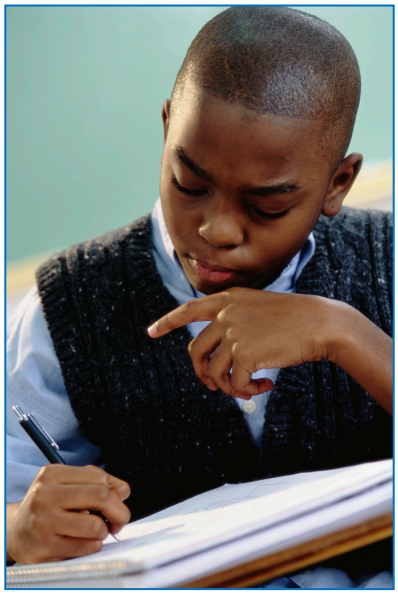

Missouri State Plan for Special Education

Regulations Implementing Part B of the Individuals with Disabilities Education Act

REVISED
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Missouri Department of Elementary & Secondary Education
Dr. Chris L. Nicastro
Commissioner of Education

MISSOURI STATE BOARD OF EDUCATION
SPECIAL EDUCATION REGULATIONS

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I. GENERAL PROVISIONS

1. APPLICABILITY

These regulations are applicable to all public agencies within the State of Missouri responsible for providing special education and related services for students with disabilities. This includes state agencies, local educational agencies, charter schools, and state and local juvenile and adult correctional facilities. Any exceptions for specific public agencies are noted in relevant sections.

2. AMENDMENTS

Any proposed changes in these regulations shall be in accordance with the provisions of the Administrative Procedures Act.

3. DEFINITIONS

The terms defined below are found throughout these regulations. All of the following definitions are cited in the Individuals with Disabilities Education Act (IDEA) unless otherwise noted.

Act
Act means the Individuals with Disabilities Education Act, as amended.

Agree or Agreement
The terms "agree" or "agreement" refer to an understanding between the parent and the public agency about a particular question or issue, which may be in writing, depending on the context.

Assistive technology device
Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such device.

Assistive technology service
Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

The term includes:

A. the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
B. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

C. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
D. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
E. training or technical assistance for a child with a disability, or if appropriate, that child's family; and,
F. training or technical assistance for professionals (including individuals providing education or rehabilitation service), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of children with disabilities.

Charter school
Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary School Act of 1965.

Child with a disability
The Individuals with Disabilities Education Act (IDEA) defines students with disabilities as those children, ages three (3) to twenty-one (21), who have been properly evaluated as having Mental Retardation, Hearing Impairments and Deafness, Speech or Language Impairments, Visual Impairments including Blindness, Emotional Disturbance, Orthopedic Impairments, Autism, Traumatic Brain Injury, Other Health Impaired, a Specific Learning Disability, Deaf Blindness, or Multiple Disabilities and, who because of that disability, require special education and related services. As allowed under 34 CFR 300.87 implementing IDEA, the State of Missouri also defines a child with a disability to include ages three (3) through five (5) who have been properly identified as a young child with a developmental delay.

Consent
Consent means that the parent:

A. has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication;
B. understands and agrees, in writing, to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and,
C. the parent understands that the consent is voluntary on the part of the parent and may be revoked at any time and, if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Core academic subjects
Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Day; business day; school day
Day means calendar day unless otherwise indicated as business day or school day. Business day means Monday through Friday, except for Federal and State holidays. School day means any day, including a partial day that children are in attendance at school for instructional purposes.

Elementary school
Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education (Kindergarten through eighth grade).

Evaluation
Evaluation means that procedures are used to determine whether a student is disabled and provide information for use by the IEP team to determine the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class unless, before administration of that test or evaluation, consent is required of parents of all children.

Excess costs
Excess costs means those costs that are in excess of the average annual per-student expenditure in a local education agency (LEA) during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting amounts received (1) under Part B of the Act; (2) under Part A of title I of the ESEA; and, (3) under Parts A and B of title III of the ESEA and, any State or local funds expended for programs that would qualify for assistance under any of the parts described above, but excluding any amounts for capital outlay or debt service.

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

A. are provided at public expense, under public supervision and direction, and without charge to the parent;
B. meet the educational standards of the State Education Agency pertaining to the education of students with disabilities;
C. includes preschool, elementary school, and secondary school education; and,
D. are provided in conformity with the individualized education program (IEP).

Highly qualified special education teachers
For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA. Highly qualified requires that the teacher:

A. has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification or passed the State

special education teacher licensing examination) and holds a license to teach in the state as a special education teacher; and,

B. has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and,
C. holds at least a bachelor's degree; and,
D. demonstrates competence in all of the core academic subjects in which the special education teacher (who is not new to the teaching profession) is the teacher of record in the same manner as is required for a teacher who is not new to the teaching profession, which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or,
E. in the case of a new special education teacher who teaches multiple subjects and is highly qualified in mathematics, language arts, or science, demonstrates, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher, under 34 CFR 200.56(c) which may include a single HOUSSE covering multiple subjects.

If a teacher is participating in an alternative route to special education certification, the teacher is considered to be highly qualified if that teacher:

A. receives high quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction before and while teaching;
B. participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
C. assumes functions as a teacher only for a specified period of time not to exceed three years; and,
D. demonstrates satisfactory progress toward full certification.

The state, through its certification and licensure process, must ensure these provisions are met.

A special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards is considered highly qualified if the teacher:

A. meets the requirements for any elementary, middle, or secondary school teacher who is new or not new to the teaching profession or,
B. meets requirements of an elementary school teacher, or in the case of instruction above the elementary level, meets the requirements as applied to the elementary teacher in ESEA and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards as determined by the State.

A fully certificated regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

These requirements do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally placed private school children.

Homeless children
Homeless children has the meaning given the term homeless children and youths in section 725(42 U.S.C. 11434a) of the McKinney-Vento-Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

Individualized education program (IEP)
Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR 300.320 through 300.324.

Individualized education program (IEP) team
Individualized education program team or IEP team means a group of individuals described in 34 CFR 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

Limited English proficient
Limited English proficient means an individual who is aged 3 through 21; who is enrolled or preparing to enroll in an elementary or secondary school; who was not born in the United States or whose native language is a language other than English; who is a Native American or Alaska Native or a native resident of the outlying areas and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency or who is migratory, whose native language is a language other than English and who comes from an environment where a language other than English is dominant; and, whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the State's proficient level of achievement on State assessments and to successfully achieve in classrooms where the language of instruction is English.

Local educational agency (LEA)
A public board of education or other public authority legally constituted in Missouri for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or a combination of school districts or counties recognized by the State as an administrative agency for its public elementary schools or secondary schools.

Native language
Native language, when used with respect to an individual who is limited English proficient, means the following:

The language normally used by that individual or, in the case of a child, the language normally used by the parents of the child.

In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For an individual with deafness or blindness or, for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Parent
The term "parent" means a biological, adoptive, or foster parent of a child or a guardian generally authorized to make educational decisions for the child (but not the State if the child is a ward of the State), a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; an individual who is legally responsible for the child's welfare; or, a surrogate parent who has been appointed.

Parent training and information center
Parent training and information center means a center assisted under sections 671 or 672 of the Act.

Personally identifiable
Personally identifiable means information that contains:

A. the name of the child, the child's parents, or other family member;
B. the address of the child;
C. a personal identifier, such as the child's social security number or student number; or,
D. a list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

Private or parochial school
Any nonpublic not for profit private school, home school, or religious/parochial school.

Public agency
Public agency includes the state education agency (SEA), other state agencies, LEAs, public charter schools that are not otherwise included as LEAs and are not a school of an LEA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

Related services
Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic

recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services, school nurse services, social work services in schools, and parent counseling and training.

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g. mapping), maintenance of that device, or the replacement of that device.

However, nothing limits the right of a child with a surgically implanted device (e.g. cochlear implant) to receive related services (as listed above), that are determined by the IEP team to be necessary for the child to receive FAPE, or limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school or prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly as required in 34 CFR 300.113(b).

Individual related services are defined as follows:

A. Audiology includes identification of children with hearing loss, determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of children, parents, and teachers regarding hearing loss; and, determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
B. Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
C. Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
D. Interpreting services includes the following, when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services; sign language transliteration and interpreting services; and, transcription services, such as communication access real-time translation (CART), C-Print and TypeWell, and special interpreting services for children who are deaf-blind.
E. Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
F. Occupational therapy means services provided by a qualified occupational therapist; and includes improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation, improving ability to perform tasks for independent functioning if functions are impaired or lost, and preventing, through early

intervention, initial or further impairment, or loss of function. In Missouri, this definition includes licensed occupational therapist assistants practicing under the supervision of a licensed occupational therapist.

G. Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching students the following, as appropriate:

1) spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
2) to use long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
3) to understand and use remaining vision and distance low vision aids; and,
4) other concepts, techniques, and tools.

H. Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and, helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

I. Physical therapy means services provided by a qualified physical therapist. In Missouri, this definition includes physical therapy assistants practicing under the supervision of a licensed physical therapist.

J. Psychological services includes administering psychological and educational tests and other assessment procedures, interpreting assessment results, obtaining, integrating, and interpreting information about child behavior and conditions relating to learning, consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations, planning and managing a program of psychological services, including psychological counseling for children and parents, and assisting in developing positive behavioral intervention strategies.

K. Recreation includes assessment of leisure function, therapeutic recreation services; recreation programs in schools and community agencies; and, leisure education.

L. Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

M. School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

N. Social work services in schools includes preparing a social or developmental history on a child with a disability, group and individual counseling with the child and

family, working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school, mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program, and assisting in developing positive behavioral intervention strategies.

O. Speech-language pathology services includes identification of children with speech or language impairments, diagnosis and appraisal of specific speech or language impairments, referral for medical or other professional attention necessary for the habilitation of speech or language impairments, provision of speech and language services for the habilitation or prevention of communicative impairments, and counseling and guidance of parents, children, and teachers regarding speech and language impairments.
P. Transportation includes travel to and from school and between schools; travel in and around school buildings; and, specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Scientifically based research

Scientifically based research means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs. It includes research that:

A. employs systematic, empirical methods that draw on observation or experiment;
B. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
C. relies on measurements or observational method that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
D. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assigned experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
E. ensures experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and,
F. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparable rigorous, objective, and scientific review.

Secondary school

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education between the grades of 9 and 12.

Secretary

Secretary means the Secretary of Education.

Services plan
Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR 300.132 and is developed and implemented in accordance with 34 CFR 300.137 through 300.139.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes each of the following, if the services otherwise meet the definition of specially designed instruction:

A. speech-language pathology services or any other related service if the service is considered special education rather than a related service under State standards;
B. travel training; and,
C. vocational education.

"No cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

"Physical education" means the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports), and includes special physical education, adapted physical education, movement education, and motor development.

"Specially designed instruction" means adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live, and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

"Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

State educational agency
State educational agency or SEA means the State Board of Education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools.

Supplementary aids and services
Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children.

Transition services
Transition services means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's strengths, preferences, and interests, and shall include instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education if provided as specially designed instruction, or related services if required to assist a student with a disability to benefit from special education.

Universal design
Universal design has the meaning given the term in Section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

Ward of the State
Ward of the State means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency, except that the term does not include a foster child who has a foster parent who meets the definition of a parent.

II. CONFIDENTIALITY

1. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

It is the policy of the Missouri Department of Elementary and Secondary Education that all information collected and maintained by LEAs/public agencies responsible for the provision of special education and related services for children with disabilities will be protected to ensure the confidentiality of all such information consistent with the specific procedures established in this section.

Definitions

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Educational records" means records maintained by a public agency responsible for the provision of general education or special education and related services that pertain to the special education and related services provided to a student with a disability. The term includes medical, psychological, and educational reports but does not include records of instructional, educational, ancillary, supervisory, and administrative personnel which are the sole possession of the maker and which are not accessible or revealed to any other personnel, except another person who performs on a temporary basis the duties of the individual who made the record. The term includes test instruments or protocols/score sheets and a record of the test results. Copies of test protocols will only be provided if the failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the educational records. The term does not include certain records maintained by a law enforcement unit of a public agency or records maintained about a student with a disability as an employee of the public agency.

"Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information or from which information is obtained under Part B of IDEA.

Notice to Parents (34 CFR 300.612)

The Department of Elementary and Secondary Education requires each LEA/public agency to give adequate notice to fully inform parents about LEA's/public agency's responsibility to protect the confidentiality of any personally identifiable information collected, used, or maintained for IDEA purposes. The notice will be provided in the native language of the parent. The notice shall include:

A. the different languages the notice is available in;
B. a description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the LEA/public agency intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

C. a summary of the policies and procedures which the LEA/public agency must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and,
D. a description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974, and implementing regulations.

Before any major identification, location, or evaluation activity is initiated, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the LEA of the activity.

Access Rights (34 CFR 300.613)

Each local school district/public agency shall permit parents to inspect and review any educational records relating to their children that are collected, maintained, and used by the local school district/public agency regarding their student without unnecessary delay and before any meeting regarding an IEP, hearing relating to the identification, evaluation, placement or provision of FAPE, or resolution session and, in no case, more than 45 days after the request has been made. The right to review and inspect records includes:

A. the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
B. the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and,
C. the right to have a representative of the parent inspect and review the records.

An agency may presume that the parent has authority to inspect and review records relating to his/her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

Record of Access (34 CFR 300.614)

Each participating agency shall maintain a record of all parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency). The record will include:

A. name(s) of party;
B. the date access was given; and,
C. purpose for which the party is authorized to use the records.

The record of access shall be maintained in each file of each pupil that contains confidential information. The agency is required to maintain a list of those employees who have access to educational records and maintain the list in a central location. Only

employees of the agency who have a legitimate need to access education records shall be included on the list.

Records of More Than One Student (34 CFR 300.615)

If any education record includes information on more than one (1) child, the agency shall allow parents to inspect and review only the information relating to their child or to be informed of the specific information.

List of Types and Location of Information (34 CFR 300. 616)

Each participating agency shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency.

Fees (34 CFR 300.617)

Each participating agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information under this part.

Amendment of Records at Parent Request and Hearing Rights (34 CFR 300.618)

A parent who believes that information in the educational records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

The school district/public agency shall reach a decision regarding the request within a reasonable period of time, but no more than 45 calendar days after receipt of the request. If the agency agrees to the requested amendment, the records in question shall be amended as agreed to. If the agency denies the request for an amendment, the agency shall:

A. inform the parent of the denial and advise the parent of their right to a hearing; and,
B. advise the parent/guardian that they have a right to request a hearing, before an official of the district or agency, if they desire to further challenge the data contained within the student's file. This hearing shall be held in conformity with the requirements outlined in Section 99.22 of the Family Educational Rights and Privacy Act regulations.

If, as a result of the hearing, the agency decides the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the school district or public agency shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the agency shall inform the child's parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reason for disagreeing with the decisions of the agency. Any explanation placed in the records of the child must be maintained by the agency as a part of the child's records as long as the record or contested portion is maintained by the agency. If the record of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

Consent (34 CFR 300.622)

Parental consent must be obtained before personally identifiable information is disclosed to parties, unless the information is contained in the educational records, and the disclosure is authorized without parental consent under 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

Parental consent or the consent of an eligible child who has reached the age of 18 must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with an IEP.

