportunity to attend the IEP meeting.
  - d) Other (CD and SSD): Each district shall, as a matter of direct compliance, ensure that other staff who have knowledge and expertise regarding the child and whose attendance at the IEP meeting has been determined necessary and appropriate by the district, shall be provided the opportunity to attend the IEP meeting.
- 4) Content of the IEP: Although the specific structure of the IEP is dictated by regulation (34 CFR 300.324), the content of each of the specified elements will be the work product of the meeting participants. The goal of the process is to reach consensus, with elements of the IEP intended to reflect agreement on what would be appropriate for the student with disabilities.
- 5) Parental Disagreement with the IEP Content: Should a parent express disagreement about the content of the IEP, three (3) options can be considered:
- a) Agree upon an interim course of action, including implementation of those components of the IEP where agreement exists and scheduling a time to reconvene the IEP meeting.
  - b) Agree upon some informal method of resolving the disagreement, including mediation or outside consultation.
  - c) Conclude that consensus cannot be reached and that the IEP Team decision is subject to the parent's right to the administrative hearing process, as described in Regulation V of the State Plan as amended by this regulation.
- 6) Role of the SSD and CD Representatives: the SSD and CD staff members who attend the IEP meeting to serve in these roles should

strive to reach agreement on each issue regarding services for an individual student. Prolonged disagreement between the representatives of the special and component district could improperly delay implementation of appropriate services. Resolution shall be reached based upon the following:

- a) The IEP process does not represent a negotiation between the special and component districts regarding control over the development of the student's educational program. It was the clear intent of Congress that, under IDEA, control rests with the IEP Team and not with the local school board of any district.
- b) Disagreement between the agency representatives or negotiations to resolve the disagreement may not serve to delay parental or guardian hearing rights under IDEA.

#### D. Regulation V, Procedural Safeguards

Under the Merry litigation, Parkway School District has some joint compliance responsibilities that exceed responsibilities that apply to other districts. Such requirements of the Merry case are incorporated herein by reference.

Each of the compliance areas outlined under Regulation V of the State Plan relating to procedural safeguards will be addressed separately where requirements differ from the norm due to the organization/nature of SSD.

- 1) **Opportunity to Examine Records:** The parents or guardian of students with disabilities have the right to inspect and review records with respect to the provision of special education and related services to their child 34 CFR 300.501, in accordance with the procedures outlined within IDEA regulations, 34 CFR 300.613-300.620. Implementation of these requirements in regard to access and confidentiality of special education records is a matter of separate compliance for each special and component district based upon possession of the records. Each district must have policies in place to assure compliance with these regulatory requirements.
- 2) **Independent Evaluation:** The assurance of the right of a student with disabilities to have an independent evaluation 34 CFR 300.502 is primarily a matter of direct compliance by the special school district. This would include the parental right to an independent educational evaluation at public expense 34 CFR 300.502 (b), the requirement that parent-initiated evaluations be considered in decisions regarding the student's program 34 CFR 300.502 (c), compliance with hearing officer requests for independent evaluations 34 CFR 300.502 (d), and the requirement that any evaluation obtained at public expense is

based upon the same criteria as used by the public agency initiating the evaluation 34 CFR 300.502 (e).

- 3) Prior Parental Notice: The requirement of written parental notice prior to any proposed change or refusal to change the identification, evaluation, or educational placement of the student or the provision of free and appropriate public education to the student 34 CFR 300.503 (a), is a matter of direct compliance by the special school district. Although consultation with appropriate component district staff will be needed in order to determine these recommendations, direct responsibility to assure compliance with this notice requirement, including the assurance of appropriate content of the notice 34 CFR 300.503 (b) is the responsibility of the special school district.
- 4) Prior Parental Consent: Parental consent must be obtained prior to conducting any initial evaluation or additional assessments as part of the reevaluation process and prior to the initiation of special education and related services to a student with a disability 34 CFR 300.300. Obtaining this consent, as well as the initiation of procedures if a parent refuses consent, would be a matter of direct compliance for the special school district.
- 5) Administrative Hearing Process: A parent or the responsible public agency may initiate a hearing on matters regarding the identification, evaluation, or educational placement of the student or the provision of free and appropriate public education, 34 CFR 300.507. It is the responsibility of the SSD to initiate the administrative hearing process for all students with disabilities ages five (5) to twenty-one (21) years of age and for students ages three (3) and four (4) who reside in component districts that do not provide Early Childhood Special Education (ECSE) services. Component districts that provide ECSE services have the responsibility to initiate due process for those children. There is no right to a due process hearing to be initiated by one school district against another. School districts within the State of Missouri comply with these requirements based upon the administrative hearing process required under Chapter 162 RSMo. Although full implementation of this hearing process could be defined as a matter of joint compliance, the complexity of this process requires specific delineation of the compliance responsibilities.
  - a) Implementation: As the subgrantee under IDEA, it is a matter of direct compliance for the special school district to implement the hearing process outlined under state statute. This includes designation of the individual to hold the resolution meeting pursuant to Section 162.961 RSMo. ~~and choosing a hearing panel member pursuant to Section 162.961 RSMo.~~
  - b) Implementation of the Hearing Decision: As a function of the creation of a special school district and as a matter of compliance with the procedural safeguards under IDEA

