# Local Plan for Compliance With State Regulations

## Implementing Part B of the Individuals with Disabilities Education Act

July 2026

**LOCAL PLAN FOR COMPLIANCE WITH STATE REGULATIONS**
IMPLEMENTING PART B OF THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT

# Table of Contents


**LOCAL PLAN FOR COMPLIANCE WITH STATE REGULATIONS ..... 2**

**I. GENERAL PROVISIONS ..... 4**
2. AMENDMENTS ..... 4
3. DEFINITIONS ..... 4

**II. CONFIDENTIALITY ..... 14**
1. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION ..... 14

**III. IDENTIFICATION AND EVALUATION ..... 18**
1. CHILD FIND ..... 18
2. DEFINITIONS AND CRITERIA FOR DETERMINATION OF ELIGIBILITY ..... 19
3. PROCEDURES FOR EVALUATION AND DETERMINATION OF ELIGIBILITY ..... 29

**Determination of Eligibility for Young Children Ages 3 Through 5 ..... 35**

**IV. FAPE/IEP/LRE ..... 38**
1. FREE APPROPRIATE PUBLIC EDUCATION ..... 38
2. INDIVIDUALIZED EDUCATION PROGRAMS ..... 41
3. LEAST RESTRICTIVE ENVIRONMENT (LRE) ..... 50
4. TRANSITION OF CHILDREN FROM PART C SERVICES TO PART B SERVICES ..... 53

**V. PROCEDURAL SAFEGUARDS/DISCIPLINE ..... 56**
1. OPPORTUNITY TO EXAMINE EDUCATION RECORDS/PARENT PARTICIPATION IN MEETINGS ..... 56
2. INDEPENDENT EDUCATIONAL EVALUATION (IEE) ..... 56
3. WRITTEN NOTICE ..... 58
4. PROCEDURAL SAFEGUARDS NOTICE (34 CFR 300.504) ..... 59
5. PARENTAL CONSENT (34 CFR 300.300) ..... 60
1. ADMINISTRATIVE HEARING RIGHTS ..... 62
2. EDUCATIONAL SURROGATES ..... 75
3. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY ..... 78
4. DISCIPLINARY ACTIONS/REMOVALS/EXPEDITED HEARINGS ..... 78
B. PUBLIC AGENCY ELIGIBILITY ..... 85
A. GENERAL REQUIREMENTS ..... 85
2. CONDITION OF ASSISTANCE (34 CFR 300.200) ..... 85
3. CONSISTENCY WITH STATE POLICIES (34 CFR 300.201) ..... 85
4. INFORMATION FOR SEA (34 CFR 300.211) ..... 85
5. HEARINGS RELATED TO PUBLIC AGENCY ELIGIBILITY (34 CFR 300.221 and 300.155) 86
6. FAILURE TO PROVIDE FREE APPROPRIATE PUBLIC EDUCATION (FAPE) ..... 86
B. FISCAL REQUIREMENTS ..... 87

2. PERMISSIVE USE OF FUNDS (34 CFR 300.208) ..... 87
3. ACCOUNTING AND PAYMENT PROCEDURES ..... 88
4. EXCESS COST (34 CFR 300.202) ..... 89
5. MAINTENANCE OF EFFORT (34 CFR 300.203) ..... 89
6. WITHHOLDING OF PAYMENTS ..... 92
7. EARLY CHILDHOOD SPECIAL EDUCATION (ECSE) EXPENDITURE REQUIREMENTS 93
C. COMPLIANCE REQUIREMENTS ..... 95
2. PURCHASE OF INSTRUCTIONAL MATERIALS (34 CFR 300.210) ..... 96
3. RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES (34 CFR 300.213) 97
4. PERSONNEL (34 CFR 300.201) ..... 97
5. CLASS SIZE AND CASELOADS ..... 97

**C. PRIVATE SCHOOLS AND AGENCIES ..... 100**
1. CHILDREN PLACED IN APPROVED PRIVATE AGENCIES BY PUBLIC AGENCIES ..... 100
2. CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE ..... 100
3. CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS-CHILD FIND ..... 102
4. PUBLIC AGENCY REQUIREMENTS TO PROVIDE SERVICES FOR PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES (34 CFR 300.132) ..... 102

**1. STATE EDUCATION AGENCY (SEA) PROVISION OF DIRECT SERVICES ..... 109**

**2. MISSOURI SCHOOLS FOR THE SEVERELY DISABLED ..... 109**
REGULATIONS FOR SERVICES ..... 109
ELIGIBILITY CRITERIA FOR MSSD ..... 109
ELIGIBILITY PROCEDURES ..... 110

