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 be 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 exits 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.