If a child is enrolled or going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

If parent's failure to give consent would constitute neglect as defined in the Child Abuse and Neglect Laws of Missouri, Section 210.110 RSMo, a report should be made by the LEA to the proper authorities.

Safeguards (34 CFR 300.623)

Each participating agency shall protect the confidentiality of personally identifiable information of collection, storage, disclosure, and destruction stages. To assure protection, the district/agency shall:

A. appoint one (1) official at each participating agency to be responsible for ensuring the confidentiality of any personally identifiable information;
B. provide training or information to all persons collecting or using personally identifiable information in the state's policies and procedures governing such information; and,
C. maintain, for public inspection, a current list of the names and positions of those employees within the public agency who may have access to personally identifiable data.

Destruction of Information (34 CFR 300.624)

The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parent subject to the federal requirement that records be maintained for a minimum of three (3) years from the date the child no longer receives special education and related services. However, a permanent record containing the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be retained without time limitation.

Children's Rights (34 CFR 300.625)

All rights of privacy and educational records indicated herein with regard to parents shall pass to the child upon reaching age 18, or otherwise emancipated under state law, except in the case of a child with a disability who is legally determined to be incompetent to make such decisions for himself/herself and for whom legal guardianship or conservatorship is required beyond the age of 18. In those instances, the legally established guardian or conservator shall maintain the rights to privacy as outlined in this section.

Parents of children who reach age 18 but who are still dependents, as defined in Section 152 of the Internal Revenue Service Code of 1954, may inspect and review the child's educational record at the discretion of the public agency.

III. IDENTIFICATION AND EVALUATION

1. CHILD FIND

It is the policy of the State of Missouri that all children with disabilities, residing in the state, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated. This requirement applies to highly mobile children with disabilities (such as migrant and homeless children) and children who are suspected of being a child with a disability and in need of special education even though they are advancing from grade to grade. The State of Missouri also ensures that it has procedures in place to determine which children are receiving needed special education and related services.

The Department of Elementary and Secondary Education is the agency responsible for coordinating the planning and implementation of the child find activities for children birth to twenty-one (21).

The following state agencies participate in the planning and implementation of child find activities.

Department of Mental Health assists in identification and location of infants, toddlers, and children with suspected disabilities through its Regional Centers for the Developmentally Disabled, State Habilitation Centers, and State Hospitals. Referrals are made to local school districts and the Part C system.

Department of Health assists in identification and location of infants, toddlers, and children with suspected disabilities through its Title V and Head Injury Programs. Referrals are made to local school districts and to the Part C system.

Department of Social Services

A. The Children's Division assists in the identification of infants, toddlers, and children with suspected disabilities. Referrals are made to local school districts and to the Part C system.
B. Rehabilitation Services for the Blind identifies, locates, and refers infants, toddlers, and children who have visual problems. Referrals are made to local school districts or to the Part C system.
C. The Division of Youth Services identifies students with disabilities who are placed within the care and custody of the Missouri Division of Youth Services. Special education services are provided for these students within the Division's facilities.

Department of Corrections provides for the identification of and special education services to inmates with disabilities under age twenty-one (21) years, who are placed within its jurisdiction.

Missouri Department of Elementary and Secondary Education requires local school districts to annually assist in Child Find by conducting the following activities prior to November 1 each year:

A. Publishing one (1) public notice in local newspapers or on the school district website that describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21). The notice must also describe the LEA's responsibility to refer infants and toddlers suspected of having a disability to the state Part C early intervention system.
B. Airing one (1) public notice on local radio and/or television stations, during general viewing/listening hours, which describe the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21).
C. Placing posters/notices in all administrative offices of each building operated by the school district that describes the district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21).
D. Providing written information through general distribution to the parents/guardians of students enrolled in the school district which describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21).

Local school districts are also required to conduct Child Find in private schools as outlined in Regulation VIII.3.

The Department of Elementary and Secondary Education will monitor the implementation of the Child Find requirements. Such reviews will include:

A. approval of each local district's Compliance Plan documentation, and
B. a review of data from the annual child count reported by each district.

All data collected and used to meet Child Find requirements is subject to confidentiality requirements of 34 CFR 300.610 - 300.627.

LISTED BELOW IS THE STATUTE OF THE STATE OF MISSOURI WHICH PROVIDES THE LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY FOR CHILD FIND:

(Section 162.700, RSMo)

2. DEFINITIONS AND CRITERIA FOR DETERMINATION OF ELIGIBILITY

The Individuals with Disabilities Education Act (IDEA) defines students with disabilities as those children, ages three (3) to twenty-one (21), who have been properly evaluated as having Intellectual Disability, Hearing Impairments and Deafness, Speech or Language Impairments, Visual Impairments including Blindness, Emotional

Disturbance, Orthopedic Impairments, Autism, Traumatic Brain Injury, Other Health Impaired, a Specific Learning Disability, Deaf Blindness, or Multiple Disabilities and, who because of that disability, require special education and related services. As allowed under 34 CFR 300.8 implementing IDEA, the State of Missouri also defines a child with a disability to include children ages three (3) through five (5) who have been properly identified as a young child with a developmental delay.

No child may be determined to be eligible if the determinant factor for that eligibility determination is lack of appropriate instruction in reading, including the essential components of reading instruction (as defined by section 1208(3) of the ESEA), or lack of appropriate instruction in math or limited English proficiency 34 CFR 300.306(b)(1).

Several conditions may be diagnosed by other professionals such as physicians, psychologists, etc. that are not specified by IDEA. These may include such conditions as Tourette syndrome, diabetes, sickle cell anemia, leukemia, etc. Students who present significant learning problems by virtue of the condition may demonstrate eligibility for special education under one or more of the disabilities identified above.

Disability Categories, Definitions, and Criteria in alphabetical order:

A. Autism
B. Deaf/Blindness
C. Emotional Disturbance
D. Hearing Impairment and Deafness
E. Intellectual Disability
F. Multiple Disabilities
G. Orthopedic Impairment
H. Other Health Impairment
I. Specific Learning Disability
J. Speech or Language Impairment
K. Traumatic Brain Injury (TBI)
L. Visual Impairment/Blindness
M. Young Child with a Developmental Delay

Autism Definition

"Autism" means a developmental disability significantly affecting verbal or nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability as defined in this document.

A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the criteria are satisfied.

Criteria for Initial Determination of Eligibility

A child displays autism when:

A. Through evaluation that includes a review of medical records, observation of the child's behavior across multiple environments, and an in-depth social history, the following behaviors are documented:

    1) Disturbances of speech, language-cognitive, and nonverbal communication: The child displays abnormalities that extend beyond speech to many aspects of the communication process. Communicative language may be absent or, if present, language may lack communicative intent. Characteristics may involve both deviance and delay. There is a deficit in the capacity to use language for social communication, both receptively and expressively.
    2) Disturbance of the capacity to relate appropriately to people, events, or objects: The child displays abnormalities in relating to people, objects, and events. There is a deficit in the capacity to form relationships with people. The capacity to use objects in an age appropriate or functional manner may be absent, arrested, or delayed. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.

B. The condition adversely affects the child's educational performance.
C. The autism is not a result of an emotional disability as defined in this document.

Other Behaviors Which the Child May Exhibit Include:

A. Disturbance of developmental rates and sequences: The child may also exhibit delays, arrests, or regressions in physical, social, or learning skills. Areas of precocious skill development may also be present, while other skills may develop at normal or extremely depressed rates. The order of skill acquisition frequently does not follow normal developmental patterns.
B. Disturbances of responses to sensory stimuli: The child's behavior may also range from being hyperactive to being unresponsive to people and objects in their environment and can alternate between these two (2) states over periods ranging from hours to months. Disturbances may be apparent in auditory, visual, olfactory, gustatory, tactile, and kinesthetic responses. The child may respond to stimulation inappropriately and in repetitive or nonmeaningful ways.

Deaf/Blindness Definition

"Deaf/Blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational

needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

Criteria for Initial Determination of Eligibility

A child is deaf/blind when:

A. both visual and hearing impairments are present as described in the criteria for Hearing Impairment/Deafness and Visual Impairment/Blindness, and
B. the impairments together cause severe communication, developmental, and educational needs.

Emotional Disturbance Definition

"Emotional Disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

A. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
B. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
C. inappropriate types of behavior or feelings under normal circumstances;
D. a general pervasive mood of unhappiness or depression; and,
E. a tendency to develop physical symptoms or fears associated with personal or social problems.

The term includes schizophrenia, but does not apply to children who are socially maladjusted unless it is determined they have an emotional disturbance.

Criteria for Initial Determination of Eligibility

A child displays an emotional disturbance when:

A. Through evaluation procedures that must include observation of behavior in different environments and an in-depth social history, the child displays one of the following characteristics:

    1) an inability to learn that cannot be explained by intellectual, sensory, or health factors;
    2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
    3) inappropriate types of behavior or feelings under normal circumstances;
    4) a general pervasive mood of unhappiness or depression; and,
    5) a tendency to develop physical symptoms or fears associated with personal or social problems.

B. the characteristic(s) must have existed to a marked degree and over an extended period of time. In most cases, an extended period of time would be a range from two (2) through nine (9) months depending upon the age of the child and the type of behavior occurring. For example, a shorter duration of disturbance that interrupts the learning process in a younger student might constitute an extended period of time. Difficulties may have occurred prior to the referral for evaluation; and,
C. the emotional disturbance adversely affects the child's educational performance.

NOTE: Manifestations of an emotional disturbance can be observed along a continuum ranging from normal behavior to severely disordered behavior. Children who experience and demonstrate problems of everyday living and/or those who develop transient symptoms due to a specific crisis or stressful experience are not considered to have an emotional disturbance.

Hearing Impairment and Deafness Definition

"Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance, but is not included in the following definition for deafness.

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

Criteria for Initial Determination of Eligibility

A child displays a Hearing Impairment/Deafness when:

A. a hearing impairment has been diagnosed by an audiologist, and
B. the hearing impairment adversely affects the child's educational performance.

Intellectual Disability Definition

"Intellectual Disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affects a child's educational performance.

Criteria for Initial Determination of Eligibility

A child displays intellectual disability when:

A. the child performs 2.0 Standard Deviations below their peers of equivalent age, ethnic, and cultural background when measured by a standardized instrument of cognitive ability;
B. the child displays adaptive behavior consistent with measured cognitive ability. Adaptive behavior refers to the effectiveness with which a student meets the

standards of personal independence and social responsibility expected of his/her age and cultural group. There should be a significant positive correlation between the student's intellectual ability and adaptive behavior; and,

C. the disability adversely affects the child's educational performance.

Multiple Disabilities Definition

"Multiple Disabilities" means concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf/blindness.

Criteria for Initial Determination of Eligibility

A child displays multiple disabilities when:

A. concomitant impairments occur, and
B. the impairments together cause severe educational needs.

Orthopedic Impairment Definition

"Orthopedic Impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member, etc.), impairments caused by disease (poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations and fractures, or burns that cause contrachures).

Criteria for Initial Determination of Eligibility

A child displays a physical impairment when:

A. an orthopedic impairment has been diagnosed by a licensed physician, and
B. the physical impairment adversely affects the child's educational performance.

Other Health Impairment Definition

"Other Health Impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems, such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome, and adversely affects a child's educational performance.

Criteria for Initial Determination of Eligibility

A child displays a Health Impairment when:

A. a health impairment has been diagnosed by a licensed physician, licensed psychologist, licensed professional counselor, licensed clinical social worker, or school psychologist, and
B. the health impairment adversely affects the child's educational performance.

Specific Learning Disability Definition

"Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or, limited English proficiency.

Criteria for Initial Determination of Eligibility

A child has a specific learning disability when:

A. The child does not achieve adequately for the child's age or to meet State approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State approved grade-level standards:

Oral Expression	Listening Comprehension
Written Expression	Basic Reading Skill
Reading Fluency Skills	Reading Comprehension
Mathematics Calculation	Mathematics Problem Solving; and,

B. The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in A above when using a process based on the child's response to scientific, research-based intervention; or

   The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR 300.304-300.305. A pattern of strengths and weaknesses is defined as a severe discrepancy between achievement and intellectual ability of at least 1.5 standard deviations; and,

C. The group determines that its findings under A and B of this section are not primarily the result of:

1) a visual, hearing, or motor disability;
2) Intellectual disability;
3) Emotional disturbance;
4) Cultural factors;
5) Environmental or economic disadvantage;
6) Limited English Proficiency;
7) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208 (3) of the ESEA);
8) Lack of appropriate instruction in math; and,

D. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:

1) Data that demonstrate that prior to or as part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel, and
2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

Professional Judgment

If a responsible public agency uses a severe discrepancy method: A child who does not display a discrepancy of at least 1.5 standard deviations as defined in B above, may nonetheless be deemed to have a specific learning disability if 1) the child meets the other criteria of this rule; and 2) based upon professional judgment and review of formal and informal assessments, the evaluation team concludes that a severe discrepancy exists. In such cases, sufficient data must be presented in the evaluation report to document the existence of a specific learning disability.

It is the policy of the State of Missouri that any agency using a Response to Intervention model for the identification of Specific Learning Disability, must have written procedures for implementation that, at a minimum, incorporate guidelines developed by the SEA which are found on the Department website.

Speech or Language Impairment Definition

"Speech or Language Impairment" means a communication disorder, such as stuttering, impaired articulation, language impairment, or voice impairment that adversely affects a child's educational performance.

A. Criteria for Initial Determination of Eligibility - Language

A language impairment is present when:

1) the child consistently exhibits inappropriate use in any of the structures of language (e.g., morphology, syntax, semantics, and pragmatics) as measured by language sampling or other clinical tasks;
2) the child's language functioning is significantly below the child's abilities as measured by two (2) or more standardized language assessments. Significantly below is defined as two (2) standard deviations below the mean for children three (3) to five (5) years of age but not eligible for kindergarten, and 1.5 standard deviation below cognitive ability for children who are kindergarten age eligible and older;
3) the language impairment adversely affects the child's educational performance; and,
4) the language impairment is not a result of dialectal differences or second language influence.

Professional Judgment

A child may also be deemed eligible if the evaluation documents through formal and informal assessment that a language impairment is present even though the standard scores do not meet the criteria in A above. In such cases, sufficient data must be presented in the evaluation report to document the existence of the language impairment.

B. Criteria for Determination of Initial Eligibility - Sound System Disorder

A Sound System Disorder, which includes articulation and/or phonology, is present when:

1) the student exhibits a delay of correct sound production based on state designated normative data. The child's sound system is significantly delayed based on a single word test and/or a sentence/phrase repetition task and a connected speech sample with consideration given to the type of error recorded (substitutions, omissions, distortions, and/or additions). These errors may be described as single sound errors or errors in phonological patterns or multiple errors in the child's speech that compromise intelligibility and/or listener perception even though the recorded errors are considered within normal developmental guidelines;
2) the Sound System Disorder adversely affects the child's educational performance; and,
3) the sound system disorder is not a result of dialectal differences or second language influence.