**REEVALUATION ..... 112**

**1. TRANSFER OF STUDENTS ENROLLED IN MSSD ..... 112**
TRANSFER OF STUDENTS WITH SEVERE DISABILITIES FROM A SEPARATE SCHOOL (DAY) FACILITY (IN MISSOURI PUBLIC AGENCY, A ..... 113
TRANSFER OF STUDENTS WHO PREVIOUSLY ATTENDED MSSD, MOVED OUT OF STATE, AND HAVE RETURNED TO MISSOURI ..... 113

**2. MISSOURI SCHOOL FOR THE BLIND AND MISSOURI SCHOOL FOR THE DEAF ..... 114**
ELIGIBILITY FOR MSB AND MSD ..... 114
REFERRAL PROCEDURES ..... 115
REEVALUATION ..... 116

# 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 Intellectual Disability, Hearing Impairments and Deafness, Speech or Language Impairments, Visual Impairments including Blindness, Emotional Disturbance, Orthopedic Impairments, Autism, Traumatic Brain Injury, Other Health Impairments, 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 3 through 7 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).

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).

English Learner

English learner 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 challenging State academic standards; the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.

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).

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.

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 an English Learner, 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, school 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 nonprofit private elementary or secondary 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

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.

Postsecondary Transition services
Postsecondary 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

This public agency ensures 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.

Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

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)

DESE requires each public agency to give adequate notice to fully inform parents about 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 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 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 in 34 CFR part 99.

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 public agency 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) including electronic records. 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 student 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) student, 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 his/her 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 public agency decides the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the public agency shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall inform the student's parent of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reason for disagreeing with the decisions of the public agency. Any explanation placed in the records of the student must be maintained by the public agency as a part of the student's records as long as the record or contested portion is maintained by the public agency. If the record of the student or the contested portion is disclosed by the public 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 third 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 student 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 student is enrolled or going to enroll in a private school that is not located in the public agency of the parent's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the public agency where the private school is located and officials in the public agency of the parent's residence.

Safeguards (34 CFR 300.623)

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

A. appoint one (1) official at each public 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 IDEA is no longer needed to provide educational services to the child. The information must be retained pursuant to the Missouri Secretary of State's record retention schedule. At the parent's request and when the information is no longer needed to provide educational services, the information must be destroyed. 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

Students' Rights (34 CFR 300.625)

All rights of privacy and educational records indicated herein with regard to parents shall pass to the student upon reaching age 18, or when the student is otherwise emancipated under state law, except in the case of a student 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 students 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 student's educational record at the discretion of the public agency.

## III. IDENTIFICATION AND EVALUATION

### 1. CHILD FIND

It is the policy or responsibility of this agency that all students with disabilities, residing in the district, including students with disabilities who are homeless students or are wards of the state, and students 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 students with disabilities (such as migrant and homeless students) and students who are suspected of being a student with a disability and in need of special education even though they are advancing from grade to grade. This agency also ensures that it has procedures in place to determine which students are receiving needed special education and related services.

The Department of Elementary and Secondary Education (DESE) is the agency responsible for coordinating the planning and implementation of the Child Find activities for children/students birth to 21.
The following state agencies participate in the planning and implementation of Child Find activities as stated:
Department of Mental Health assists in identification and location of infants, toddlers, and students with suspected disabilities through its Regional Centers for the Developmentally Disabled, State Habilitation Centers, and State Hospitals. Referrals are made to local public agencies and the Part C system.
Department of Health and Senior Services assists in identification and location of infants, toddlers, and students with suspected disabilities through its Title V and Head Injury Programs. Referrals are made to local public agencies and to the Part C system.
Department of Social Services

A. The Children's Division assists in the identification of infants, toddlers and students with suspected disabilities. Referrals are made to local public agencies and to the Part C system.
B. Rehabilitation Services for the Blind identifies, locates, and refers infants, toddlers, and students who have visual problems. Referrals are made to either local public agencies 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 21 years, who are placed within its jurisdiction.
DESE requires local education agencies (LEAs) to annually assist in Child Find by conducting the following activities prior to November 1 each year:

A. Publishing one public notice in local newspapers or on the public agency website that describes the public agency's responsibility to provide special education and related services to students ages 3 to 21. The notice must also describe this agency'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 this agency's responsibility to provide special education and related services to students ages 3 to 21.
C. Placing posters/notices in all administrative offices of each building operated by this agency that describes the public agency's responsibility to provide special education and related services to students ages 3 to 21.
D. Providing written information through general distribution to the parents/guardians of students enrolled in the public agency which describes the public agency's responsibility to provide special education and related services to students ages 3 to 21.