regarding the provision of special education and related services, both the special and the component district would be bound by any final decision obtained through the administrative hearing process, 34 CFR 300.513. Implementation of a final decision would be a matter of joint compliance between these districts.

- 6) **Separate Compliance with Section 504:** As stated previously, some of the protections of Section 504 go beyond the provision of special education services and cannot be addressed in these provisions. Both the special and component districts must, as a matter of separate compliance, maintain policies and procedures that address those requirements of Section 504 that do not relate to the provision of special education services.
- 7) **Maintenance of Placement:** A major area of joint compliance for the special and component districts will be implementation of the requirements as to the student's status during administrative or judicial proceedings 34 CFR 300.518. Maintenance of the, placement for the student with a disability, whether in an instructional setting provided by the special district or the component district, will be required unless there is an agreement of the parties otherwise. Without such agreement, the placement can only be changed by a final decision of a hearing panel, hearing officer, or by order by a court of competent jurisdiction. This would include, but not be limited to, implementation of disciplinary procedures that would constitute a significant change in the placement for the student.
- 8) **Surrogate Parents:** Sections 162.997-162.999 RSMo. authorize the appointment of surrogate parents when the parents or guardian of the student are not known or unavailable to act on behalf of a students with a disability as required pursuant to IDEA requirements 34 CFR 300.519. The responsibility for the surrogate parent program is a joint compliance. While the SSD has the primary responsibility to notify the Department of a student that is in need of a surrogate parent, providing the basic notice requirements and evaluating the surrogate performance, the component districts must assist SSD in sharing information to assist them in making a determination of need. The component districts should also assist the SSD in the recruitment of individuals to be trained as Surrogate parents. Component districts must also assist with the implementation of the program by affording the surrogate parents the same rights as other parents.

#### E. Regulation IV, Least Restrictive Environment

The special school district and each component district share responsibility for assuring that students with disabilities will be educated, to the maximum extent appropriate, with their nondisabled peers.

- 1) Continuum of Alternative Placements: IDEA requires that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled and that the removal occur only when the nature or the severity of the disability is such that education in the regular classes cannot be achieved satisfactorily with the use of supplementary aids and services. Each special and component district shall, as a matter of joint compliance, ensure that alternative placements are available to meet the needs of students with disabilities for special education and related services 34 CFR 300.115. This includes the requirement that for every student with a disability:
  - a) Consideration is made, on an annual basis, of placement in the general education environment with appropriate supplementary aids and services, modifications or supports;
  - b) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the student or on other students or on the quality of services which he or she needs; and,
  - c) Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school which he or she would attend if nondisabled 34 CFR 300.116(c).
  
- 2) Allocation of Instructional Resources: The special school district and each component district shall, as a matter of joint compliance, adopt those policies and practices needed to assure allocation of instructional resources sufficient to provide appropriate special education and related services. These assurances shall:
  - a) Address allocation of classroom instructional space.
  - b) Address allocation of space for the provision of related services.
  - c) Address the availability and provision of instructional materials to support the general education curriculum, including: current textbooks, teacher manuals and supplements, instructional technology (including hardware and software), and other materials that are routinely designated for the use of nondisabled students. Instructional technology (including hardware, software, and multimedia) shall be accessible to students with disabilities either directly by features incorporated within the technology or by compatibility with add-on components.
  - d) Address the access of special education teachers to instructional supports generally available to all teaching staff (e.g., duplicating services, computer technology, library/media resources, etc.).