Sufficient data is present in the evaluation report to document the existence of a disorder due to multiple errors in the sound system which compromise the child's intelligibility and/or the listener's perception even though the recorded errors are considered within normal developmental guidelines (professional judgment).

C. Criteria for Initial Determination of Eligibility - Fluency

A fluency impairment is present when:

1) the child consistently exhibits one or more of the following symptomatic behaviors of dysfluency:
   - sound, syllabic, or word repetition;
   - prolongations of sounds, syllables, or words;
   - blockages; or,
   - hesitations;
2) the child's fluency is significantly below the norm as measured by speech sampling in a variety of contexts. A significant discrepancy is defined as five (5) or more dysfluencies per minute or a ten (10) percent dysfluency rate and distracting to the listener; and,
3) the fluency impairment adversely affects the child's educational performance

Professional Judgment

A child may also be deemed eligible if the evaluation documents through formal and informal assessment that a fluency impairment is present even though the criterion in C above is not met. In such cases, sufficient data must be presented in the evaluation report to document the existence of the fluency impairment.

D. Criteria for Initial Determination of Eligibility - Voice

A voice impairment is present when:

1) the child consistently exhibits deviations in one or more of the parameters of voice: pitch, quality, or volume;
2) the child's voice is discrepant from the norm as related to his/her age, sex, and culture and is distracting to the listener;
3) the voice impairment is not the result of a temporary problem such as: normal voice changes, allergies, colds, or other such conditions; and,
4) the voice impairment adversely affects the child's educational performance.

Traumatic Brain Injury (TBI) Definition

"Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability, psychosocial impairment, or both that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, such as, cognition,

language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychological behavior, physical functions, information processing, and speech. The term does not include brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.

Initial Eligibility Criteria for Traumatic Brain Injury

A child has a Traumatic Brain Injury when:

A. a traumatic brain injury/head injury has been diagnosed by a licensed physician or through a neuropsychological assessment, and
B. the student's educational performance is adversely affected by deficits in acquisition, retention, and/or generalization of skills. Students with a brain injury may have rapidly changing profiles, therefore, educational assessment should include current documentation of the student's functional capabilities and indicate deficits in one or more of the following areas:

    1) building or maintaining social competence;
    2) performance of functional daily living skills across settings;
    3) the ability to acquire and retain new skills; and,
    4) the ability to retrieve prior information.

Professional Judgment

A child may also be deemed eligible if the child displays characteristics of TBI even though a medical diagnosis of head injury has not been made by a physician. In such cases, substantial data to document the medical basis for a head injury must be present in the evaluation report.

Visual Impairment/Blindness Definition

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

Criteria for Initial Determination of Eligibility

A child displays a Visual Impairment when:

A. a visual impairment or a progressive vision loss has been diagnosed by an optometrist or ophthalmologist;
B. visual acuity has been determined to be:

    1) for visual impairment of 20/70 to 20/200 in the better eye with best correction by glasses;

2) for blindness of 20/200 or less in the better eye after best correction by glasses or a visual field measuring 20 degrees or less; and,

C. the visual impairment adversely affects the child's educational performance.

Young Child with a Developmental Delay Definition

"Young Child with a Developmental Delay" means a child ages three (3) through five (5) who is experiencing developmental delays, as measured by appropriate evaluation instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who need special education and related services.

Note: LEAs in Missouri are not required to adopt and use the term "Young Child with a Developmental Delay" for any children in their jurisdiction. However, if an LEA uses the term "Young Child with a Developmental Delay," the LEA must conform to both the State's definition of the term and the age range.

Criteria for Initial Eligibility for Young Children with a Developmental Delay

A child has a developmental delay when:

For children ages three (3) through five (5) (not kindergarten age eligible)

A. The child's development is at or below 1.5 standard deviations, or equivalent levels, of the mean in any TWO areas of development OR at or below 2.0 standard deviations, or equivalent levels, in any ONE area of development. Areas of development that can be used to determine eligibility include physical, cognitive, communication, social/emotional, or adaptive.
B. The child needs special education and related services.

Professional Judgment

A child may also be deemed eligible when:

A. the evaluation report documents through formal and informal assessment that a significant deficit exists and a child is eligible for services even though the standard scores, or equivalent levels, do not meet the stated criterion levels in A above, or
B. the team may determine that a child, who is functioning above the stated criterion level and because of intensive early intervention, is eligible for services based on expected regression if services were to be terminated.

For children ages five (5) (kindergarten eligible)

A. Children kindergarten age eligible may continue eligibility as a Young Child with a Developmental Delay if they were identified as such prior to attaining kindergarten age eligibility.

3. PROCEDURES FOR EVALUATION AND DETERMINATION OF ELIGIBILITY

The Missouri Department of Elementary and Secondary Education ensures that each public agency establishes and implements procedures for evaluation and determination of eligibility that meet the requirements of this section.

Parental consent for initial evaluation

Consent of the parent must be obtained by the local school district or responsible public agency from a parent prior to conducting the initial evaluation.

Consent for initial evaluation may not be construed as consent for initial provision of special education and related services. Public agencies must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

Ward of the State

For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

A. the public agency cannot discover the whereabouts of the parent of the child despite reasonable efforts to do so;
B. the rights of the parent of the child have been terminated in accordance with State law; and,
C. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

Failure to Consent

If the parent of a child enrolled in a public school or seeking to be enrolled in a public school does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards (including mediation procedures or due process procedures), if appropriate, except to the extent inconsistent with State law relating to such parental consent. A public agency does not

violate its obligation under "child find" or "evaluations and reevaluations" of the Act if it declines to pursue the evaluation.

Evaluation Timelines

The following timelines are adopted by the state for purposes of evaluation. The public agency shall provide the parent with a Notice of Intent to Evaluate as soon as possible, but within thirty (30) calendar days of the date of referral for evaluation. Delays beyond this time may be permitted for just cause (school breaks for summer or holidays, student illness, etc.) and documented in the student's record.

The evaluation shall be completed and a decision regarding eligibility rendered within sixty (60) calendar days following parent consent or notice, as the case may be. This timeline does not apply if the parent of the child repeatedly fails or refuses to produce the child for evaluation or the child enrolls in a school of another public agency after the timeline has begun and prior to a determination by the child's previous public agency as to whether the child is a child with a disability or there is just cause (school breaks for summer or holidays, student illness, etc.) documented in the student's record.

Parent Request for Evaluation

Parents may request an evaluation for their child. If the public agency receives such a request, the district shall:

A. accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in this section, or
B. refuse the request and provide the parent with Notice of Action Refused

Initial Evaluation (34 CFR 300.301)

Each public agency shall conduct a full and individual initial evaluation, in accordance with 34 CFR 300.305 and 34 CFR 300.306, before the initial provision of special education and related services to a child with a disability. This may or may not include additional testing as determined by the evaluation team members.

Either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

The initial evaluation must be conducted within the evaluation timelines set forth above and must consist of procedures to determine if the child is a child with a disability as defined in this State Plan and to determine the educational needs of the child.

If a parent of a child repeatedly fails or refuses to produce the child for evaluation or, if a child enrolls in a school of another public agency after the evaluation timeline has begun and prior to the determination by the child's previous public agency as to

whether the child is a child with a disability, the sixty (60) day timeframe does not apply. An exception to this applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and the subsequent public agency agree to a specific time when the evaluation will be completed.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Reevaluations (34 CFR 300.303)

A public agency must ensure that a reevaluation of each child with a disability is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance of the child warrant a reevaluation or if the child's parent or teacher requests a reevaluation.

A reevaluation may occur not more than once a year, unless the parent and the public agency agree otherwise. A reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

For parent or district requested reevaluations, initial evaluation timelines specified in this section must be followed.

Evaluation Procedures (34 CFR 300.304)

The public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct. Each public agency shall ensure, at a minimum, that the following requirements are met:

A. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.
B. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.
C. The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
D. Assessments and other evaluation materials used to assess a child under Part B of the Act are selected and administered so as not to be discriminatory on a racial or cultural basis, are provided and administered in the child's native language or other mode of communication, and in the form most likely to yield accurate

information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer.

E. Assessments and other evaluation materials used to assess a child are used for the purposes for which the assessments or measures are valid and reliable and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) must be included in the evaluation report.
F. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
G. Assessments are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
H. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
I. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent school as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.
J. In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
K. The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

<u>Additional Requirements for Evaluations and Reevaluations (34 CFR 300.305)</u>

As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of IDEA, the IEP Team and other qualified professionals, as appropriate, shall review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based, local or State assessments, classroom based observations, and observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, shall identify what additional data, if any, are needed to determine:

A. whether the child has a particular category of disability and the educational needs of the child, or in case of a reevaluation of a child, whether the child continues to have such a disability and the educational needs of the child;
B. the present levels of academic achievement and related developmental needs of the child;
C. whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and,
D. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

The group making these decisions may conduct its review without a meeting. The public agency shall administer tests and other evaluation methods as may be needed to produce the data identified above.

If the determination of the group is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents of that determination and the reasons for it, and of the right of the parents to request an assessment to determine whether, for purposes of services under the Individuals with Disabilities Education Act, the child continues to be a child with a disability, and to determine the child's educational needs.

If the parent requests assessment, even though the determination has been made that no additional data are needed, the public agency must grant the request if the issue is continued eligibility under Part B of IDEA or to determine the child's educational needs.

A public agency must evaluate a child with a disability before determining that the child is no longer a child with a disability. An evaluation is not required before the termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to reaching the age of twenty-one (21).

A public agency must provide a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching the age of twenty-one (21) a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post secondary goals.

Determination of Eligibility (34 CFR 300.306)

Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability and the educational needs of the child. The public agency must provide a copy of the evaluation report which documents the determination of eligibility at no cost to the parent.

In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each public agency must – (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and, (ii) Ensure that information obtained from all of these sources is documented and carefully considered.

If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with this state plan.

Evaluation Report

Each public agency shall develop a written Evaluation Report for all initial evaluations and any reevaluations which required additional testing.

The evaluation report must include:

A. a statement of whether the child has a specific disability as defined in Regulation III.2. of this document;
B. a synthesis of information from the evaluation considering all areas of functioning;
C. the basis for making the determination of eligibility for a disability;
D. a statement that the disability is not a result of lack of appropriate instruction in reading, including the essential components of reading instruction (as defined by section 1208(3) of the ESEA or lack of appropriate instruction in math or Limited English proficiency; and,
E. a list of the individuals who were in attendance at the eligibility determination meeting and their role.

The Evaluation Report for students identified as Specific Learning Disabled must include items A through E above and the following:

F. relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to academic functioning;
G. educationally relevant medical findings, if any;
H. whether the child:

    1) does not achieve adequately for the child's age or to meet State approved grade-level standards, and
    2) does not make sufficient progress to meet age or State approved grade-level standards, or
    3) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State approved grade-level standards, or intellectual development;

I. the determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or Limited English proficiency on the child's achievement level;

J. if the child has participated in a process that assesses the child's response to scientific, research-based intervention:

   1) the instructional strategies used,
   2) the student-centered data collected,
   3) documentation that the child's parents were notified about:
      - the State's policies regarding the amount and nature of student performance data that would be collected,
      - the general education services that would be provided,
      - the strategies for increasing the child's rate of learning, and
      - the parents right to request an evaluation; and,

K. each team member shall certify in writing whether the report reflects his/her conclusion; if it does not reflect his/her conclusion, the team member must submit a separate statement presenting his/her conclusions.

<u>Determination of Eligibility for Young Children Ages 3 through 5</u>

A. School districts shall, through approved district policy, determine eligibility for children ages three (3) through five (5) (not kindergarten age eligible) using one of the following methods:

   1) Identify all children using any of the disability categories except that of Young Child with a Developmental Delay (YCDD); or,
   2) Identify all children as eligible using only the category of Young Child with a Developmental Delay (YCDD); or,
   3) Identify all children as eligible using any of the disability categories including that of Young Child with a Developmental Delay (YCDD).

B. For a child with a disability who becomes Kindergarten age eligible (age five (5) by August 1), districts shall, through approved district policy, choose one of the following methods to determine <u>continuing eligibility</u> for special education:

   1) If the district selected methods A. 2) <u>or</u> A. 3) above, they may either:

      - continue a child as eligible under the Young Child with a Developmental Delay (YCDD) <u>or</u> apply any of the other disability categories, or
      - apply any disability category other than Young Child with a Developmental Delay (YCDD).

2) If the district selected method A.1) above, all children will continue to be identified as eligible using any disability category other than Young Child with a Developmental Delay (YCDD).

C. Children who are kindergarten age eligible (age five (5) by August 1) and have not been identified as eligible for special education in prior years, must meet criteria of any disability category other than Young Child with a Developmental Delay (YCDD).
D. Children who are first grade age eligible (age six (6) by August 1) must meet criteria of any disability category other than Young Child with a Developmental Delay (YCDD).

4. ADDITIONAL PROCEDURES

Determination of Eligibility for Children with Specific Learning Disabilities (34 CFR 300.307)

The State has adopted criteria for determining whether a child has a specific learning disability. The criteria adopted by the State does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability and permits the use of a process based on the child's response to scientific, research based intervention.

Public agencies in the state must use the State criteria in determining whether a child has a specific learning disability.

Additional Group Members 34 CFR 300.308

The determination of whether a child suspected of having a specific learning disability is a child with a disability must be made by the child's parents and a team of qualified professionals that must include:

A. the child's regular teacher or, if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; for a child of less than school age, an individual qualified by the Department to teach a child of his or her age, and
B. at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

Extension of Evaluation Timelines When Determining Eligibility for Specific Learning Disabilities

The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the evaluation timelines, unless extended by mutual written agreement of the child's parents and the evaluation professionals, if prior to a referral, a child has not made

adequate progress after an appropriate period of time when provided instruction and whenever a child is referred for an evaluation.

Observation (34 CFR 300.310)

The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

The group determining whether a child has a specific learning disability must decide to:

A. use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation, or
B. have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE THE LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY

Section 162.700 RSMo Evaluations
Section 162.700(2), RSMo Eligibility determination
Section 162.945, RSMo-Notice of evaluation results

IV. FAPE/IEP/LRE

1. FREE APPROPRIATE PUBLIC EDUCATION

It is the policy of the State of Missouri that all children with disabilities between the ages of three (3) and twenty-one (21) years, inclusive, 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:

A. are provided at public expense, under public supervision and direction, and without charge to the parent;
B. meet the educational standards of the State Education Agency pertaining to the education of students with disabilities;
C. includes preschool, elementary school, and secondary school education; and,
D. are provided in conformity with the individualized education program (IEP).

<u>FAPE for Children Begins at Age Three (3)</u>

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~~s~~ procedures that the Part C system must complete to assure a smooth transition for children eligible for Part B services at age three (3).

<u>FAPE for Children Suspended or Expelled from School</u>

A public agency is not required to provide services to a child 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 child without disabilities who has been similarly removed.