This public agency is also required to conduct Child Find in private schools as outlined in Regulation XIII of the Missouri State Plan for Special Education.

**2. DEFINITIONS AND CRITERIA FOR DETERMINATION OF ELIGIBILITY**

The Individuals with Disabilities Education Act (IDEA) defines students with disabilities as those students, ages 3 to 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 Impairments, 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 students ages three 3 through 7 who have been properly identified as a young child with a developmental delay.

No student 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 comprehensive literacy (as defined in section 2221(b)(1) 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, dyslexia, central auditory processing disorder, 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 Impairments
I. Specific Learning Disabilities
J. Speech or Language Impairment
K. Traumatic Brain Injury (TBI)
L. Visual Impairment/Blind
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 student'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 student's educational performance is adversely affected primarily because the student has an emotional disability as defined in this document.

A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria above are satisfied.

Criteria for Initial Determination of Eligibility

A student displays autism when:

A. Through evaluation that includes a review of medical records, observation of the student'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 student 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 student 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 student may seek consistency in environmental events to the point of exhibiting rigidity in routines.

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

Other Behaviors Which the Student May Exhibit Include:

A. Disturbance of developmental rates and sequences: The student 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 student'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 student 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 students with deafness or students with blindness.

Criteria for Initial Determination of Eligibility

A student 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 Disability Definition**

"Emotional Disability" 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 student'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 students who are socially maladjusted unless it is determined they have an emotional disturbance.

Criteria for Initial Determination of Eligibility

A student 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 student 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 through nine months depending upon the age of the student 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 student's educational performance.

NOTE: Manifestations of an emotional disturbance can be observed along a continuum ranging from normal behavior to severely disordered behavior. Students 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 student's educational performance, but is not included in the following definition for deafness.

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

Criteria for Initial Determination of Eligibility

A student displays a Hearing Impairment/Deafness when:

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

Criteria for Initial Determination of Eligibility

A student displays intellectual disability when:

A. the student 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. 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. Adaptive behavior assessments should be completed by two or more adults who are familiar with the child's functional performance, including a parent or guardian when possible. The student displays significant deficits in adaptive behavior functioning when results from two raters using a standardized adaptive behavior instrument produce composite scores 2.0 Standard Deviations below the mean. When the criterion is met on one composite score, a second score allowing for the standard error of measurement may be accepted. There should be a significant positive correlation between the student's intellectual ability and adaptive behavior; and
C. the disability adversely affects the student's educational performance. The description of adverse educational impact is supported by information gained through a comprehensive evaluation including observation of the student's academic and functional performance completed in a variety of educational settings.

**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 student 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 student's educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member, etc.), impairments caused by diseas (poliomyelitis, bone tuberculosis, etc), and impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).

Criteria for Initial Determination of Eligibility

A student displays a physical impairment when:

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

Criteria for Initial Determination of Eligibility

A student displays a Health Impairment when:

A. a health impairment has been diagnosed by a licensed physician, licensed assistant physician, Missouri State Board of Nursing recognized advance practice registered nurse, licensed psychologist, licensed professional counselor, or licensed clinical social worker or school psychologist, and
B. the health impairment adversely affects the student's educational performance. The description of adverse educational impact is supported by information gained through a comprehensive evaluation including observation of the student's academic and functional performance completed in a variety of educational settings.

**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 visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

Criteria for Initial Determination of Eligibility

A student has a specific learning disability when:

A. The student does not achieve adequately for the student'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 student'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 student 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 student's response to scientific, research-based intervention; or
The student 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 CRF 300.304-307.300.311. 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 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 comprehensive literacy instruction (as defined in section 2221(b)(1) of the ESEA);
    8) Lack of appropriate instruction in math; and

D. To ensure that underachievement in a student 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 demonstrates that prior to or as part of the referral process, the student 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 student's parents.

Professional Judgment

If this agency uses a severe discrepancy method: A student who does not display a discrepancy of at least 1.5 standard deviations as defined above, may nonetheless be deemed to have a specific learning disability if 1) the student 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 implementing that, at a minimum, incorporate guidelines developed by 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, a language impairment, or a voice impairment that adversely affects a student's educational performance.

