

## **REGULATION IV: FAPE/IEP/LRE**

### **A. FREE APPROPRIATE PUBLIC EDUCATION**

It is the policy of the State of Missouri that all children with disabilities ages three (3) to twenty-one (21) years, as prescribed by Missouri statutes and residing in the state, have a right to a free appropriate public education (FAPE), including children with disabilities who have been suspended or expelled from school.

The term "students with disabilities" as used in this document includes all students defined as "handicapped" and "severely handicapped" in accordance with 162.675(1) and (3) RSMo and the Individuals with Disabilities Education Act (IDEA). Definitions of each disabling condition are found in Regulation III of this document.

A free appropriate public education (FAPE) is defined to include regular and special education and related services which:

- (1) Are provided at public expense, under public supervision and direction, and without charge to the parent;
- (2) Meet the educational standards of the State Education Agency pertaining to the education of students with disabilities;
- (3) Includes preschool, elementary school, and secondary school education; and,
- (4) Are provided in conformity with the individualized education program (IEP).

### **FAPE FOR CHILDREN BEGINS AT AGE THREE (3)**

The State of Missouri ensures that FAPE is available to each eligible child residing in the state no later than the child's third birthday. An IEP must be in effect by the child's third birth date. If the child's third birth date occurs during the summer, the child's IEP Team shall determine the date when the services under the IEP will begin. This State Plan and the Part C State Plan outline procedures that both the Part B and Part C systems must complete to assure a smooth transition for children eligible for the Part C program and eligible for Part B services to receive services at age three (3).

### **FAPE FOR STUDENTS SUSPENDED OR EXPELLED FROM SCHOOL**

A public agency is not required to provide services to a student with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year if services are not provided to a student without disabilities who has been similarly removed.

In the case of a student with a disability who has been removed from the provision of special education and related services, including maintaining the student's special education placement,

for more than ten (10) school days in a school year the public agency, for the remainder of the removals must:

- (1) Provide services to the extent necessary to enable the student to continue to progress in the general curriculum, although in another setting, and to progress toward achieving the goals in the student's IEP if the removal is:
  - a. Under the school personnel's authority to remove for not more than ten (10) consecutive school days as long as that removal does not constitute a change of placement, or
  - b. For behavior that is not a manifestation of the student's disability and results in a disciplinary change of placement.

### **CHILDREN ADVANCING FROM GRADE TO GRADE**

The State of Missouri ensures that FAPE is available to any individual student with a disability who needs special education and related services, even though the student has not failed or been retained in a course or grade, and is advancing from grade to grade. The determination that such a student is eligible for services must be made on an individual basis by the group of individuals within the student's public agency that is responsible for making those determinations.

### **EXCEPTIONS TO FAPE**

Public agencies in Missouri are not required to provide FAPE to the following children and youth:

- (1) Youth with disabilities who reach the age of twenty-one (21).
- (2) Students who have graduated from high school with a regular high school diploma. The term, regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate of attendance or a High School Equivalency (HSE) certificate. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring prior written notice in accordance with 34 CFR 300.503.
- (3) Children whose parent has refused to consent to the receipt of special education and related services or has failed to respond to a request to provide such consent.
- (4) Parentally placed private school children with disabilities.
- (5) Children with disabilities who receive early intervention services under Part C of the Act.

### **CONTINUING REQUIREMENT FOR FAPE**

Students who have participated in a graduation ceremony or who have obtained a High School Equivalency (HSE) certificate, but have not been awarded a regular high school diploma, continue to be eligible to receive FAPE if they are under twenty-one (21) years of age.

## **AGENCY RESPONSIBLE FOR FAPE**

The public agency or special school district in which a student with a disability resides is responsible for implementation of FAPE. Students with disabilities or severe disabilities who are admitted to programs and facilities of the Department of Mental Health or whose domicile is in one district, but actually reside in another district as a result of a placement arranged by or approved by the Department of Mental Health, the Department of Social Services, or a court of competent jurisdiction shall be provided special education and related services in the district where the student actually resides.

The Department of Mental Health, the Department of Social Services, or a court of competent jurisdiction may provide or procure special education and related services for such students.