In the case of a child with a disability who has been removed for more than ten (10) school days in a school year the public agency, for the remainder of the removals must:

A. provide services to the extent necessary to enable the child to continue to progress in the general curriculum, although in another setting, and to progress toward achieving the goals in the child's IEP if the removal is:

1) 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
2) for behavior that is not a manifestation of the child'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 child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. The determination that such a child is eligible for services must be made on an individual basis by the group of individuals within the child's local education 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:

A. youth with disabilities who reach the age of twenty-one (21).
B. 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 or a general educational development credential (GED). 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.
C. 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.
D. parentally placed private school children with disabilities.
E. 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 General Education Diploma (GED), 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 local school district or special school district in which a child 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) through twenty (20), 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:

A. the requirement to participate in State and district assessments, and
B. 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, for students and youth with disabilities who have been assigned to programs by a court and meet eligibility.

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE A LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY RELATING TO FAPE:

Section 162.670, RSMo ***Section 162.675, RSMo***
Section 162.680, RSMo ***Section 217.355(4), RSMo***
Section 162.700(1), RSMo ***Section 219.021, RSMo***
Article IV, Section 37(a), Missouri Constitution

2. 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. a 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;
B. a 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. For children with disabilities who take alternative assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
C. a 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:

    1) to advance appropriately toward attaining the annual goals;
    2) to be involved in and make progress in the general education curriculum;
    3) to participate in extracurricular and other nonacademic activities; and,
    4) to 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.

D. a statement of the child's participation in physical education;
E. an 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;
F. a 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;

G. the 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;
H. a 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;
I. a listing of the individuals who attended the IEP meeting and their role (indicates attendance only not necessarily agreement with the IEP);
J. a statement indicating the child's eligibility or ineligibility for extended school year services; and,
K. a statement of the placement considerations and decision.

As appropriate, the IEP must also include:

Transition Services

A. 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
B. 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

A. the specific goals and objectives which specify the competencies in reading and writing Braille to be taught during the school year;
B. means by which Braille will be implemented through integration with normal classroom activities;
C. the date on which Braille instruction will commence;
D. the level of competency in Braille reading and writing expected to be achieved by the end of the period covered in the IEP;
E. the duration of each session;
F. 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,
G. 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:

A. the strengths of the child;
B. the concerns of the parents for enhancing the education of their child;
C. the results of the initial or most recent evaluation of the child; and,
D. the academic, developmental, and functional needs of the child.

The IEP Team must also:

A. 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);
B. 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;
C. 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,
D. 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:

A. the parents of the child;
B. not less than one regular education teacher of the child (if the child is or may be participating in the regular education environment);
C. not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child;
D. 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;
E. 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;

F. at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and,
G. 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.

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 local educational 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 local educational 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:

A. that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the student;
B. that the agency will invite the student; and,
C. 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:

A. detailed records of telephone calls made or attempted and the results of those calls;
B. copies of correspondence sent to the parents and any responses received; or,
C. detailed records of visits made to the parent's home or place of employment and the results of those visits.

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:

A. 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;
B. each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP; and,
C. 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 school, and who had an IEP that was in effect in Missouri, the local educational 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 responsible 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 responsible 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:

A. conducts an initial evaluation, if determined necessary by the new public agency, and
B. develops, adopts, and implements a new IEP (if appropriate).

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 local 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.

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:

A. any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
B. the results of any reevaluation;
C. information about the child provided to or by the parents;
D. the child's anticipated needs; or,
E. 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.

Private School Placements by Public Agencies

Before a public agency places a child with a disability in or refers a child to a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child. The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency. If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

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.

Routine Checking of Hearing Aids and External Components of Surgically Implanted Medical Devices (34 CFR 300.113)

Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, and the external components of surgically implanted medical devices are functioning properly.

For a child with a surgically implanted medical device who is receiving special education and related services, a public agency is not responsible for the post-surgical maintenance,

programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

3. 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 five (5) 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.

For children ages three (3) to five (5), the placement options include home, early childhood settings, early childhood special education classes in settings with children who are nondisabled, early childhood special education in settings with only children with disabilities, multiple settings, and residential settings.

See most current definitions of placement on the Department website.

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:

A. whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; if not, then,
B. 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:

A. 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);
B. 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);
C. 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);
D. 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,
E. 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 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:

A. distribution of state and federal laws and regulations pertaining to special education;
B. monitoring of public agencies to determine compliance with the least restrictive environment provisions;
C. training/workshops for public agency personnel provided prior to and following monitoring activities regarding least restrictive environment provisions;
D. technical assistance as may be requested by public agencies and local school districts relative to the implementation of LRE provisions; and,
E. collaboration with the State Parent Information and Training Center as requested.

Monitoring Activities (34 CFR 300.120)

The Department of Elementary and Secondary Education monitors each public agency, including the requirements for the least restrictive environment through the following procedures:

A. an annual review of each responsible agency's count of children with disabilities and placement data;
B. investigation of any child complaint filed;
C. periodic monitoring of public agencies to determine appropriate implementation of policies and procedures; and,
D. 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:

A. shall review the LEA/public agency's justification for its actions, and
B. 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:

Section 162.680, RSMo
Section167.126, RSMo

4. 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 in 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 lives 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. Meeting participation may be achieved 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 before 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 of services.

An IEP is developed in accordance with Regulation IV, Section 2 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 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.

V. PROCEDURAL SAFEGUARDS/DISCIPLINE

The following statements reflect the policy which the Missouri Department of Elementary and Secondary Education (Department) has established to ensure procedural safeguards for all parties involved in the education of students with disabilities.

1. OPPORTUNITY TO EXAMINE EDUCATION RECORDS/PARENT PARTICIPATION IN MEETINGS (34 CFR 300.501)

Each responsible public agency shall provide the parent of a child with a disability the opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

Each responsible public agency shall provide proper notice to ensure parents have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.

A meeting does not include informal or unscheduled conversations involving staff and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The IEP team determines the educational placement for each child with a disability.

2. INDEPENDENT EDUCATIONAL EVALUATION (IEE) (34 CFR 300.502)

The parents of a student with a disability have a right to obtain an Independent Educational Evaluation (IEE) of their child. That right is subject to the requirement that the independent evaluation must meet the educational evaluation criteria used by the responsible public agency when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.

The right to an independent educational evaluation assures:

A. that upon requesting an IEE, information about where an independent evaluation may be obtained and the agency criteria applicable for independent educational evaluations will be given to parents.
B. that parents have the right to an independent evaluation at public expense for any agency evaluation, with which the parents disagree. If a parent requests an IEE at public expense, however, the responsible public agency must, without unnecessary delay, either file a due process hearing as described in Regulation V. to show that the agency

evaluation is appropriate or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. If the final decision is that the agency evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense.

1) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

C. that parents cannot be required to notify the responsible public agency prior to obtaining an independent evaluation at public expense. However, it is reasonable for the responsible public agency to request notification before such an evaluation is conducted. Likewise, a parent cannot be required to explain why they object to the public evaluation, but it is reasonable for the responsible public agency to ask why.

D. that if the responsible public agency has a policy regarding reimbursement for independent evaluations, that policy will specify the factors to be considered in the determination of public funding for the evaluation. That determination should be based on:

1) the qualifications and locations of the evaluators, and
2) the cost of the evaluation.

The public agency may only impose limitations on the cost of an IEE if the agency uses those same limitations when conducting an evaluation. If a public agency uses such cost limitations, it must ensure that its procedures require payment for an IEE at a higher rate if an appropriate IEE cannot, in light of the child's unique needs and other unique circumstances, be obtained within those cost limitations. If the cost of an IEE at public expense exceeds the agency's cost limitations, the public agency must either:

1) initiate a due process hearing or
2) pay the full cost of the IEE.

E. that if the responsible public agency has a policy regarding reimbursement for independent evaluations and that policy establishes allowable maximum charges for specific tests or types of evaluations, the maximum set will still enable parents to choose from among qualified professionals in the area and will result only in the elimination of excessive fees. The policy shall specify that the responsible public agency will pay the fee for the independent evaluation up to the maximum established. Additionally, the policy will anticipate that a student's "unique circumstances" may justify an evaluation that exceeds the allowable cost criteria.

F. that if the responsible public agency has no policy which sets maximum allowable charges for specific tests or types of evaluation, then the parents will be reimbursed for services rendered by a qualified evaluator.

G. except for the location of the evaluation and the qualifications of the examiner, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. These criteria for IEEs at public expense must apply equally to the public agency's own evaluations and exceptions for unique circumstances must be considered.

H. that a parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.
I. that the results of an independent evaluation obtained by the parents at public expense (or private expense if shared with the agency by the parent):

    1) must be considered by the responsible public agency if it meets agency criteria in any decision made with respect to the provisions of a free appropriate public education to the student, and
    2) may be presented as evidence at a due process hearing under this subpart regarding that student.

J. that the cost of an independent evaluation will be at public expense if a hearing officer requests an independent educational evaluation as part of a due process hearing.

3. WRITTEN NOTICE (34 CFR 300.503)

Written notice must be given to parents a reasonable time before the responsible public agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The notice must be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so.

If the native language or other mode of communication of the parents is not a written language, the responsible public agency shall ensure the following:

A. that the notice is translated orally or by other means to the parents in their native language or other mode of communication;
B. that the parents understand the content of the notice; and,
C. that there is written evidence that those requirements have been met.

<u>Content of Notice</u>

The written notice sent to parents by the responsible public agency must contain the following:

A. a description of the action proposed or refused by the agency;
B. an explanation of why the agency proposes or refuses to take the action;
C. a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal;
D. a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained;
E. sources for parents to contact to obtain assistance in understanding their procedural safeguards;
F. a description of other options that the IEP Team considered and the reasons why those options were rejected; and,
G. a description of other factors that are relevant to the agency's proposal or refusal.

4. PROCEDURAL SAFEGUARDS NOTICE (34 CFR 300.504)

A copy of the state approved procedural safeguards available to the parents of a child with a disability shall be given to parents only one (1) time a school year, except that a copy also shall be given to the parents:

A. upon initial referral or parental request for evaluation;
B. upon receipt of the first due process complaint and upon receipt of the first child complaint in a school year;
C. upon a disciplinary change of placement; and,
D. upon request by the parent.

The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present and resolve complaints through due process complaint and state complaint procedures including the time period in which to file; the opportunity for the agency to resolve the complaint and the difference between the complaint procedures; the child's placement during due process proceedings; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents of children in private schools at public expense; mediation; due process hearings, including requirements for disclosure of evaluation results and recommendations; civil actions including the time period in which to file those actions; and, attorneys' fees.

5. PARENTAL CONSENT (34 CFR 300.300)

Parental Consent for Services

A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. Procedures for reasonable efforts required are the same as parent participation in IEP meetings.

If the parent of a child fails to respond or refuses to consent to services, the public agency may not use the procedures under Procedural Safeguards (including mediation or due process) in order to obtain agreement or a ruling that the services may be provided to the child.

If the parent of a child refuses to consent to the initial provision of special education and related services or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency will not be considered to be in violation of providing FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent. The public agency is not required to convene an IEP Team meeting or develop an IEP for the child for the special education and related services for which the public agency requests such consent.

Parental Consent for Reevaluations

Each public agency must obtain informed parental consent, prior to conducting any reevaluation of a child with a disability. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures (mediation or due process). The public agency does not violate its obligation under child find or evaluations if it declines to pursue the evaluation or reevaluation.

Parental Consent to Access Public Insurance

Before accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, a public agency must provide written notification, to the child's parents. The notification must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

A public agency must obtain parental consent before the public agency accesses a child's or parent's public benefits or insurance for the first time. This is a one-time consent, i.e., the public agency is no longer required to obtain parental consent each time access to public benefits or insurance is sought.

The annual notification must state:

A. The public agency may not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive services in the IEP that it is required to provide at no cost to the parents.
B. The public agency may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services.
C. The public agency may not use a child's benefits under a public benefits or insurance program if that use would:
    a. Decrease available lifetime coverage or any other insured benefit;
    b. Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
    c. Increase premiums or lead to cancellation of benefits or insurance; or
    d. Risk loss of eligibility for home and community-based waiver, based on aggregate health-related expenditures.
D. Withdrawal of consent or refusal to provide consent for billing public insurance does not relieve the school district or other responsible public agency of its responsibility to ensure that all required services in the IEP are provided at no cost to the parents.
E. Parents have the right to consent or withdraw their consent for disclosure of their child's personally identifiable information (e.g. records or information about the services that may be provided under the IEP) to the agency responsible for the administration of the State's public benefits or insurance program at any time. Such disclosure will identify the purpose of the disclosure (e.g. billing for services), and the agency to which the disclosure may be made (e.g. MO HealthNet).

Other Consent Requirements

Parent consent is not required before reviewing existing data as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

If a parent of a child who is home-schooled or placed in a private school by parents at their own expense does not provide consent for the initial evaluation or the reevaluation or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures. The public agency is not required to consider the child as eligible for special education and related services.

Definition of "Efforts"

Consent is not necessary for any subsequent placements and consent for reevaluations need not be obtained if the responsible public agency can demonstrate that it made reasonable efforts to obtain consent and the parent failed to respond. "Reasonable efforts" include a minimum of two (2) attempts documented, such as: detailed records of telephone calls made and the results of those calls; copies of correspondence sent to the parent and responses received; or, detailed records of visits to the parent's home or work place and the results of those visits. Neither may lack of consent after the initial evaluation or the initial placement be a cause for denial of any other service, activity, or benefit of the responsible public agency.

Parent consent means that the:

A. parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication;
B. parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and,
C. parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; however, if the parent revokes consent, that revocation is not retroactive.

Parental Revocation of Consent (34 CFR 300.9 and 300.300)

A parent may unilaterally withdraw a child from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to their children. A public agency may not, through mediation or a due process hearing, challenge the parent's decision or seek a ruling that special education and related services must continue to be provided to the child. Parental revocation of consent must be in writing.

Upon receipt of the parent's written revocation of consent, a public agency:

- must provide the parent with prior written notice before ceasing the provision of special education and related services
- will not be considered in violation of requirement to make FAPE available to the child because of the failure to provide the child with special education and related services
- is not required to convene an IEP team meeting or develop an IEP for the child
- is not required to amend the child's education records to remove any references to the child's receipt of special education and related services

6. ADMINISTRATIVE HEARING RIGHTS

Mediation (34 CFR 300.506)

The Department of Elementary and Secondary Education makes mediation available to allow parents or adult students and responsible public agencies to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Mediation will be provided at no cost to either party. Department funded mediation is not available to resolve disputes between parents or between districts and persons other than the parent (or adult student).

A. Process

The parties must agree to mediate and mutually agree on a mediator from the trained mediator list maintained by the Department of Elementary and Secondary Education, Office of Special Education.