A. Criteria for Initial Determination of Eligibility – Language Impairment

A language impairment is present when a comprehensive communication assessment documents all of the following:

1) the language impairment adversely affects the student's educational performance as documented by lack of response to evidence based interventions designed to support progress in the general education curriculum;
2) the student's overall language functioning is significantly below age expectations as measured by two or more composite standard scores on standardized language assessments. The composite language score reflects both receptive and expressive

language function in a single standard score. Significantly below is defined as 1.75 standard deviations or more below the mean for students who are kindergarten age eligible and older. A public agency may accept a second composite score allowing for the standard error of measurement when the criterion is met on the other composite score. The agency may adopt written procedures for utilization of reasonable variances that enable a student to meet the standard score criterion in highly unique situations such as English Learners;

3) young child with a developmental disability criteria (communication area) shall be used for eligibility determinations for children who are three (3) to five (5) years of age but not yet kindergarten eligible;
4) the student consistently displays inappropriate or inadequate language that impairs communication in the student's educational environment as documented by structured qualitative procedures such as a formal language sample, classroom observations, curriculum based assessments, teacher/parent checklists/interviews, or other clinical tasks; and
5) the language impairment is not a result of dialectal differences or second language influence.

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 Sound System Disorder adversely affects the student's educational performance as documented by lack of response to evidence based interventions designed to support progress in the general education curriculum;
2) the student exhibits a significant delay of at least one year in correct sound production based on the state designated normative data in the table below after administering 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. However, if the student does not exhibit a significant delay of at least one year in correct sound production, but there are multiple errors in the sound system which are collectively so severe that the student's speech is unintelligible, the public agency may establish the student as having a sound system disorder; and
3) the sound system disorder is not a result of dialectal differences or second language influence.

| Phoneme | Chronological Age |
|---|---|
| /m/ | 3:0 |
| /n/ | 3:6 |
| /ŋ/ (ng) | 7:0 |
| /h/ | 3:0 |
| /w/ | 3:0 |
| /j/ (y) | 5:0 |
| /p/ | 3:0 |
| /b/ | 3:0 |
| /t/ | 4:0 |
| /d/ | 3:6 |
| /k/ | 3:6 |
| /g/ | 4:0 |
| /f-/ | 3:6 |

| Phoneme | Chronological Age |
|---|---|
| /-f/ | 5:6 |
| /v/ | 5:6 |
| /θ/ (th) | 8:0 |
| /ð/ (th) | 7:0 |
| /s/ | 7:0 |
| /z/ | 7:0 |
| /ʃ/ (sh) / | 7:0 |
| /tʃ/ (ch) | 7:0 |
| /dʒ/ (j) | 7:0 |
| /ʒ/ (zh) | 8:0 |
| /l-/ | 6:0 |
| /-l/ | 7:0 |
| /r/ | 8:0 |

| Word in it ial clusters | Chronological Age |
|---|---|
| /tw kw/ | 5:6 |
| /sp st sk/ | 7:0 |
| /sm sn/ | 7:0 |
| /sw/ | 7:0 |
| /sl/ | 7:0 |
| /pl bl kl gl fl/ | 6:0 |
| /pr br tr dr kr gr fr/ | 8:0 |
| /θr/ | 9:0 |
| /skw/ | 7:0 |
| /spl/ | 7:0 |
| /spr str skr/ | 7:0 |

C. Criteria for Initial Determination of Eligibility - Fluency

A fluency impairment is present when a comprehensive communication assessment documents all of the following:

1) the fluency impairment adversely affects the student's educational performance as documented by lack of response to evidence based interventions designed to support progress in the general education curriculum;
2) the student's fluency is significantly below the norm as measured by speech sampling in a variety of contexts and impairs communication in the student's educational environment as documented by structured qualitative procedures such as classroom observations, curriculum based assessments, teacher/parent checklists/interviews, or other clinical tasks; andthe student consistently exhibits at least one of the following symptomatic behaviors of dysfluency:
    a. sound, syllabic, or word repetitions;
    b. prolongations of sounds, syllables, or words;
    c. avoidance;
    d. blockages; or
    e. hesitations.

D. Criteria for Initial Determination of Eligibility - Voice

A voice impairment is present when a comprehensive communication assessment documents all of the following:

1) the voice impairment adversely affects the student's educational performance as documented by lack of response to evidence based interventions designed to support progress in the general education curriculum;
2) the student consistently exhibits deviation in pitch, quality, or volume;
3) the student's voice is discrepant from the norm as related to his/her age, sex, and culture and is distracting to the listener; and
4) the voice impairment is not a result of:
    a. a medical condition that contraindicates voice therapy intervention;
    b. a temporary condition such as: normal voice changes, allergies, colds, or other such conditions; or
    c. a dialectal difference or second language influence.