The Department of Mental Health shall provide special education and related services for students with disabilities, ages three (3) to twenty-one (21), whose domicile is in one school district, but actually reside in another school district if said student has been determined by the Department of Mental Health to be dangerous to himself/herself or others or is determined to be medically fragile.

The Department of Corrections shall provide special education and related services to those youth who are determined eligible for special education services at the time of their admittance to the correctional system.

The following requirements do not apply to those students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

- (1) The requirement to participate in State and district assessments, and
- (2) The requirement relating to transition planning and transition services if their eligibility for Part B services will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

The IEP Team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the Department of Corrections has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements relating to LRE do not apply.

The Department of Social Services, Division of Youth Services (DYS) shall provide special education and related services or arrange for such services with other agencies and schools where DYS releases such students. Students and youth with disabilities who have been assigned to programs by a court and meet eligibility will continue to receive services by said program.

Listed below are the statutes of the State of Missouri which provide the legal basis and source Missouri's policy relating to FAPE.

- (1) Section 162.670, RSMo
- (2) Section 162.675, RSMo

- (3) Section 162.680, RSMo
- (4) Section 217.355(4), RSMo
- (5) Section 162.700(1), RSMo
- (6) Section 219.021, RSMo
- (7) Article IV, Section 37(a), Missouri Constitution

## **B. METHODS OF ENSURING SERVICES (34 CFR 300.154)**

### **ESTABLISHING RESPONSIBILITY FOR SERVICES**

The Assistant Commissioner of Special Education for DESE ensures that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency and DESE, 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:

- (1) 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);
- (2) Conditions and Terms of Reimbursement: The conditions, terms, and procedures under which the responsible agency must be reimbursed by other agencies;
- (3) 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,
- (4) 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 public agency (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The public agency or State agency may then claim reimbursement for the services from the 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.

## **C. INDIVIDUALIZED EDUCATION PROGRAM**

### **DEFINITION OF IEP (34 CFR 300.320)**

The term Individualized Education Program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting and must include a:

- (1) Statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities, and for children with disabilities who take alternative assessments aligned to alternative achievement standards, a description of benchmarks or short-term objectives;
- (2) Statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities, and meeting each of the child's other educational needs that result from the child's disability. Measurable goals are specific to a particular skill or behavior to be achieved, measurable/quantifiable, attainable, results oriented, time-bound, and can reasonably be accomplished within the duration of the IEP. For children with disabilities who take alternative assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (3) Statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable to be provided to the child or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to:
  - a. Advance appropriately toward attaining the annual goals;
  - b. Be involved in and make progress in the general education curriculum;
  - c. Participate in extracurricular and other nonacademic activities; and,

- d. Be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph.

This statement must specify whether the student needs transportation as a related service. If the IEP Team determines transportation is not necessary as a related service, the IEP document must reflect this.

- (1) Statement of the child's participation in physical education;
- (2) Explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in activities described in letter C above;
- (3) Statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments. If the IEP Team determines that the child shall take an alternative assessment on a particular State or district-wide assessment of student achievement, a statement of why the child cannot participate in the regular assessment, and why the particular alternate assessment is appropriate for the child;
- (4) Projected date for the beginning of the services and modifications described in letter C above, and the anticipated frequency, location, and duration of those services and modifications;
- (5) Description of how the child's progress toward the annual goals described in letter B above will be measured, and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (6) Listing of the individuals who attended the IEP meeting and their role (indicates attendance only not necessarily agreement with the IEP);
- (7) Statement indicating the child's eligibility or ineligibility for extended school year services; and,
- (8) Statement of the placement considerations and decision.

As appropriate, the IEP must also include:

### **TRANSITION SERVICES**

- (1) Beginning not later than the first IEP to be in effect when the child is sixteen (16), or younger if determined appropriate by the IEP team, and updated annually thereafter appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; the transition services (including courses of study) needed to assist the child in reaching those goals, and

- (2) Beginning not later than one year before the student reaches age eighteen (18), a statement that the child has been informed of his or her rights under Part B of IDEA and that those rights will transfer to the student upon reaching the age of majority.