1) The parties shall notify the Department of the mediator selected and the Department will send a letter empowering them to proceed. Mediators will not be paid if they have not been empowered by the Department.
2) Mediation must be scheduled within fifteen (15) days of the selection of a mediator.
3) Mediation must be conducted at a time and place that is convenient to both parties.
4) Mediation must be completed within thirty (30) days of the agreement to mediate.
5) Any agreement reached during mediation must be in writing and delivered to each party.
6) No more than three (3) persons can accompany each party unless the parties mutually agree on additional participants.
7) No attorney shall participate or attend on behalf of any party at the mediation session. However, parents may be accompanied by a lay advocate.
8) Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under Part B of IDEA.
9) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that states that all discussions that occurred during the mediation will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding and is signed by both the parent and a representative of the agency who has the authority to bind such agency.

10) The written signed agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court.
11) If the parties are not able to reach an agreement through the mediation process, the mediator will notify the department.

B. Mediator Qualifications

1) Mediators must be impartial and free of any conflict of interest.
2) Mediators shall not be employees of an LEA or a public agency which is involved in the education or care of the student or of the State Board of Education. A person who otherwise qualifies as a mediator is not an employee of the State Board of Education or LEA solely because he or she is paid by the agency to serve as a mediator.
3) Mediators must have a minimum of sixteen (16) hours of training as a mediator.
4) Mediators, to be placed on the Department's mediator list, must meet all regulations, requirements, and must agree to be compensated at a rate set by the Department and provide the Department with a resume or biographical statement reflecting their qualifications.
5) Mediators must be knowledgeable in laws and regulations relating to the provision of special education and related services.

Filing a Due Process Complaint (34 CFR 300.507)

Parents or a public agency may file a due process complaint with the Department of Elementary and Secondary Education, Office of Special Education concerning the proposed action of the agency to initiate or refuse to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

The due process complaint must allege a violation that happened not more than two years before the date the parent or the public agency knew or should have known about the alleged action that forms the basis of the due process complaint. The above timeline does not apply if the complainant could not file a due process complaint within the timeline because:

A. the public agency specifically misrepresented that it had resolved the issues identified in the complaint, or
B. the public agency withheld information that it was required to provide under Part B of IDEA.

The Department shall inform parents of any free or low-cost legal and other relevant services available in the area upon their request or if a parent or the responsible public agency files a due process complaint.

Due Process Complaint (34 CFR 300.508)

In order to request a due process hearing, a parent or the public agency (or the attorney representing either party) must provide the other party with a copy of the due process

complaint. That complaint must contain all of the content listed below and must be kept confidential. The party filing a due process complaint must forward a copy of the complaint to the Department of Elementary and Secondary Education.

The content of the complaint must include:

A. the name of the child;
B. the address of the child's residence;
C. the name of the child's school;
D. if the child is a homeless child or youth, the child's contact information and the name of the child's school;
E. a description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; and,
F. a proposed resolution of the problem to the extent known and available at the time.

A complaint is filed on the date it is received by the Department if received during business hours of the Office of Special Education as posted on the website. Complaints received after business hours will be filed the following business day.

Administrative Hearing Commission to Process and Hear the Complaints

Within two (2) business days of the filing of the complaint, the Office of Special Education will forward the complaint to the Administrative Hearing Commission for a hearing. All further documentation must be filed with the Administrative Hearing Commission by fax or mail or as otherwise provided by the Administrative Hearing Commission Rules.

Sufficiency of Complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (parent or the responsible public agency) notifies the Administrative Hearing Commission and the other party, in writing, within fifteen (15) calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five (5) calendar days of receiving the notification, the receiving party (parent or the responsible public agency) considers a due process complaint insufficient, the Administrative Hearing Commission must decide if the due process complaint meets the requirements listed above and notify the parent and the responsible public agency, in writing, immediately.

Complaint Amendment

The party who files the complaint may amend the complaint only if:

A. the other party approves of the changes, in writing, and is given the chance to resolve the due process complaint through a resolution meeting, described below, or

B. by no later than five (5) days before the due process hearing begins, the Administrative Hearing Commissioner grants permission for the changes.

If the complaining party makes changes to the due process complaint, the timelines for the resolution meeting (within fifteen (15) calendar days of receiving the complaint) and the time period for resolution (within thirty (30) calendar days of receiving the complaint) start again on the date the amended complaint is filed.

Withdrawal of Complaint

Unless a motion for decision without hearing has been filed or the hearing has started, a complaining party can withdraw a complaint by sending a written notice of withdrawal or making a verbal request to the Administrative Hearing Commission. If a motion for decision has been filed or the hearing has started, the complaining party shall make a request for withdrawal in writing to the Administrative Hearing Commission who will rule on the request.

Responsible Public Agency Response to a Due Process Complaint

If the public agency has not sent a prior written notice to a parent regarding the subject matter contained in their due process complaint, the public agency must, within ten (10) calendar days of receiving the due process complaint, send a response to the parent and the Administrative Hearing Commission that includes:

A. an explanation of why the public agency proposed or refused to take the action raised in the due process complaint;
B. a description of other options that the child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
C. a description of each evaluation procedure, assessment, record, or report the public agency used as the basis for the proposed or refused action; and,
D. a description of the other factors that are relevant to the public agency's proposed or refused action.

Providing the information in items A-D above does not prevent the public agency from asserting that the due process complaint was insufficient.

Answer to a Due Process Complaint

Except as stated under the sub-heading immediately above, the party receiving a due process complaint must, within ten (10) calendar days of receiving the complaint, send the other party and the Administrative Hearing Commission an answer that specifically addresses the issues in the complaint.

Model Forms (34 CFR 300.509)

The Department of Elementary and Secondary Education has developed model forms to help parties to file a due process complaint and a child complaint. However, parties are not required to use these model forms. Parties can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint.

Resolution Process (34 CFR 300.510)

Resolution Meeting

Within fifteen (15) calendar days of receiving notice of a parent's due process complaint or amended complaint, and before the due process hearing begins, the responsible public agency must convene a meeting with the parent and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in the due process complaint. The meeting:

A. must include a representative of the responsible public agency who has decision-making authority on behalf of the public agency, and
B. may not include an attorney of the responsible public agency unless the parent is accompanied by an attorney.

Parents and the responsible public agency determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for the parent to discuss their due process complaint and the facts that form the basis of the complaint so that the public agency has the opportunity to resolve the dispute. The resolution meeting is not necessary if the parent and the responsible public agency agree, in writing, to waive the meeting or if the parent and the responsible public agency agree to use the mediation process.

The responsible public agency shall notify the Department of Elementary and Secondary Education and the Administrative Hearing Commission of the date of the resolution meeting and the result or that a decision was made not to hold a resolution meeting.

Resolution Period

If the public agency has not resolved the due process complaint to the satisfaction of the parent within thirty (30) calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The forty-five (45) calendar day timeline for issuing a final decision begins at the expiration of the thirty (30) calendar day resolution period, with certain exceptions for adjustments made to the thirty (30) calendar day resolution period, as described below.

Except where the parties have both agreed to waive the resolution process or to use mediation, the failure of the parent to participate in the resolution meeting will delay the

timelines for the resolution process and due process hearing until the parent agrees to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the public agency is not able to obtain the parent's participation in the resolution meeting, the public agency may, at the end of the thirty (30) calendar day resolution period, request that the Administrative Hearing Commission dismiss the due process complaint.

If the public agency fails to hold the resolution meeting within fifteen (15) calendar days of receiving notice of the parent's due process complaint or fails to participate in the resolution meeting, the parent may ask the Administrative Hearing Commission to order that the forty-five (45) calendar day due process hearing timeline begin.

Adjustments to the Thirty (30) Calendar Day Resolution Period

The forty-five (45) day timeline for the due process hearing starts the day after one of the following events:

A. both parties agree, in writing, to waive the resolution meeting;
B. after either the mediation or the resolution meeting starts but before the end of the thirty (30) calendar day resolution period, the parties agree, in writing, that no agreement is possible; or,
C. both parties agree, in writing, to continue the mediation process at the end of the thirty (30) calendar day resolution period but later, either party withdraws from the mediation process.

Written Settlement Agreement

If a resolution to the dispute is reached at the resolution meeting, the parties must enter into a legally binding agreement that is:

A. signed by the parent and a representative of the public agency who has the authority to bind the agency, and
B. enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

The parties' agreement does not need to be filed with, or adopted or approved by, the Administrative Hearing Commission to be legally binding.

Agreement Review Period

If the parties execute an agreement as a result of a resolution meeting, either party may void the agreement within three (3) business days of the agreement's execution.

State-level Due Process Hearings

A. Process: The Administrative Hearing Commission processes all due process complaints handling all issues after the filing of the complaint to the final decision. A

complaint shall be assigned to a Commissioner who meets the training requirements of state law in regard to special education matters. The provisions of chapters 536 and 621, RSMo and the procedural rules adopted by the Administrative Hearing Commission shall be followed unless they conflict with the federal regulations or state statutes implementing the Individuals with Disabilities Education Act.

B. Hearing Rights: Any party to a hearing has the right to:

1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
2) represent themselves or be represented by a licensed Missouri attorney;
3) present evidence and confront, cross-examine, and compel the attendance of witnesses;
4) prohibit the introduction of any evidence, including all evaluations and recommendations based on the offering party's evaluation at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
5) obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost; and,
6) obtain written or, at the option of the parents, electronic findings of fact and decisions at no cost.

In addition, the parents or the student if they are the educational decision maker, have the right to open the hearing to the public; otherwise, it is closed. The parents may also elect to have the student present at the hearing. Any student over age 18 has the right to attend the hearing, unless their legal guardian, if any, objects.

C. Subject Matter: The party that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Hearing Decisions (34 CFR 300.513)

A decision on whether a child received a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, the Administrative Hearing Commission may find that a child did not receive FAPE only if the procedural inadequacies:

A. impeded the child's right to a free appropriate public education (FAPE);
B. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to their child; or,
C. caused a deprivation of an educational benefit.

None of the provisions described above shall be interpreted to prevent the Administrative Hearing Commission from ordering a public agency to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR 300.500-300.536).

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR 300.500-300.536) shall be interpreted to prevent a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Finality of Decision

Once the Administrative Hearing Commission has issued a final decision, no motion for reconsideration is permitted. However, if a final decision contains technical or typographical errors, a party may request correction of the errors if the correction does not change the outcome of the hearing or substance of the final hearing decision. Requests for a change of a technical or typographical error do not toll the time for an appeal. The Commissioner hearing the case makes the determination if a change is necessary.

Findings and Decision to Advisory Panel and General Public

The Administrative Hearing Commission shall mail a copy of the written findings and decision to each party and to the State Department of Elementary and Secondary Education (Department). The Department shall provide a copy of the findings and decision (with all personal identifiers removed) to the Missouri Special Education Advisory Panel and shall make the findings and decision available to the public (with all personally identifiable information removed).

Timelines and Convenience (34 CFR 300.515)

Except in the case of an expedited hearing provided for below, the hearing must be held and a written decision rendered and mailed within forty-five (45) days of the expiration of the thirty (30) day resolution period or the adjusted time period specified. The decision timeline may be extended upon request of a party and agreement by the Administrative Hearing Commissioner. The Administrative Hearing Commissioner cannot grant an extension without a request from one or both parties.

Site of the Hearing

Each hearing must be held at a time and place which is reasonably convenient to the parents and student involved.

Civil Proceedings (34 CFR 300.516)

Any party aggrieved by the findings and decisions made in a hearing may appeal the decision within forty-five (45) days to the State courts as provided in Chapter 536, RSMo., or in Federal court without regard to the amount in controversy. To the extent that Chapter 536, RSMo. provisions conflict with the IDEA judicial review requirements at 34 CFR 300.516 the IDEA judicial review provisions are controlling. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and shall base its decision on the preponderance of the evidence, granting the relief the court deems appropriate.

Commissioner Qualifications to Hear Due Process Complaints

Hearing Commissioners:

A. shall not have a personal or professional interest in the matters that are before them which would conflict with their objectivity in the hearing;
B. shall have an affirmative obligation to seek out any conflict of interest and withdraw from any matter in which a conflict is identified;
C. shall not have been employed within the last five years by a school district or organization engaged in special education parent or student advocacy;
D. shall not have performed work for a school district or for a parent or student as a special education advocate within the last five years as an independent contractor or consultant;
E. shall not have been employed within the last five years by the State Board of Education or Department of Elementary and Secondary Education;
F. shall not have performed work for the State Board of Education or Department of Elementary and Secondary Education within the last five years as an independent contractor or consultant;
G. shall not have been a party to a special education proceeding as an attorney, parent, or child; and,
H. must be knowledgeable and understand the provisions of IDEA, and Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts and have had at least 10 hours of initial training in special education matters and shall annually complete a minimum of five hours of training.

Hearing Commissioners must have the knowledge and ability to conduct hearings, and to make and write decisions consistent with appropriate, standard legal practice.

Specific allegations of conflict of interest may be filed with the Administrative Hearing Commission.

A person who otherwise qualifies to conduct a hearing is not an employee of the agency because he or she is paid by the agency to serve as a hearing officer.

Pre-Hearing Conference

The Administrative Hearing Commission has the option to conduct a prehearing conference.

Administrative Hearing Commission Orders

The Commissioner has the authority to take any actions necessary to ensure the compliance with all requirements of the law. If the Commissioner orders a party to do an act or not to do an act, the party must comply with the order. Objections to orders must be made as part of the record as promptly as possible. The Commissioner has the authority to dismiss an action with, or without, prejudice if the party filing the request fails to comply with an order. The Commissioner has the authority to preclude the other party from presenting defenses and may impose sanctions as allowed by the regulations of the Administrative Hearing Commission.

Subpoenas

Parties may request subpoenas for witnesses from the Administrative Hearing Commission in accordance with section 536.077.

Hearing Procedures

The Commissioner shall hold the hearing and shall rule on procedural and evidentiary matters. The Commissioner must ensure that issues for the hearing are appropriately identified and that evidence is relevant and not cumulative. The Commissioner shall limit the hearing to the amount of time necessary for each party to present its case. The Commissioner has authority to question witnesses and request information.

A. Length of Presentations

The Commissioner may limit the length of any presentation in order to proceed with the hearing in an expeditious manner. In general, a hearing should last no longer than two (2) days. Any hearing exceeding two (2) days requires good cause to be shown and must be documented on the record.

B. Exclusions

1) The parties shall exchange lists of exhibits and lists of their witnesses at least five (5) business days before the hearing or two (2) days before an expedited hearing. Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party in accordance with this rule.

2) Evidence or testimony may also be excluded at the hearing if:

   a) it is cumulative, irrelevant, or unnecessary;
   b) it represents the legal conclusion of a witness; or,
   c) it is speculation on the part of the witness.

   This is not an exhaustive list of all bases for excluding evidence or testimony.

3) Admissibility of evidence shall be determined by the Administrative Hearing Commission in accordance with Missouri law, including but not limited to § 536.070, RSMo and the Individuals with Disabilities Education Act and supporting regulations.

C. Communication with Hearing Commissioners

No party or attorney may communicate with the Commissioner on the merits of the case unless all parties have the opportunity to participate. Communiction with the

Commission should be directed to the Commission's primary telephone number, 573-751-2422.