**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 or psychosocial impairment, or both, that adversely affects a student'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 student 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 student may also be deemed eligible if the student 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 student's educational performance. The term includes both partial sight and blindness.

Criteria for Visual Impairment/Blindness

A student has an impairment in vision that, even with correction, adversely affects a student's education performance. This includes both partial sight and blindness.

**Young Child with a Developmental Delay Definition**

"Young Child with a Developmental Delay" means a child ages 3 through 7 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," this agency 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

For children ages 3 through 5 (not kindergarten age eligible) A child has a developmental delay when:

A. The student'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 as compared to typical 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 students ages 5 (kindergarten eligible) though 7**

A. Students' eligible for kindergarten or first grade may continue eligibility as a Young Child with a Developmental Delay if they were identified as such prior to attaining kindergarten age eligibility. The category of Young Child with a Developmental Delay shall not be used in determining continued eligibility for special education services for a student who is 7 years of age before August 1 of a given school year.

## 3. PROCEDURES FOR EVALUATION AND DETERMINATION OF ELIGIBILITY

This agency ensures that it 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 this 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. This agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability.

Ward of the State

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

A. This agency cannot discover the whereabouts of the parent of the student despite reasonable efforts to do so;
B. The rights of the parent of the student 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 student.

Failure to Consent

If the parent of a student enrolled in this agency or seeking to be enrolled in this agency does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, this agency may, but is not required to, pursue the initial evaluation of thestudent 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. This 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 the purposes of evaluation. This agency shall provide the parent with a Notice of Intent to Evaluate as soon as possible, but within 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 60 calendar days following parent consent or notice, as the case may be. This timeline does not apply if the parent of the student repeatedly fails or refuses to produce the student for evaluation or the student enrolls in a school of another public agency after the timeline has begun and prior to a determination by the student's previous public agency as to whether the student is a student with a disability or there is just cause (school breaks for summer or holidays, student illness, etc).

Parent Request for Evaluation

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

A. accept the request and determine in a timely manner, but not more than 30 days from the request, if there is reason to suspect a disability and need for evaluation. 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 Prior Written Notice

Refused Initial Evaluation (34 CFR 300.301)

This 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 student with a disability. This may or may not include additional testing as determined by the evaluation team members.

Either a parent of a student or this agency may initiate a request for an initial evaluation to determine if the student is a student with a disability. If the public agency determines there is no reason to suspect a disability, the parent will be provided with a prior written

notice refusing to conduct an initial evaluation.

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

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

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

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

Evaluation Procedures (34 CFR 300.304)

This agency must provide notice to the parents of a student with a disability that describes any evaluation procedures including, but not limited to, standardized and non-standardized tests, classroom observations, functional behavioral assessments (FBAs), interviews that the public agency proposes to conduct. This 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 student, including information provided by the parent, and information related to enabling the student 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 student is a student with a disability and the content of the student's IEP.
B. No single measure or assessment is used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for a student.
C. This 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 student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student 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 student 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 student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
H. The student 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 students with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those student's prior and subsequent public agency as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.
J. In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.
K. This agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

Additional Requirements for Evaluations and Reevaluations (34 CFR 300.305)

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 student, including evaluations and information provided by the parents of the student, 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 student's parents, IEP Team and other qualified professionals, as appropriate, shall identify what additional data, if any, are needed to determine:

A. whether the student has a particular category of disability and the educational needs

of the student, or in case of a reevaluation of a student, whether the student continues to have such a disability and the educational needs of the student;

B. the present levels of performance and educational needs of the student;
C. whether the student needs special education and related services, or in the case of a reevaluation of a student, whether the student 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 student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general curriculum.

The group making these decisions may conduct its review without a meeting. This public agency must administer tests and other evaluation methods as may be needed to produce the data to make an eligibility determination and develop an IEP as listed in (A) through (D) above.

If the determination of the group is that no additional data are needed to determine whether the student continues to be a student with a disability, this agency shall notify the student'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 student continues to be a student with a disability, and to determine the student's educational needs.

If the parent requests assessment, even though the determination has been made that no additional data are needed, this agency must grant the request if the issue is continued eligibility under Part B of IDEA.

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

This agency must provide a student whose eligibility terminates due to graduation from the public agency with a regular diploma or due to reaching the age of twenty-one (21) with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student'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, which includes the parent of the student, must determine whether the student is a student with a disability and the educational needs of the student. This agency will 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 student is a student with a disability and the educational needs of the student, 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 student's

physical condition, social or cultural background, and adaptive behavior; and (ii) Ensure that information obtained from all these sources is documented and carefully considered.