### **FOR CHILDREN WHO ARE BLIND OR VISUALLY IMPAIRED**

- (1) The specific goals and objectives which specify the competencies in reading and writing Braille to be taught during the school year;
- (2) Means by which Braille will be implemented through integration with normal classroom activities;
- (3) The date on which Braille instruction will commence;
- (4) The level of competency in Braille reading and writing expected to be achieved by the end of the period covered in the IEP;
- (5) The duration of each session;
- (6) If the IEP Team determines that Braille instruction is not appropriate for a child with blindness or visual impairments, the basis for that determination shall be documented on the IEP; and,
- (7) That a referral to Rehabilitation Services for the Blind has been discussed and the decision of the parent regarding the referral.

### **SPECIAL CONSIDERATIONS**

In developing each child's IEP, the IEP Team must consider:

- (1) The strengths of the child;
- (2) The concerns of the parents for enhancing the education of their child;
- (3) The results of the initial or most recent evaluation of the child; and,
- (4) The academic, developmental, and functional needs of the child.

The IEP Team must also:

- (1) In the case of a child whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior (for children for whom a Behavior Intervention Plan is developed, the Plan must be included in the IEP);

- (2) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- (3) Consider the communication needs of the child and, in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and,
- (4) Consider whether the child requires assistive technology devices and services.

Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in this section, and the IEP Team to include information under one component of a child's IEP that is already contained under another component of such IEP.

**IEP TEAM (34 CFR 300.321)**

Public agencies shall ensure that the IEP Team for each child with a disability includes:

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is or may be participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who is qualified to provide or supervise the provisions of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency and able to commit the resources of the agency;
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in B through D of this paragraph;
- (6) At the discretion of the parent or the agency, and with parent written consent, if appropriate, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and,
- (7) Whenever appropriate, the child with a disability.

## **TRANSITION SERVICES PARTICIPANTS**

The public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing transition services, the public agency also shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

## **DETERMINATION OF KNOWLEDGE AND EXPERTISE**

The determination of knowledge or special expertise of any individual shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team. The parents of a child who has reached the age of eighteen (18) may be invited to participate in the IEP Team meeting by either the child or the public agency.

## **DESIGNATING A PUBLIC AGENCY REPRESENTATIVE**

A public agency may designate another public agency member of the IEP Team to also serve as the agency representative (IEP Team participant D above) if they satisfy the criteria specified for that role.

## **IEP TEAM ATTENDANCE**

A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, in writing, and the public agency consent to the excusal, and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

## **INITIAL IEP TEAM MEETING FOR A CHILD UNDER PART C**

In the case of a child who was previously served under Part C (First Steps), an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representative of the Part C system to assist with the smooth transition of services.

## **PARENT PARTICIPATION (34 CFR 300. 322)**

Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place.

## **INFORMATION PROVIDED TO PARENTS**

The notice to parents must indicate the purpose, time, and location of the meeting; who will be in attendance; and inform the parent that the parent and the district can invite individuals to the meeting that they believe have knowledge or special expertise regarding their child. The determination as to whether an individual has knowledge or special expertise is made by the parent or public agency who invited the individual to be a member of the IEP Team. In the case of an initial IEP Team meeting for a child who has participated in Part C (First Steps), the notice must inform the parent, that at their request, an invitation to the initial IEP meeting shall be sent to the Part C service coordinator or other representatives of the Part C system.

For a student with a disability beginning not later than the first IEP to be in effect when the child is sixteen (16) or younger, if determined appropriate by the IEP Team, and annually thereafter, the notice must indicate:

- (1) That a purpose of the meeting is the consideration of the postsecondary goals and transition services for the student;
- (2) That the agency will invite the student; and,
- (3) Identify any other agency that will be invited to send a representative.

## **OTHER MEASURES TO ENSURE PARENT PARTICIPATION**

If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 34 CFR 300.328.

## **CONDUCTING AN IEP MEETING WITHOUT A PARENT IN ATTENDANCE**

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must have a record of at least two (2) separate attempts to arrange a mutually agreed on time and place, such as:

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; or,

- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

The second attempt to schedule a meeting with the parent must be a direct contact. A direct contact includes regular or certified mail, phone call, or in person contact.

### **USE OF INTERPRETERS OR OTHER ACTION**

The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

### **PARENT COPY OF THE IEP**

The public agency shall provide the parent a copy of the child's IEP at no cost to the parent.