All pleadings must be filed by fax or mail or as otherwise provided by Administrative Hearing Commission rules.

E. Witnesses

At the request of a party or upon the Commissioner's own motion, the Commissioner may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses. The Commissioner has authority to question witnesses and request information.

F. Limitations

The Commissioner may, at his or her discretion, limit the number of witnesses, the length of direct and cross examination, and the number and type of documents used as evidence in the hearing.

Consolidation of Cases

A. Standards for Consolidation

The Commission may consolidate two (2) or more separate cases for hearing if the cases involve the same student, present substantially the same issues of fact and law, if the consolidation would save time and costs, and if consolidation would not prejudice any party.

B. Request for Consolidation

A party requesting consolidation must serve a written request for consolidation on all parties to the cases to be consolidated and the Commissioners assigned to the cases. Any party objecting to the request must serve and file their objections within five (5) calendar days following service of the request for consolidation.

C. Determination

The Administrative Hearing Commission will rule on the request for consolidation.

Hearing Officer List

The Department shall keep a list of Commissioners who may hear due process complaints. The list must include a statement of the qualification of each of the Commissioners.

Attorneys' Fees (34 CFR 300.517)

Only a court of law can award attorneys fees.

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

A. to a prevailing party who is a parent of a child with a disability;
B. to a prevailing party who is a state educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or,
C. to a prevailing state educational agency or local educational agency against the attorney of a parent or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Funds under Part B of IDEA may not be used to pay attorney fees or costs of a party related to an action or proceeding under this section. A public agency may use Part B funds for conducting an action or proceeding under this section.

A court award for reasonable attorney fees is subject to the following:

A. the award must be based on prevailing rates in the community in which the action arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fee award;
B. attorney fees and related costs may not be reimbursed for services performed subsequent to the time of a written offer of settlement to a parent if: the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or in the case of an administrative proceeding, at any time more than ten (10) days before the proceeding begins; the offer is not accepted within ten (10) days; and the court or hearing officer finds that the relief finally obtained is not more favorable to the parents than the offer of settlement. However, if the parent prevails and was substantially justified in rejecting the settlement offer, an award of attorney fees and related costs may be made;
C. attorney fees may not be awarded related to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action;
D. attorney fees may not be awarded related to a resolution meeting; and,
E. the court may reduce the amount of attorney fees awarded if: the parent or the parent's attorney unreasonably protracted the final resolution of the controversy, the amount unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; the time spent and legal services furnished were excessive considering the nature of the action/proceeding; or, the attorney representing the parent did not provide to the responsible public agency the appropriate information in the due process request notice required by regulation.

   NOTE: Attorney fees may not be reduced if the court finds the state or local agency unreasonably protracted the final resolution or there was a violation of the Procedural Safeguards.

Maintenance of Placement (34 CFR 300.518)

During the pendency of any administrative or judicial proceeding regarding a due process complaint requesting a due process hearing, the child shall remain in his or her current placement, unless such change has been made with the agreement of the parent or guardian. Students who are endangering themselves or others can have their status changed, without the agreement of the parent or guardian. The Administrative Hearing Commission cannot order a change of placement during a dispute; but the parent or guardian and the district can agree to a change.

When a responsible public agency contacts a State Board of Education operated program for consideration of a student's eligibility for acceptance and enrollment, the responsible public agency shall assure that the student will be enrolled or will maintain enrollment in the responsible public agency pending final action by the state.

If the decision in a due process hearing agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the local school district or responsible public agency and the parents for purposes of "stay-put" pending and during judicial appeal.

7. EDUCATIONAL SURROGATES (34 CFR 300.519)

The Missouri Department of Elementary and Secondary Education has established the following for the appointment of educational surrogates:

Identifying the Need for Appointment

Any person may advise a responsible public agency that a student with a disability within its jurisdiction may be in need of a person to act as an educational surrogate. Notice can be given to the public agency responsible for providing education to students with disabilities or directly to the Office of Special Education.

Process of Appointment

When the public agency responsible for providing education to students with disabilities is informed of a student with disabilities living within its jurisdiction, it shall, within thirty (30) days, determine whether an educational surrogate should be appointed. A request for the appointment of a surrogate shall be made within ten (10) days to the Office of Special Education. The Office, on behalf of the State Board of Education, shall, within thirty (30) days, appoint a person to act as an educational surrogate. The Office shall maintain a registry of trained educational surrogates from which they will select individuals for appointment. If an educational surrogate dies, resigns, or is removed, within fifteen (15) days thereof, a replacement will be appointed.

Criteria for Appointment

The State Board of Education shall appoint a person to act as a surrogate for the parent or guardian of a child with a disability as defined in Section 162.675, RSMo., when:

A. the child has no identified parent;
B. the child has parents who, after reasonable efforts, cannot be located by a public agency;
C. the child is a ward of the state and is living in a facility or group home (and not with a person acting as a parent); or,
D. the child is an unaccompanied homeless youth.

Definitions

The Department will use the following definitions when determining a child's eligibility to receive a surrogate appointment:

A. the term "parent" means a biological, adoptive, or foster parent of a child or a guardian generally authorized to make educational decisions for the child (but not the State if the child is a ward of the State), a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; an individual who is legally responsible for the child's welfare; or, an educational surrogate who has been appointed.

Qualifications for Appointment

Any person who is appointed to act as an educational surrogate shall:

A. be at least eighteen (18) years of age;
B. not be an employee of the SEA, responsible public agency or any other agency that is involved in the education or care of the child with disabilities (a person otherwise qualified to be an educational surrogate is not an employee of an agency simply because he or she is reimbursed to serve as an educational surrogate);
C. not be a contractor of a nonpublic agency that provides only non-educational care for the child;
D. not be a contractor of responsible public agency;
E. be free from any personal or professional interest that may conflict with the interests of the child represented; and,
F. have knowledge and skills that ensure adequate representation of the child.

In the case of a child who is a ward of the State, the educational surrogate alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the above requirements.

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogates without regard to the above requirements, until an educational surrogate can be appointed that does meet those requirements.

Educational Surrogate Training

All educational surrogates shall participate in a training session in which they will become familiar with the Missouri Educational Surrogate Program, acquire a basic understanding of the special education process in Missouri, and develop the knowledge and skill necessary to adequately represent a student. The Department shall provide the educational surrogate training and may require assistance from the LEA to present an effective training session.

Responsible Public Agency Responsibilities

Specifically, a responsible public agency shall:

A. designate a staff member who will be responsible for overseeing the educational surrogate program in their district. Unless notified otherwise, the Department will assume that the educational surrogate contact person is the same as the district's special education director or contact person;
B. complete and return to the Department a "Determination of Need for Surrogate Appointment" form for each student believed to be eligible for receiving a surrogate appointment;
C. assist the Department in recruiting educational surrogate volunteers and submit their names and addresses to the Department;
D. be available to aid the Department with local educational surrogate training; and,
E. complete and return to the Department an “LEA Educational Surrogate Evaluation” form for each surrogate serving in the district.

Duties of the Educational Surrogate

An individual appointed to act as an educational surrogate shall:

A. complete and return to the Department an Educational Surrogate Application and Verification of Eligibility form;
B. attend an educational surrogate training session;
C. represent their assigned student in all decisions relating to the student's education including matters related to the identification, evaluation, and educational placement of the child, as well as the provision of a free appropriate public education to the child; and,
D. notify the LEA or the Department if any conflicts develop or if they will no longer be able to fulfill their educational surrogate role.

Immunity from Liability

The person appointed to act as an educational surrogate shall be immune from liability for any civil damage arising from any act or omission in representing the student in any decision related to the student's education.

This immunity shall not apply to intentional conduct, wanton and willful conduct, or gross negligence.

Reimbursement

The person appointed to act as an educational surrogate shall be reimbursed by the State Board of Education for all reasonable and necessary expenses incurred as a result of his or her representation of a student with a disability. Determination of "reasonable and necessary" expenses shall be made at the discretion of the Department and pursuant to State Office of Administration guidelines. Such expenses do not include attorney fees or child care/babysitting expenses.

Evaluation

The Department will send to each LEA an evaluation form to complete for each educational surrogate in which they will recommend the continuation or termination of the surrogate appointment. LEAs shall provide brief written discussions supporting a recommendation of termination and attach any existing documentation. Upon receipt of a recommendation of termination, the Office will investigate and reach a decision on whether to terminate.

Termination

The educational surrogate appointment shall be terminated at the request of the educational surrogate or in the event of any of the following situations:

A. the conclusions of the initial educational evaluation indicate that the student does not qualify for receiving special education;
B. the student's parent or guardian reappears to represent him or her or wardship is terminated;
C. the student is no longer in need of special education services;
D. the student reaches the age of majority;
E. the educational surrogate fails to fulfill their responsibilities as defined by State and Federal regulations; and,
F. the student graduates and/or reaches age twenty-one (21).

8. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY (34 CFR 300.520)

When a student with a disability reaches age eighteen (18) or otherwise is emancipated in accordance with state law, the local school district or responsible public agency shall provide any required notice to both the student and the parents. All other rights accorded to parents under Part B of IDEA transfer to the student. All rights accorded to parents transfer to students, at age eighteen (18), who are incarcerated in an adult or juvenile, State or local correctional institution. The student and parent must be notified of the transfer of rights. The transfer does not apply if the student is declared incompetent by a court of competent jurisdiction.

9. DISCIPLINARY ACTIONS/REMOVALS/EXPEDITED HEARINGS

Authority of School Personnel

School personnel may consider any unique circumstances on a case by case basis when determining whether a change of placement, consistent with other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

Ten (10) School Days or Less

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent such alternatives are applied to children without disabilities) without providing services. School personnel may also impose additional removals of not more than ten (10) school days consecutively in that same school year for separate incidents, as long as those removals do not constitute a change of placement. Once a child has been removed from his or her placement for a total of ten (10) school days in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required below under the subheading "Services."

Long Term Suspension

If school personnel seek to order a change in placement that would exceed ten (10) school days consecutively and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except services must be provided to ensure the child receives a free appropriate public education, although it may be provided in an interim alternative educational setting.

Change of Placement

A removal of a child with a disability from the child's current educational placement is a change of placement if:

A. the removal is for more than ten (10) school days in a row; or,
B. the child has been subjected to a series of removals that constitute a pattern because:

    1) the series of removals total more than ten (10) school days in a school year;
    2) the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and,
    3) of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another; and,

The school district determines whether a pattern of removals constitutes a change of placement on a case-by-case basis. That determination is subject to review through due process and judicial proceedings.

Services

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

A school district is only required to provide services to a child 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 it provides services to a child without disabilities who has been similarly removed.

A child with a disability who is removed from the child's current placement for more than ten (10) school days must:

A. continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP, and
B. receive, as appropriate, a functional behavioral assessment, and behavior intervention services, and modifications that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for ten (10) school days in that same school year and, if the current removal is for ten (10) school days in a row or less and if the removal is not a change of placement (see definition below), then school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement, the child's IEP Team shall determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

Manifestation

Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or, if the conduct in question, was the direct result of the local educational agency's failure to implement the IEP.

If the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) determine that either the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or, if the conduct in question, was the direct result of the local educational agency's failure to implement the IEP applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

Determination that Behavior Was a Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement. If the child already has such a behavioral intervention plan, the IEP Team must review it and modify it, as necessary, to address the behavior.

Unless the removal is due to weapons, drugs, or serious bodily injury, the child must be returned to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

Special Circumstances

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to forty-five (45) school days, if the child:

A. carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district;
B. knowingly has or uses illegal drugs (see the definition below) or sells or solicits the sale of a controlled substance (see the definition below) while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district; or,
C. has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district.

On the date on which the decision to take that action is made, the parent must be notified of the decision and provided the Procedural Safeguards statement.

Determination of Setting (CFR 300.531)

The interim alternative educational setting must be determined by the IEP Team for removals that are changes of placement and forty-five (45) school day placements described under special circumstances.

Expedited Due Process Hearing (34 CFR 300.532)

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request an expedited due process hearing.

Authority of Commissioner in Expedited Hearings

A qualified hearing Commissioner will hold the due process hearing and make a decision. The hearing Commissioner may:

A. return the child with a disability to the placement from which the child was removed if the hearing Commissioner determines that the removal was a violation of the requirements described under the heading Authority of School Personnel, or that the child's behavior was a manifestation of the child's disability, or
B. order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing Commissioner determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These expedited hearing procedures may be repeated, if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a school district files a due process complaint to request such a hearing:

A. The Administrative Hearing Commission must arrange for an expedited due process hearing, which must occur within twenty (20) school days of the date the hearing is requested and must result in a determination within ten (10) school days after the hearing.
B. Unless the parents and the school district agree, in writing, to waive the meeting or agree to use mediation, a resolution meeting must occur within seven (7) calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings.

The timeline for an expedited due process hearing may not be extended; however, the case may be withdrawn and re-filed.

Placement During Appeals (34 CFR 300.533)

When the parent or responsible public agency has filed a due process complaint related to disciplinary matters, the child must (unless the parent and the State Educational Agency or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the Administrative Hearing Commission, or until the expiration of the time period of removal as provided for and described under the heading Authority of School Personnel, whichever occurs first.

Protection for Children Not Yet Eligible for Special Education and Related Services (34 CFR 300.534)

Students who have not been identified as disabled may be subjected to the same disciplinary measures applied to children without disabilities if the district did not have prior knowledge of the disability. If the school district is deemed to have knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action, the child may assert any of the protections for students with disabilities in the area of discipline. The district has knowledge of the disability when:

A. the parent has expressed concern in writing that the student needs special education services to supervisory or administrative personnel of the appropriate educational agency or a teacher of the child; or,
B. the parent has requested an evaluation; or,
C. the student's teacher or other school staff has expressed specific concern about a pattern of the student's behavior directly to the director of special education or to other supervisory personnel in accordance with the agency's established child find or special education referral system.

A school district would not be deemed to have knowledge that the child is a child with a disability, if the school district conducted an evaluation and determined that the child was not a child with a disability; or determined that an evaluation was not necessary and provided proper Notice of Action Refused prior to the behavior incident; or, if the parent of the child has not allowed an evaluation of the child pursuant to IDEA or has refused services.

If a request for evaluation is made during the period the student is subject to disciplinary measures, the evaluation will be expedited. Until the evaluation is completed (assuming the school district is not deemed to have knowledge that the child is a child with a disability prior to the behavior that precipitated the disciplinary action), the child remains in the educational placement determined by the school district, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, the school district shall provide special education and related services and follow all required procedures for disciplining students with disabilities.

Reporting Crimes Committed by Students With Disabilities

Nothing in this part shall be construed to prohibit a school district from reporting crimes, to appropriate law enforcement and judicial authorities, or to prevent State law

enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by students with disabilities. An agency reporting a crime shall ensure copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. Transmittal of records must be in accordance with Family Educational Rights and Privacy Act (FERPA).

Definitions

A. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC 812 (c)).
B. Illegal drug means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
C. Substantial evidence means beyond a preponderance of the evidence.
D. Weapon means dangerous weapon as defined under paragraph (2) of the first subsection (g) of Section 930 of title 18, United States Code. The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.
E. A serious bodily injury involves an injury with a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC 1365 (h)(3)).