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

Evaluation Report

This agency shall develop a written Evaluation Report for all initial evaluations and any reevaluations which required additional testing or resulted in a change in eligibility.

The evaluation report must include:

A. a statement of whether the student has a specific disability as defined in Regulation III of the Missouri State Plan for Special Education;
B. a synthesis of information from the evaluation that demonstrates consideration was given to all areas of functioning;
C. the basis for making the determination of eligibility for a disability including the disability's adverse effect on the student's education and the student's need for specialized instruction;
D. a statement that the disability is not a result of lack of appropriate instruction in reading, including the essential components of comprehensive literacy instruction (as defined in section 2221(b)(1) 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 student and the relationship of that behavior to academic functioning;
G. educationally relevant medical findings, if any;
H. whether the student:
   1) does not achieve adequately for the student'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 student's achievement level;
J. if the student has participated in a process that assesses the student's response to scientific, research-based intervention:

1) the instructional strategies used,
2) the student-centered data collected,
3) documentation that the student'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 student'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.

## Determination of Eligibility for Young Children Ages 3 Through 5

This agency has, through approved policy, selected the following check marked method to determine eligibility for children ages 3 through 5 (not kindergarten age eligible). (only one should be checked)

Children ages 3 to 5 (not kindergarten-age eligible):

_____ Identify all children using any of the disability categories except that of Young Child with a Developmental Delay and Language Impairment, or

_____ Identify all children as eligible using only the category of Young Children with Developmental Delay, or

X Identify all children as eligible using any of the disability categories, other than Language Impairment, including that of Young Child with a Developmental Delay.

For a child with a disability who become eligible for Kindergarten (age 5 before August 1) or first grade, this agency has chosen the following check marked method to determine continuing eligibility for special education: (only one should be checked):

X Continue a child as eligible using Young Child with a Developmental Delay or apply any of the other disability categories; or

_____ Apply any disability category other than Young Child with a Developmental Delay.

Students who are eligible for kindergarten (age 5 before August 1) or first grade who have not been identified as eligible for special education prior to being eligible for kindergarten, must meet criteria of any disability category other than Young Child with a Developmental Delay.

The category of young child with a developmental delay shall not be used to determine continued eligibility for special education services for a student who is 7 years of age before August 1 of a given school year, but eligibility for special education services may be determined for such students through any other disability category.

Determination of Eligibility for Students with Specific Learning Disabilities (34CFR300.307)

The state has adopted criteria for determining whether a student 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 student has a specific learning disability and permits the use of a process based on the student's response to scientific, research based intervention.

This agency must use the state criteria in determining whether a student has a specific learning disability.

Additional Group Members 34 CFR 300.308

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

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

Extension of Evaluation Timelines When Determining Eligibility for Specific Learning Disabilities

This agency must promptly request parental consent to evaluate the student to determine if the student needs special education and related services and must adhere to the evaluation timelines, unless extended by mutual written agreement of the student's parents and the evaluation professionals:

(1) If prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in the preceding section for Specific Learning Disability (4) a. and b., and
(2) Whenever a student is referred for an evaluation.

Observation (34 CFR 300.310)

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

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

A. use information from an observation in routine classroom instruction and monitoring of the student performance that was done before the student was referred for an

evaluation, or

B. have at least one member of the group conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent is obtained.

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

## IV. FAPE/IEP/LRE

### 1. FREE APPROPRIATE PUBLIC EDUCATION

It is the policy of this agency that all students with disabilities ages of three (3) to twenty-one (21) years, as prescribed by Missouri statutes and under the jurisdiction of this agency have a right to a free appropriate public education (FAPE), including students 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 the State Plan.

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, secondary school education; and
D. are provided in conformity with the individualized education program (IEP).

FAPE for Children/Students Begins at Age Three (3)
This agency ensures that FAPE is available to each eligible child/student under the jurisdiction of the agency no later than the child's third birthday. An IEP will 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 plan and the Part C State Plan outline procedures that both the Part B and Part C systems must complete to assure a smooth transition for children eligible for the Part C program and eligible for Part B services to receive services at age three (3).

FAPE for Students Suspended or Expelled from School
This agency is not required to provide services to a student with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year if services are not provided to a student without disabilities who has been similarly removed.
In the case of a student with a disability who has been removed from the provision of special education and related services, including maintaining the student's special education placement, for more than ten (10) school days in a school year, this agency, for the remainder of the removals must:

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

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 student's disability and results in a disciplinary change of placement.