### **WHEN IEPS MUST BE IN EFFECT (34 CFR 300.323)**

At the beginning of the school year, each public agency shall have an IEP in effect for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part B.

Each public agency shall ensure that a meeting to develop an IEP is conducted within thirty (30) days of a determination that the child needs special education and related services and that the special education and related services are made available to the child in accordance with the IEP as soon as possible following the IEP meeting.

Each public agency must ensure that:

- (1) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation;
- (2) Each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP; and,
- (3) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

### **IN-STATE TRANSFERS**

In the case of a child with a disability who transfers school districts within the same school year, who enrolls in a new public agency, and who had an IEP that was in effect in Missouri, the public agency shall, without delay, provide such child with a free appropriate public education according to the procedures outlined below.

For students with known disabilities who enroll and have a copy of a current evaluation report and IEP the public agency shall place the child, without delay, in the appropriate special education placement and provide FAPE to the student including services comparable to those listed in the IEP until the public agency either accepts the prior IEP or develops and implements a new appropriate IEP.

If the public agency does not agree with the current evaluation report, it must initiate a reevaluation as described in this State Plan. During the time that the reevaluation is being conducted, the agency shall implement the IEP, as written, from the sending agency or develop an IEP until the reevaluation is complete.

For students with suspected disabilities who enroll but do not have copies of the evaluation report and/or IEP, the public agency shall seek information to confirm special education services. Without delay, agency officials shall conduct interviews with officials of the public agency in which the student was enrolled, the student's parent/legal guardian, and, when appropriate, the student and provide such services as can be determined from interviews.

If no evaluation report is obtained, the public agency shall refer the student for comprehensive evaluation and review/revise the IEP, if determined necessary, at the completion of the evaluation.

### **OUT OF STATE TRANSFERS**

For children who transfer from another state, and had an IEP that was in effect in that state, to a Missouri public agency and enroll in a new school within the same school year, the Missouri public agency, in consultation with the parents, must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency) until the new public agency:

- (1) Conducts an initial evaluation, if determined necessary by the new public agency, and
- (2) Develops, adopts, and implements a new IEP (if appropriate).
- (3) When a child's records are not available to the new public agency, the new public agency shall:
  - a. Place the child in regular education, and
  - b. Initiate an initial evaluation, and
  - c. If the child is found eligible, develop and implement an IEP.

### **TRANSMITTAL OF RECORDS**

To facilitate the transition for a child entering a school from another school district in Missouri or from an out-of-state school, the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled and the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

## **REQUIREMENT FOR REGULAR EDUCATION TEACHER**

The regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including the determination of appropriate positive behavioral interventions and supports, and other strategies for the child and supplementary aids and services, program modifications, or supports for school personnel that will be provided for the child, consistent with content of the IEP.

## **AMENDING OR MODIFYING AN IEP WITHOUT A MEETING**

In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP. If changes are made to the child's IEP, the public agency must ensure that the child's IEP Team is informed of those changes.

## **CONSOLIDATION OF IEP TEAM MEETINGS**

To the extent possible, the public agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

## **IEP AMENDMENTS**

Changes to the IEP may be made either by the entire IEP Team at an IEP meeting or by mutual agreement of the parent and public agency (as described above) by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

## **REVIEW AND REVISION OF IEPS**

Each public agency shall ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. The IEP Team must also review and, as appropriate, revise the IEP to address:

- (1) Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
- (2) The results of any reevaluation;
- (3) Information about the child provided to or by the parents;
- (4) The child's anticipated needs; or,
- (5) Other matters.

### **FAILURE TO MEET TRANSITION OBJECTIVES (34 CFR 300.324)**

If a participating agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

Nothing relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

### **ALTERNATIVE MEANS OF MEETING PARTICIPATION (34 CFR 300.328)**

When conducting IEP Team meetings, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation such as video conferences and conference calls.

## **D. LEAST RESTRICTIVE ENVIRONMENT (LRE)**

### **GENERAL LRE REQUIREMENTS (34 CFR 300.114)**

Each public agency shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling, or other removal of children from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

### **CONTINUUM OF ALTERNATIVE PLACEMENTS (34 CFR 300.115)**

Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children ages three (3) to twenty-one (21) with disabilities for special education and related services. The continuum shall include instruction in the regular classes (general education environments), special classes, special schools, home instruction, and instruction in hospitals and institutions. Each public agency must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with general class placement. A child does not have to fail in the less restrictive options on the continuum before the child is placed in a setting that is appropriate to his or her needs.