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE A LEGAL BASIS FOR PROCEDURAL SAFEGUARDS IN THIS STATE:

(Section 162.962 RSMo)
(Section 162.955, RSMo)
(Section 162.958, RSMo)
(Section 162.959, RSMo)
(Section 162.961 (1)(2)(3)(4)(5), RSMo)
(Section 162.963(1)(2), RSMo)
(Section 162.997(1)(2), RSMo)
(Section 162.998(1)(2), RSMo)
(Section 162.999(1)(2)(3)(4)(5)(6)(7)(8), RSMo)

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.

<u>Failure to Provide FAPE</u>

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 300.165)

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."

<u>Membership (34 CFR 300.651)</u>

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 (34 CFR 300.653)

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.

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 and 300.177)

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.

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	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 • high school • middle school • elementary	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	1. Must have one of the following certificates issued by the State Board of Education: • Special education • Guidance Counselor • School Psychological Examiner • School Psychologist 2. Licensed Professional Counselor licensed by the Division of Professional Registration
Interpreter of the Deaf	Facilitates communication between students with hearing impairments and hearing persons.	High school diploma or GED	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.
Music Therapist	Participates in the development and implementation of IEPs.	Bachelor's Degree	Certification recognized by the American Music Therapy Association

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

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
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	• Certified by the Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP) OR • Demonstrated proficiency in O&M as required by a current contract with Rehabilitation Services for the Blind
Orientation and Mobility Paraprofessional	Provides orientation and mobility services under the direction of an Orientation and Mobility Specialist.	Bachelor's Degree in fields of study other than those listed above	• Demonstrated proficiency in O&M as required by a current contract with Rehabilitation Services for the Blind and 2 years supervised experience with blind/or visually impaired persons
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** 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 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 required by a current contract with Rehabilitation Services for the Blind.

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
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

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
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)
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/K-12 • high school • middle school • elementary	Directs and assists special education teachers and paraprofessional, grades K-12, or any combination thereof, in providing special education services to students with disabilities.	Master'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

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Speech/Language Pathologist Speech/Language Pathologist, Diagnostic	Provides direct instruction, consultation with teachers, develops IEPs, writes evaluation reports, and may provide evaluation services and any other duties permitted by state law. Provides evaluation services for students with suspected speech/language disabilities. This person does not have a caseload of students for provision of direct services.	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 Pathology Aide	Works under the direct supervision of a licensed speech/language pathologist.	High school diploma or GED	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)

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 over nine months 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
        - All expenditures must follow the public agency's procurement guidelines.
        - Public agencies may not collect or charge tuition costs for allowable ECSE services.

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
   - 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.
   - All equipment items purchased with ECSE funds are the property of the district's ECSE program and must remain with the program.
   - All individualized equipment purchases must be IEP driven.

5) Lease Expenditures
   - Leases are allowed for facilities, modular units, buses, vehicles, and office equipment.
   - For any lease amount over $400,000 per year, the public agency must submit documentation on the options considered for ECSE facilities and how the option chosen is the most cost effective.

6) Capital Outlay (Lease Purchase, Purchase, New Construction, Renovation/Expansion) Expenditures
   - 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.
   - Facility reimbursement for facility lease-purchases, purchases, and new construction is calculated based on the following formula.

     Eligible Count * 60 Square Feet per Student = Amount of ECSE Reimbursable Space
     Total Facility Cost / Total Facility Square Footage = Cost per Square Foot
     Amount of ECSE Reimbursable Space * Cost per Square Foot = ECSE Reimbursement Amount
     ECSE Reimbursement Amount / 8 Years = Reimbursement per Fiscal Year

     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.

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 $300 per FTE for professional development activities. Part-time staff must be prorated based on these flat rate amounts.
   - Paraprofessionals are allotted up to $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 $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 $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 $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.

Position/Full Time Equivalent	Caseload/ Class Size
Teacher of Center Based Self Contained Classroom	12-22*
Teacher of Integrated Classroom (formerly referred to as Reverse Mainstream - At least half of the children must have an IEP/qualify for ECSE.)	12-22*
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	4-12*
Paraprofessional in ECSE Centerbased Self Contained Classroom or Integrated Classroom	12-22*
Paraprofessional in ECSE Severe/Low Incidence Classrooms	4-12*
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)

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

VIII. PRIVATE SCHOOLS (see also Regulation VI)

This section applies to children with disabilities who attend private or parochial schools or who are home schooled.

1. CHILDREN PLACED IN APPROVED PRIVATE AGENCIES BY PUBLIC AGENCIES

Responsibility of the SEA (34 CFR 300.146)

The Department of Elementary and Secondary Education ensures that when a child with a disability is placed in or referred to an approved private agency by the state or local education agency, the child is provided special education and related services in conformity with an individualized education program and at no cost to parents. Each child must be provided an education that meets the standards that apply to education provided by the SEA and LEAs and each child has all the rights of a child with a disability who is served by the public agency.

Implementation by the SEA (34 CFR 300.147)

The Department of Elementary and Secondary Education will approve private agencies in accordance with standards developed for public agencies through procedures, such as a review of policies and procedures, written reports, parent questionnaires, and on-site visits.

All private agencies approved by the Department of Elementary and Secondary Education receive a copy of State Standards and Regulations for special education.

The Department of Elementary and Secondary Education will provide representatives from approved agencies the opportunity to participate in the development and revision of State standards that apply to them.

Any private educational agency which desires to contract with a local board of education or with the State Board of Education to provide special education and related services for students with disabilities shall make application to the State Board of Education for review and approval by staff of the Department of Elementary and Secondary Education as outlined in Regulation VI.

Responsibility of the LEA

Local school districts can only contract with private agencies that have been approved by the State Board of Education for the placement of students with disabilities. Part B funds cannot be used to pay for services from unapproved private agencies.

2. CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

A. An LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or

facility if the LEA made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with 34 CFR 300.131-300.144 that are outlined in this section.

B. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures.

   If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

   The cost of reimbursement described in the above paragraph may be reduced or denied if at the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense, or at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information previously described in this section; and if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 34 CFR 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

C. Notwithstanding the notice requirement, the cost of reimbursement:

   1) must not be reduced or denied for failure to provide the notice if:

      - the school prevented the parent from providing the notice;
      - the parents had not received notice; or,
      - maintaining the child in the public agency placement would likely result in physical harm to the child; and

   2) may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if the parents are not literate or cannot

write in English or if maintaining the child in the public agency would likely result in serious emotional harm to the child.

3. CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS-CHILD FIND

Private school children with disabilities means children with disabilities enrolled by their parents in private schools that meet the definition of elementary or secondary school.

Child Find for Private School Children with Disabilities (34 CFR 300.131)

Each LEA shall locate, identify, and evaluate all private school children with disabilities, who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA.

The child find process must be designed to ensure equitable participation of parentally-placed private school children and an accurate count of those children.

In carrying out these requirements, the LEA must undertake activities similar to the activities undertaken for the agency's public school children.

The cost of carrying out the child find requirements in this section, including initial evaluations, may not be considered in determining if the LEA has met its proportionate share obligation.

The child find process must be completed in a time period comparable to that for students attending public schools in the LEA.

Each LEA in which private, including religious, elementary schools and secondary schools are located, must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

4. LEA REQUIREMENTS TO PROVIDE SERVICES FOR PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES (34 CFR 300.132)

To the extent consistent with their number and location in each local district, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of IDEA by providing them with special education and related services, including direct services determined in accordance with the equitable services determination requirement.

Each public agency shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services.

Each LEA must maintain in its records and provide to the SEA, the following information related to parentally-placed private school children:

A. the number of children evaluated;
B. the number of children determined to be children with disabilities; and,
C. the number of children served.

NOTE: While IDEA does not provide an individual entitlement to such private school students and IDEA compliance requires only that services provided represent a proportionate share as explained below under "Expenditures," school districts need to consider the extent of services required under Missouri law.

Expenditures/Proportionate Share (34 CFR 300.133)

Each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

For children ages five (5) to twenty-one (21) with disabilities, an amount that is the same proportion of the LEA's total subgrant under Section 611 of IDEA as the number of private school children eligible under IDEA ages five (5) to twenty-one (21) who are enrolled by their parents in private, including religious and home, elementary schools and secondary schools located in the school districts served by the LEA is to the total number of children eligible under IDEA in its jurisdiction ages five (5) to twenty-one (21).

If an LEA has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one (1) additional year.

In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools, must conduct a thorough and complete child find process to determine the number of parentally-placed children eligible under IDEA attending private schools located in the LEA. Child find activities may not be charged to the proportionate share obligations.

Reporting Requirements

After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, each LEA must determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA and ensure that the count is conducted on December 1, inclusive of each year. The child count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

Consultation (34 CFR 300.134)

To ensure timely and meaningful consultation, an LEA or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

A. the child find process, including how parentally-placed private school children suspected of having a disability can participate equitably; and how parents, teachers, and private school officials will be informed of the process;
B. the determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
C. the consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
D. a discussion of how, where, and by whom special education and related services will be provided, for parentally-placed private school children with disabilities including a discussion of:

    1) the types of services (including direct services and alternate service delivery mechanisms);
    2) how special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and,
    3) how and when those decisions will be made; and,

E. if the LEA disagrees with the views of the private school officials on the provision of services (whether provided directly or through a contract) and how the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

Written Affirmation (34 CFR 300.135)

When timely and meaningful consultation as required by 34 CFR 300.134 has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

Compliance (34 CFR 300.136)

A private school official has the right to submit a complaint through the state's child complaint process that the LEA:

A. did not engage in consultation that was meaningful or timely, or
B. did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA and the applicable private school provisions in this part. The LEA must forward the appropriate documentation to the SEA.

If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary of Education, United States Department of Education. The private school official must provide the information on the noncompliance that was provided to the SEA. The SEA must forward the appropriate documentation to the Secretary.

Equitable Services Determined (34 CFR 300.137)

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

Decisions about services to parentally-placed private school children with disabilities must be made in accordance with the consultation process described above (34 CFR 300.134) and the following.

If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must initiate and conduct meetings to develop, review, and revise a services plan for the child, and ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children.

Equitable Services Provided (34 CFR 300.138)

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements.

Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

Each parentally-placed private school child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that have been determined to be made available to parentally-placed private school children with disabilities.

The services plan must, to the extent appropriate, meet the requirements specified for an IEP with respect to the services provided, and be developed, reviewed, and revised consistent with requirements for IEPs.

The provision of equitable services must be provided by employees of the public agency or through contract by the public agency with an individual, association, agency, organization, or other entity. Special education and related services provided to parentally-placed private school children must be secular, neutral, and nonideological.

Location of Services; Transportation (34 CFR 300.139)

Missouri case law and the Missouri Constitution prohibit the provision of services, equipment, and personnel on-site at a child's private school. LEAs must determine how and where services will be provided to children with disabilities attending private or parochial schools and could consider the provision at a neutral site.

If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation from the child's school or the child's home to a site where the services are being provided other than the private school, and from the service site to the private school or to the child's home, depending on the timing of the services. LEAs are not required to provide transportation from the child's home to the private school. The cost of the transportation may be included in calculating whether the LEA has met expenditure requirements.

Due Process Complaints and State Complaints (34 CFR 300.140)

The due process procedures only apply to complaints that an LEA has failed to meet the child find requirements.

Any complaint that the LEA has failed to meet all other requirements pertaining to private school students must be filed in accordance with the child complaint process. Complaints filed by a private school official regarding these requirements are subject to appeal with the U. S. Secretary.

Funds Cannot Benefit a Private School (34 CFR 300.141)

An LEA may not use Part B funds available under the Act to finance the existing level of instruction in the private school or to otherwise benefit the private school.

An LEA must use Part B funds available under the Act to meet the special education and related services needs of parentally-placed private school children, but not for meeting the needs of a private school or the general needs of the students enrolled in the private school.

Use of Personnel (34 CFR 300.142)

A. The local school district may use funds available under the Act to pay for services of an employee of the private school to provide services if:

    1) the private school employee performs the services outside of his or her regular hours of private school duties;
    2) the services are provided on public school grounds or a neutral site; and,
    3) the employee performs the services under public supervision and control.

Separate Classes (34 CFR 300.143)

An LEA may not use funds available under the Act for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site and the classes include children enrolled in public schools and children enrolled in private schools.

Equipment/Supplies/Construction for the Benefit of Private School Children with Disabilities (34 CFR 300.143)

A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under Section 611 or 619 of IDEA for the benefit of private school children with disabilities.

The local school district shall spend no funds for repairs, construction, or minor remodeling of private school facilities.

LISTED BELOW ARE THE STATUTES OF MISSOURI WHICH PROVIDE A LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY RELATING TO PRIVATE SCHOOLS:

Article I, Section 7
Article IX, Section 8
Section 162.996

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.

X. STATE OPERATED PROGRAMS

1. SEA PROVISION OF DIRECT SERVICES

The Missouri Department of Elementary and Secondary Education provides free appropriate public education services for students with disabilities through three State Board of Education Operated Programs: School for the Deaf, School for the Blind, and the Missouri Schools for the Severely Disabled.

It is the policy of the Missouri Department of Elementary and Secondary Education that the requirements of Part B of IDEA are implemented by the State Board of Education Operated Programs responsible for the education of students with disabilities. Each State Board Operated Program is required to submit a Compliance Plan that specifies the policies and procedures necessary to meet the requirements of IDEA.

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

The Department ensures that funds provided under Part B to support SEA direct services are used in accordance with requirements of this state plan with the exception of those policies related to excess cost.

2. MISSOURI SCHOOLS FOR THE SEVERELY DISABLED

Regulations for Services

The Missouri Schools for the Severely Disabled (MSSD), a system of day school services in separate school settings, were established by state law to serve those students with severe disabilities referred to the State Board of Education by local school districts which do not operate such programs themselves and which are not a part of special school districts. If the evaluation information and the Individualized Education Program (IEP) compiled by the local district supports separate school placement as the student's least restrictive educational environment, the local education agency may seek determination of student eligibility for services. The following procedural information is provided to assist school districts in accessing services from the MSSD.

A. Eligibility Criteria for MSSD

1) Students with severe disabilities are those students who generally have significant cognitive deficits as evidenced by one (1) of the two (2) methods described below:

The student obtains scores falling four (4) or more standard deviations below the mean on standardized measures of cognitive functioning and shows commensurate deficits in at least two (2) areas of adaptive functioning.

OR

The student is not able to respond to any standardized measure of cognitive ability due to a combination of sensory and/or motor impairments, but evaluation information indicates significant deficits in intellectual and adaptive behavior skills, and the student requires pervasive level of supports across all life areas, as defined by the American Association for Mental Retardation (AAMR) classification system.

This identification shall result from comprehensive evaluation that is consistent with the procedures in Regulation III, Procedures for Evaluation and Determination of Eligibility.

2) The local school district shall provide justification of why it is not the least restrictive environment for the student. The district must demonstrate why it cannot educate the student in the local school and justify why the services they have provided are not adequate to meet the needs of the student.