Students Advancing from Grade to Grade

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

Exceptions to FAPE

This agency is not required to provide FAPE to the following students 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 of attendance or a High School Equivalency (HSE) certificate. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring prior written notice in accordance with 34 CFR 300.503;
C. students 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 students with disabilities; and
E. students with disabilities who receive early intervention services under Part C of the Act.

Continuing Requirement for FAPE

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

Agency Responsible for FAPE

Charter Schools and State Board Operated Programs are responsible for the provision of FAPE to those students that are enrolled in their schools.

The public agency or special school district in which a student with a disability resides is responsible for implementation of FAPE. Students with disabilities or severe disabilities who are admitted to programs and facilities of the Department of Mental

Health or whose domicile is in one public agency, but actually reside in another public agency 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 public agency where the student actually resides. Students enrolled in full-time MOCAP approved virtual education programs hosted by a Missouri school district are enrolled in the host school district. The host school district is responsible for implementation of FAPE.

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

The Department of Mental Health shall provide special education and related services for students with disabilities, ages three (3) to twenty-one (21), whose domicile is in one public agency, but actually reside in another public agency 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. Students and youth with disabilities who have been assigned to programs by a court and meet eligibility will continue to receive services by said program.

## 2. INDIVIDUALIZED EDUCATION PROGRAMS

Definition of IEP (34 CFR 300.320)

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

A. a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled students), or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities, and for students 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 student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum (i.e., the same curriculum as for nondisabled students), or for preschool children, as appropriate, to participate in appropriate activities, and meeting each of the child's other educational needs that result from the child's disability. Measurable goals are specific to a particular skill or behavior to be achieved, measurable/quantifiable, attainable, results oriented, time-bound, and can reasonably be accomplished within the duration of the IEP. For students 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 student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

   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 students with disabilities and nondisabled students in the activities described in this paragraph.

   This statement will 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 will reflect this.

D. a statement of the student's participation in physical education;

E. an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the 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 student on state and district-wide assessments. If the IEP team determines that the student shall take an alternate assessment on a particular state or district-wide assessment of student achievement, a statement of why the student cannot participate in the regular assessment, and why the particular alternate assessment is appropriate for the student;

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 student's progress toward the annual goals described in Letter B above will be measured, and when periodic reports on the progress the student 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 student's eligibility or ineligibility for extended school year services; and

K. a statement of the placement considerations and decision.

As appropriate, the IEP must include:

Transition Services

A. Postsecondary transition services must be included beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, and updated annually thereafter. Postsecondary transition plans must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and postsecondary transition services (including courses of study) needed to assist the student in reaching those goals.

Effective the 2027-28 school year, postsecondary transition services must be included in the IEP before the student exits eighth grade, or younger if determined appropriate by the IEP team, and updated annually thereafter. Postsecondary transition plans must include appropriate measurable

postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and postsecondary transition services (including courses of study) needed to assist the student in reaching those goals.

B. beginning not later than one year before the student reaches age 18, a statement that the student 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 Students 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 student 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 student's IEP, the IEP Team must consider:

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

The IEP Team must also:

A. in the case of a c student 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 students for whom a Behavior Intervention Plan is developed, the Plan must be included in the IEP);
B. in the case of a student with limited English proficiency, consider the language needs of the student as those needs relate to the student's IEP;
C. consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the

student's language and communication mode; and
D. consider whether the student requires assistive technology devices and services.

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

IEP Team (34 CFR 300.344)

This agency ensures that the IEP team for each student with a disability includes:

A. the parents of the student;
B. not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
C. not less than one special education teacher of the student, or, where appropriate, not less than one special education provider of the student;
D. a representative of the agency who is qualified to provide or supervise the provisions of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of this 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, and with written consent, if appropriate, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
G. whenever appropriate, the student with a disability.

Transition Services Participants

This 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 of the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP meeting, this 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 the student who has reached the age of majority, in implementing transition services, this agency shall also invite a representative of any other participating agency that is likely to be responsible for providing or paying for transition services.

Determination of Knowledge and Expertise

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

agency.

Designating a Public Agency Representative

This 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 student with a disability and this public agency agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

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

Initial IEP Team Meeting for a Child Under Part C

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

Parent Participation (34 CFR 300.322)

This agency shall take steps to ensure that one or both of the parents of a student 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. The participants who will be invited to attend on behalf of the public agency are indicated by specific position(s) within the agency and, if possible, should include the name.