### **PLACEMENTS (34 CFR 300.116 AND 300.327)**

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that the placement decision is made by the IEP Team that is knowledgeable about the child, the meaning of the evaluation data, and the placement options, and is made in conformity with LRE provisions. The child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home.

Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Each year the public agency, through the IEP process, shall review/revise a child's IEP and subsequently make a placement decision for each student with a disability served by the public agency. The public agency must reach the placement decision from the assumption that a student with a disability should be educated with peers who do not have a disability unless the needs of the student with a disability require other arrangements. The public agency must be able to justify the placement decision in accordance with a two-part inquiry:

- (1) Whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; if not, then,
- (2) Whether the child has been integrated to the maximum extent appropriate.

The following factors shall be considered as a part of the two-part inquiry:

- (1) The curriculum and goals of the regular education class (i.e., factors which document a need for specially designed materials, supplies, or equipment or significant modifications to the regular curriculum which would have an adverse affect on the educational program for other students in the class);
- (2) The sufficiency of the district's efforts to accommodate the child with a disability in the regular class (i.e., description of modifications which have been attempted/resources which have been committed and the student centered results which were observed or a description of the modifications considered but rejected and the basis for the rejection);
- (3) The degree to which the child with a disability will receive educational benefit from regular education (i.e., consideration of the potential positive effects with respect to cognitive, academic, physical, social, or other areas of development);
- (4) The effect the presence of a child with a disability may have on the regular classroom environment and on the education that the other students are receiving (i.e., description of potential harmful effects for the student with a disability or disruptive effects for students without disabilities); and,
- (5) The nature and severity of the child's disability (i.e., factors which support a need for alternative instruction which cannot be achieved in the regular class such as extreme distractibility, diverse learning styles, and inability to engage appropriately with other students in academic or social interactions).

### **NONACADEMIC SETTINGS (34 CFR 300.117)**

Each public agency shall ensure that each child with a disability participates in nonacademic and extracurricular services and activities of the public agency with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. Such services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to individuals with disabilities, employment of students including both employment by the public agency, and assistance in making outside employment available.

### **TECHNICAL ASSISTANCE AND TRAINING ACTIVITIES (34 CFR 300.119)**

The Department of Elementary and Secondary Education (DESE) will conduct the following activities to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the least restrictive environment policy and are provided with technical assistance and training necessary to assist them in this effort:

- (1) Distribution of state and federal laws and regulations pertaining to special education;
- (2) Monitoring of public agencies to determine compliance with the least restrictive environment provisions;
- (3) Training/workshops for public agency personnel provided prior to and following monitoring activities regarding least restrictive environment provisions;
- (4) Technical assistance as may be requested by public agencies relative to the implementation of LRE provisions; and,
- (5) Collaboration with the State Parent Information and Training Center, as requested.

### **MONITORING ACTIVITIES (34 CFR 300.120)**

DESE monitors each public agency, including the requirements for the least restrictive environment through the following procedures:

- (1) An annual review of each public agency's count of children with disabilities and placement data;
- (2) Investigation of any child complaint filed;
- (3) Periodic monitoring of public agencies to determine appropriate implementation of policies and procedures; and,

- (4) Review, approval, and subsequent verification of any corrective actions required of a public agency with respect to violations of least restrictive environment requirements.

The Department will analyze data collected relative to implementation of the LRE requirement at each LEA/public agency. If there is evidence that the LEA/public agency makes placements that are inconsistent with 34 CFR 300.114, the Department:

- (1) Shall review the LEA/public agency's justification for its actions, and
- (2) Shall assist in planning and implementing any necessary corrective action.

Listed below are the statutes of the State of Missouri which provide a legal basis and source for Missouri's policy for the least restrictive environment:

- (1) Section 162.680, RSMo
- (2) Section 167.126, RSMo

## **E. TRANSITION OF CHILDREN FROM PART C SERVICES TO PART B SERVICES 34 CFR 300.124**

The State of Missouri has developed policies and procedures to ensure a smooth and effective transition from Part C (First Steps) services to Part B (Early Childhood Special Education (ECSE)) services at age three for children with disabilities.