The amount of instructional space provided by each component district should be proportionate to the number of students with

disabilities identified as residents of the component district; students with disabilities served by the component district pursuant to the plan for voluntary desegregation for St. Louis County; and, students with disabilities who otherwise attend a private, parochial, parish or home school. Classrooms for students with low incidence disabilities may be strategically located in certain districts and students from any component district may attend.

- 3) Comparable Facilities: Each special and component district shall ensure that the facilities, provided to students with disabilities are comparable to those available to nondisabled students within that building and/or district 34 CFR 104.34 (Section 504).
- 4) Comparable Services and Activities: In the provision of nonacademic and extracurricular services and activities, the special and component districts shall ensure, as a matter of joint compliance, that each otherwise qualified student with a disability participates with non disabled students in those services and activities to the maximum extent appropriate and ensures 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 34 CFR 300.117 (IDEA) and 34 CFR 104.27 (Section 504).
- 5) Relocation of Instructional Space: Should space requirements within the component district require the relocation of space, the component district shall ensure that these changes are made no more frequently than the relocation of space for general education student services. The changes in the location of space for special education services from one building to another by component districts shall follow the same procedures the component district would follow in designating the location of its own space for instructional purposes 34 CFR 104.4(a) (Section 504).

#### F. Regulation VIII, Private Schools

It is a matter of joint compliance for the special and component districts to adopt appropriate procedures and practices to allow participation of private school students as previously defined in Regulation VIII of this State Plan.

#### G. Regulation VII, Local Compliance Plan

Districts are required by the Missouri School Improvement Program (MSIP) Standards to develop a professional development (PD) plan. Implementation of the PD requirements in a special school district is a joint responsibility of the special school district and the component school districts.

- 1) Needs Assessment: Each component district is responsible for collecting and sharing the needs assessment information collected by their Professional Development Committee (PDC) as it relates to students with disabilities. They are also responsible for their participation in appropriate professional development offered by the special district. Such participation shall be sufficient to properly assess and remediate training needs.
- 2) Staff Participation: Each component district is responsible to have policies and procedures in place which direct their participation in activities developed by special school district to conduct a thorough needs assessment relating to personnel development needs of general education personnel. In addition, each component district is responsible to have policies and procedures in place that specify the expectations of their general education personnel to participate in professional development activities developed by the special district and the component districts. Needs assessment data from component district staff may be obtained through sampling techniques. In addition, participation in in-service training by staff from component and special districts should be scheduled to reflect the needs of the staff as determined through the needs assessment process.
- 3) Professional Plan Requirements: The special school district's professional development plan shall include a description of the process used by the special school district to coordinate with the component districts' professional development plans. The special school district should include in their plan professional development activities for administrators (including superintendents and principals), general and special education teachers, related services personnel and paraprofessionals. The special school district should include topics identified by the component districts' needs assessments such as, but not limited to:
  - a) Teamwork;
  - b) Team training on curriculum modifications;
  - c) IDEA regulations;
  - d) Adaptations and modifications of curriculum;
  - e) Screening requirements;
  - f) Instructional strategies;
  - g) Inclusionary strategies/practices; and, General curriculum adopted by component and special districts.

#### **4. ASSURANCE OF COMPLIANCE**

Each special district and the component districts of which it is comprised shall submit those assurances mandated by the requirements of the State Plan, as amended by this regulation, in the form of a local compliance plan or through a jointly ratified addendum to that plan.

- A. Special District Compliance Plan: Those issues determined to be areas of direct compliance shall continue to be addressed in the local compliance plan submitted by the special school district for approval by the Department of Elementary and Secondary Education.
- B. General Assurance Document: Assurances as to areas of joint and separate compliance that are not contained in the special district compliance plan shall be addressed through joint ratification of a general assurance to the special district compliance plan. This general assurance document must be submitted for approval to the Department of Elementary and Secondary Education, Office of Special Education.
- C. Agency Ratification: Joint adoption of any compliance plan or general assurance document by any participating special or component district shall be reflected in board resolutions for that participating district and the signature of the district's chief administrative officer.