   The presence of significant cognitive deficits may permeate a student's educational condition so as to render the student severely disabled. A student with severe or multiple disabilities would evidence the presence of significant cognitive deficits along with one (1) or more of the other educationally disabling conditions.

   Students who educationally benefit from special education and related services that can be provided by local educational agencies are not considered eligible for services through MSSD. In general, students with disabilities such as cognitive deficits falling two (2) to three (3) standard deviations below the mean, Speech or Language Impairments, Hearing Impaired/Deaf, Visually Impaired/Blind, Learning Disabilities, Emotional Disturbance, Other Health Impaired, Traumatic Brain Injury, or Orthopedically Impaired can receive an appropriate education when served by local educational agencies.

   A student with a severe disability may enroll in MSSD upon attaining the age of five (5) years. Extended School Year services shall be provided to students who attain age five (5) years during the summer, if eligible for such services.

B. Eligibility Procedures

In order to assure compliance with applicable state and federal laws and regulations governing identification, evaluation, IEP development, and

educational placement procedures for students who may be enrolled in MSSD, the following procedures have been adopted by the State Board of Education.

1) All students identified as potentially in need of special education services shall be enrolled in and served by the local school district pending the determination of such need. This includes students whose performance indicates possible functioning within the range of severe to profound mental retardation.
2) The local school district in which the student resides shall complete a comprehensive evaluation which is current within three (3) years. Additional evaluations may be required as determined necessary for individual students. The evaluation information must be obtained in accordance with State regulations on evaluation. Additional educational records or other pertinent information may be required by MSSD to clarify the student's educational needs.
3) Following compilation of evaluation information, the local district where the student resides is responsible for development of an IEP for the current school term in accordance with the requirements of State regulations. The district must consider all service options, including service through a separate school placement, to determine which is appropriate to meet the student's educational needs.
4) When the IEP indicates the student is in need of services which the local district is unable to provide and which may be provided by MSSD, the local school district must forward documentation for eligibility review which includes:

    - the evaluation report;
    - current IEP, the preceding IEPs, or progress reports, if available; and,
    - justification for Separate School Placement if the IEP Team is considering separate school as a placement option for the student. This documentation must provide justification for:

        <u>Removal from Regular Education</u>

        - Curriculum and goals of the regular education class and why the student is unable to access the general education curriculum.
        - Sufficiency of the district's efforts to accommodate the child with a disability in the regular classroom.
        - The degree to which the child with a disability will receive educational benefit from regular education.
        - The effect the presence of a child with a disability may have on the regular classroom environment on the education that the other students are receiving.
        - The nature and severity of the child's disability.

        <u>Removal from LEA</u>

        - Considered educating the child in the LEA.

- Identified supplementary aids and services that would be needed to educate the child in the LEA.
- Articulated why the LEA cannot serve the child in the LEA in a placement that would benefit the child.

Parental consent must be obtained before the documentation for the eligibility review is submitted to MSSD or all personally identifiable information, as defined in 34 CFR 99.3, must be removed from the documentation before it is provided to MSSD.

5) Following a professional review of this information provided by the LEA, the district shall be notified whether or not the student is eligible for services through MSSD. Such notice shall specify the placement site should the student be referred. The decision on such eligibility is not appealable.

   Students who are eligible for the Missouri Schools for the Severely Disabled based on the severity of the disability will not be accepted if they require permanent homebound placement as such a placement requirement would therefore preclude attendance at a separate day program such as MSSD. Students who otherwise qualify and require only intermittent homebound placement will be accepted for placement.

6) Should the district be notified that the student is eligible for MSSD, the district may refer the student. The district shall notify parents of the eligibility decision and submit the referral only after the parents have been offered all rights available to them as explained in the Procedural Safeguards notice. If the IEP at time of request does not reflect a total of 1,800 minutes of service per week, the district must reconvene the IEP Team before submitting the referral so as to ensure an IEP Team decision on actual minutes needed to provide FAPE.
7) Upon receipt of the referral, enrollment papers will be mailed to the parent. MSSD will notify the LEA of the date of the student's enrollment.
8) Within thirty (30) days following initial enrollment of the student, an IEP/placement review conference shall be held. The purpose of this review is to confirm the appropriateness of continued placement in MSSD as the least restrictive environment to provide a free appropriate public education for the student. The student's teacher, other appropriate professional personnel from the school, a representative of the referring district, and the student's parent shall be invited to participate in this review. The parents shall be informed of their right to appeal, in accordance with the procedures provided in the Procedural Safeguards notice, any change in placement decision made as a result of this review.
9) IEP Teams will be convened annually or more frequently, if needed, to review and/or rewrite, if appropriate, the IEPs for all students enrolled in MSSD. These conferences will be conducted in accordance with State regulations on individualized education program, and the least restrictive environment.

10) At any time the IEP Team may determine, based on general functioning level and progress shown, that the student is no longer eligible for MSSD, either because he or she is functioning at a level higher than the required cognitive measure or because a separate school no longer appears to be the student's least restrictive environment. In such instances, the IEP Team reviews the IEP, existing data, and education record to determine the plan through which educational services for the student to return to the local school district.

C. Reevaluation

1) The local district shall conduct a reevaluation as required by State regulations.
2) Results of the reevaluation shall be submitted to MSSD for review. Additional data may be requested by MSSD to clarify the student's educational needs.

D. Transfer of Students

1) Transfer of students enrolled in MSSD

A student who is enrolled in a MSSD school and moves from one local school district to another (including those moves to another district within the catchment area of the MSSD school the student currently attends) may transfer enrollment immediately on the basis of the Justification for Separate School Placement, current IEP, and evaluation report. This is considered an interim placement, not to exceed thirty (30) days, during which the new local district follows the transfer procedures provided within Regulation III, Procedures for Evaluation and Determination of Eligibility, to confirm concurrence with placement in MSSD as the least restrictive educational environment for the student. If this review results in determination that MSSD is the least restrictive environment, the new district will complete the Justification of Continued Separate School Placement. If, during the thirty (30) day interim period, the new local school district fails to provide Justification of Separate School Placement, the student will not be served by MSSD and shall be served by the LEA through a placement other than MSSD.

2) Transfer of Students with Severe Disabilities from a Separate School (Day) Facility (in Missouri School District, a Special School District, or an Out-of-State Program):

A thirty (30) day interim placement MSSD may be available for students with severe disabilities who are changing school districts due to a change in residence. These students must have been receiving services in their local district; through cooperative arrangement by their home district with another school district; in a special school district; or, in an out-of-state program for students with severe disabilities.

To qualify for this interim placement, the following criteria must be met:

- The current IEP and evaluation report are adopted by the new school district pursuant to transfer procedures provided within Regulation IV, Least Restrictive Environment.
- The new district submits a copy of the student's current IEP and evaluation report to MSSD with a letter acknowledging adoption of the documents. In the same letter, the new district will verify the previous placement provided educational services in a self-contained classroom with students with severe disabilities in a separate school building. In addition, the district requests that the student be served in a thirty (30) day interim placement to confirm concurrence with placement in MSSD as the least restrictive educational environment for the student.
- MSSD will issue a letter of interim placement assignment if the information submitted is viewed as substantiating the request.
- Enrollment paperwork must be completed at the onset of the thirty (30) day interim placement period. MSSD will notify the LEA of the date of the student's enrollment.
- During the thirty (30) day interim placement, the local district shall follow the referral procedures to seek eligibility determination in accordance with B 1-6 above. If found eligible, the LEA will issue a notice of action to the parents, guardian or surrogate parent and MSSD confirming continued placement in the State School. If, during the thirty (30) day interim period, the local school district fails to submit the Justification of Separate School Placement, the student will not be served by MSSD and shall be served by the LEA through a placement other than MSSD.

If MSSD is not confirmed as the student's least restrictive educational environment, the local district is notified of this decision and becomes responsible for providing the required special education and related services in accordance with Regulation V, Procedural Safeguards, and Regulation IV, Individualized Education Programs.

3. MISSOURI SCHOOL FOR THE BLIND AND MISSOURI SCHOOL FOR THE DEAF

The Missouri School for the Blind (MSB) and Missouri School for the Deaf (MSD) are established by state law to serve those students referred to the State Board of Education by local school districts who may require such services to receive a free appropriate public education. If the evaluation information and the Individualized Education Program (IEP) compiled by the local district supports separate school placement as the student's least restrictive educational environment, the local education agency may seek determination of student eligibility services. The following procedural information is supplied to assist school districts in accessing services from the Missouri School for the Deaf and Missouri School for the Blind.

A. Eligibility for MSB and MSD

1) MSB: Students who are Blind or Visually Impaired, for purposes of MSB eligibility, are those students who meet the State eligibility criteria for Visual Impairment. Students who meet the state eligibility category criteria for Missouri Schools for the Severely Disabled (MSSD) are not eligible for MSB.
2) MSD: Students who are Deaf or Hearing Impaired, for purposes of MSD eligibility, are those students who meet the state eligibility criteria for Deaf/Hearing Impaired. Students who meet the state eligibility criteria for MSSD are not eligible for MSD.
3) A student may enroll in MSB and MSD upon attaining the age of five (5) years. Extended School Year services shall be provided to students who attain age five (5) years during the summer, if eligible for such services.

B. Referral Procedures

In order to assure compliance with applicable State and Federal laws and regulations governing identification, evaluation, IEP development, and educational placement procedures for students who may be enrolled in either the Missouri School for the Deaf or Missouri School for the Blind program, the following procedures have been adopted by the State Board of Education. The local school district is encouraged to request a professional employee of MSB or MSD to participate in this process. Such requests for participation shall be honored when made during the school term and when schedules permit.

1) All students identified as potentially in need of services from the State Board Operated Programs shall be enrolled in local school district programming pending the determination of such need.
2) The local school district in which the student resides shall complete a comprehensive and appropriate evaluation information, current within three (3) years. Additional evaluations may be required as determined necessary for individual students. The evaluation must be obtained in accordance with State regulations (Procedures for Evaluation and Determination of Eligibility). Additional educational records or other pertinent information may be required by MSB or MSD to clarify the student's educational needs.
3) Following compilation of evaluation information, the local school district where the student resides is responsible for development of an IEP for the current school term in accordance with the requirements of State regulation provisions for Individualized Education Programs. The district must consider all service options, including service through a separate school placement, to determine which is appropriate to meet the student's educational needs.
4) If the IEP Team is considering separate school as a placement option for the student, they must document the justification for such placement in writing. This documentation must include that the district has:

- considered educating the child in the LEA;
- identified supplementary aids and services that would be needed to educate the child in the LEA; and,
- articulated why the LEA cannot serve the child in the LEA in a placement that would benefit the child.

5) When the IEP indicates the student is in need of services which the local district is unable to provide and which may be provided by the MSB or MSD, the local school district may forward the evaluation report, current IEP, and justification for separate school placement to MSB or MSD for eligibility review. The preceding IEPs, if applicable, and related educational records and other pertinent information for all services provided by the local district shall also be forwarded. Additional information may be requested on an individual student basis. Following a professional review of this information, the district shall be notified whether or not the student is eligible for services through MSB or MSD. The eligibility determination is not appealable and is a unilateral determination made by MSB or MSD, respectively.
6) Should the district be notified that the student is eligible for MSB or MSD, the district may refer the student. Notice of such decision to refer shall be given to the parent in accordance with the law including an explanation of their right to appeal the action through use of their due process hearing rights. The district shall submit the referral only after the parents have received an explanation of the Procedural Safeguards. If the IEP, at time of request, does not reflect a total of 1,800 minutes of service per week, the district must reconvene the IEP Team before submitting the referral so as to ensure an IEP Team decision on actual minutes needed to provide FAPE.
7) Upon receipt of the referral, enrollment papers will be mailed to the parent by MSB or MSD.
8) Within thirty (30) days following initial enrollment of the student in MSB or MSD, an IEP meeting shall be held. The purpose of this review is to confirm the eligibility and appropriateness of continued enrollment in MSB or MSD as the least restrictive environment to provide a free appropriate public education for the student and to make necessary revisions in the student's IEP. The student's teacher, other appropriate professional personnel from MSD or MSB, a representative of the referring district, and the student's parents shall be invited to participate in this review. The parents shall be informed of their right to appeal, in accordance with the Procedural Safeguards, any decision made as a result of this review, including any change in placement decision made as a result of this review. If the IEP Team meeting results in a determination that the student is ineligible for services at MSB or MSD, the home district will be notified and will need to locate another entity to implement the IEP or revise the IEP if appropriate, pursuant to proper IEP process.
9) IEP Teams will be convened annually or more frequently, if needed, to review and/or rewrite, if appropriate, the IEPs for all students enrolled in MSB or MSD.
10) At any time the IEP Team may determine, based on general functioning level and progress shown, that the student is no longer eligible for MSB or MSD

because a separate school no longer appears to be the student's least restrictive environment. In such instances, the IEP Team reviews the IEP, existing data, and education record to determine the plan through which the student will be transitioned to the local school district for services.

C. Reevaluation

1) The local district shall conduct a reevaluation as required by State regulations.
2) Results of the reevaluation shall be submitted to MSB and MSD for review. Additional data may be requested by MSB or MSD to clarify the student's educational needs.

D. Subsequent Referral Procedures

The following procedures have been adopted by the State Board of Education for annual enrollment.

1) Missouri School for the Deaf or Missouri School for the Blind shall mail a copy of the Letter of Referral to the referring district on an annual basis.
2) Personnel from the referring district shall be invited to review the educational progress displayed by the student during the proceeding school term and participate in the development of the student's IEP.
3) If the referring district determines a continuing need for services from the Missouri School for the Deaf or Missouri School for the Blind, as documented in the student's IEP, the superintendent of the district shall amend any identifying information concerning the student or parent, as is necessary, sign the referral form, and submit the referral to the Missouri School for the Deaf or Missouri School for the Blind.
4) The determination of whether to accept the re-referral for the new school year is a unilateral decision to be made by Missouri School for the Deaf or Missouri School for the Blind and is not appealable. Upon rejection of the re-referral, a home district is responsible for provision of a free appropriate public education.
5) The Missouri School for the Deaf or Missouri School for the Blind shall mail a Letter of Notification to the parent or guardian and local school district of every student enrolled in the previous year who is expected to return and who has been referred by the local school district.

The Department of Elementary and Secondary Education does not discriminate on the basis of race, color, religion, gender, national origin, age, or disability in its programs and activities. Inquiries related to Department programs and to the location of services, activities, and facilities that are accessible by persons with disabilities may be directed to the Jefferson State Office Building, Office of the General Counsel, Coordinator – Civil Rights Compliance (Title VI/Title IX/504/ADA/Age Act), 6th Floor, 205 Jefferson Street, P.O. Box 480, Jefferson City, MO 65102-0480; telephone number 573-526-4757 or TTY 800-735-2966; fax number 573-522-4883; email civilrights@dese.mo.gov.

Missouri Department of Elementary and Secondary Education
P. O. Box 480
Jefferson City, Missouri 65102-0480
http://dese.mo.gov