### **NOTIFICATION TO LEA FROM PART C**

In Missouri, all children eligible for the Part C program are considered to be potentially eligible for Part B services. The Part C program notifies the LEA in which the child resides in accordance with the Part C State Plan.

Notification includes the following directory information: child's name and birth date and parent's name, address, and telephone number. When the LEA receives complete directory information, this constitutes a referral to Part B.

The Part C program has an opt out policy that allows parents to object to notification to the LEA. If a parent first opts out of notification to the LEA and subsequently requests notification to the LEA, there may be a gap in services if the decision was made less than 90 days from the child's third birthday.

### **TRANSITION CONFERENCE WITH LEA**

The Part C program requires that a transition conference with the LEA be held in accordance with the Part C State Plan. If invited, LEA personnel must participate in the meeting regardless of the time of year in which the meeting occurs. LEA personnel may participate in the meeting through a variety of methods, including in person, phone conference, web conference etc.

## **EVALUATION**

If the LEA suspects the child has a disability, an evaluation is conducted, in accordance with the procedures and timelines in Regulation III of the Part B State Plan, to determine if the child is eligible for Part B services.

## **TIMELINES FOR IEP DEVELOPMENT AND IMPLEMENTATION**

All children found eligible for Part C and who are also found eligible for Part B, including Part C Extension children described below must have an IEP developed by the child's third birthday.

The only exceptions to this requirement are (1) if the child was referred to Part C less than 90 days before the child's third birthday; (2) if the parent does not give parental consent to evaluate the child, which delays an evaluation by the school district and subsequent development of an IEP; or (3) if the parent first opts out of notification to the LEA and subsequently requests notification to the LEA less than 90 days from the child's third birthday, which delays an evaluation by the school district and subsequent development of an IEP.

An invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representative of the Part C system to assist with the smooth transition for a child who previously received Part C services.

An IEP is developed in accordance with Regulation IV of the Part B State Plan. The IEP team must consider the content of the child's Part C Individualized Family Service Plan (IFSP) when developing the IEP.

The obligation to make a free appropriate public education (FAPE) available to each Part C child who is eligible for ECSE begins on the child's third birthday, unless the parent of a child with a summer third birthday chooses Part C Extension instead of FAPE at age three.

## **PART C EXTENSION FOR CHILDREN WITH SUMMER THIRD BIRTHDAYS**

Parents of a child determined eligible for both Part C and Part B, and who has a summer third birthday in accordance with the Part C State Plan, may choose to: (1) continue Part C services until the initiation of the local district's school year following the child's third birthday, or (2) transition to Part B to receive FAPE on the child's third birthday.

Parents who choose to continue Part C services have the right, at any time, for their child with a summer third birthday to receive Part B services instead of Part C services. However, the LEA is not required to provide FAPE under Part B for the period of time a child is receiving services through Part C Extension.

Parents who choose the option to transition to Part B have the right for their child with a summer third birthday to receive FAPE through an IEP upon the child's third birthday. Parents who choose Part B services cannot later choose to return to Part C services once consent for Part B services is obtained and the child has turned three.

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

The hearing procedure described in the General Provisions Section will be used when a public agency is determined to be unwilling or unable to provide a Free Appropriate Public Education (FAPE).

### **FAILURE TO PROVIDE FAPE**

DESE may withhold, in part or whole, and may seek to recover, in part or whole, Federal special education funds when a 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 DESE in a:

- (1) Monitoring report stemming from a monitoring for compliance with IDEA, Part B; or,
- (2) Child complaint decision in which the agency has been found out of compliance; or,
- (3) 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 DESE. However, if DESE determines it is unreasonable to further extend, or if DESE attempted to provide technical assistance to the agency to accomplish the corrective action to no avail, DESE may determine the agency is unable or unwilling to provide FAPE.

DESE will determine the amount of funding to be withheld or recovered on a case-by-case basis. DESE will determine the amount deemed necessary to enforce the decisions rendered in the actions described above. DESE will notify the public agency 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 I of this State Plan, for LEA eligibility, is incorporated herein by reference.