Information Provided to Parents

The notice to parents shall indicate the purpose, time and location of the meeting, and who will be in attendance, and inform the parent that the parent and the public agency can invite individuals to the meeting that they believe have knowledge or special expertise regarding their student. The determination as to whether an individual has knowledge or special expertise is made by the parent or this agency who invited the individual to be a member of the IEP team. In the case of an initial IEP Team meeting

for a student 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 student is 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 this 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, this agency shall use other methods to ensure parent participation, including conference telephone calls, or video conferences, 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 this agency is unable to convince the parents that they should attend. In this case this agency must have a record of at least two 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.

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

Use of Interpreters or Other Action

This 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

This agency shall provide the parent a copy of the student'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, this agency shall have an IEP in effect for each student with a disability within its jurisdiction who has been determined eligible to

receive services under IDEA, Part B.

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

This agency must ensure that:

A. the student'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 student's IEP; and
C. the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

In-state Transfers

In the case of a student with a disability who transfers public agencies within the same school year, who enrolls in this public agency, and who had an IEP that was in effect in Missouri, this public agency shall, without delay, provide such student 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 this public agency shall place the student, without delay, in the appropriate special education placement and provide FAPE to the student including the services comparable to those listed in the IEP until the public agency either accepts the prior IEP or develops and implements a new appropriate IEP.

If this 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 provide comparable services until the reevaluation is complete.

For students with suspected disabilities who enroll but do not have copies of the evaluation report and/or IEP, this 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, this 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 students who transfer from another state, and had an IEP that was in effect in that state, to this agency and enroll in a new school within the same school year, this agency, in consultation with the parents, must provide the student with FAPE (including services comparable to those described in the student's IEP from the previous public agency) until this 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 student's records are not available to this agency, the agency shall:

A. place the student in regular education,
B. initiate an initial evaluation, and
C. if the student is found eligible, develop and implement an IEP.

Transmittal of Records

To facilitate the transition for a student entering a school from another public agency in Missouri or from an out-of-state school, the new school in which the student enrolls shall take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous school in which the student was enrolled and the previous school in which the student 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 student with a disability, as a member of the IEP team, will, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies for the student and supplementary aids and services, program modifications or supports for school personnel that will be provided for the student, consistent with content of the IEP. The IEP team members determine the extent of the participation of a general education teacher at the particular IEP meeting.

Amending or Modifying an IEP without a Meeting

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

Consolidation of IEP Team Meetings

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

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 this 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

This agency shall ensure that the IEP Team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student 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 student provided to or by the parents;
D. the student's anticipated needs; or
E. other matters.

Failure to Meet Transition Objectives (34 CFR 300.324)

If a participating agency, other than this agency, fails to provide the transition services described in the IEP, this 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 this agency places a student with a disability in, or refers a student to, a private school or facility, this agency shall initiate and conduct a meeting to develop an IEP for the student. This agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, this agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of this agency. If the private school or facility initiates and conducts these meetings, this agency shall ensure that the parents and an agency representative are involved in any decision about the student'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 student's IEP, responsibility for compliance with this part remains with this agency and the SEA.

Alternative Means of Meeting Participation (34 CFR 300.328)

When conducting IEP Team meetings, the parent of a student with a disability and this 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)

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

For a student with a surgically implanted medical device who is receiving special education and related services, this 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 300.550)

This agency ensures that to the maximum extent appropriate students with disabilities, including students in public or private institutions or other care facilities, are educated with students who do not have disabilities, and that special classes, separate schooling, or other removal of students 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 300.551)

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

Placements (34 CFR 300.552)

In determining the educational placement of a student with a disability, including a preschool child with a disability, this agency ensures that the placement decision is made by the IEP team that is knowledgeable about the student, the meaning of the evaluation data, and the placement options, and is made in conformity with LRE provisions. The student's placement is determined at least annually, is based on the student's IEP, and is as close as possible to the student's home.
Unless the IEP of a student with a disability requires some other arrangement, the student 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 student or on the quality of services that he or she needs. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
Each year this agency, through the IEP process, shall review/revise a student's IEP and subsequently make a placement decision for each student with a disability served by this agency. This agency shall 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. This 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 student 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 public agency's efforts to accommodate the student 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 student 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 student 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 student'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, inability to engage appropriately with other students in academic or social interactions).

Nonacademic Settings (34 CFR 300.553)

This agency shall ensure that each student with a disability participates in nonacademic and extracurricular services and activities of this agency with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. This agency ensures that each student with a disability has the supplementary aids and services determined by the student's IEP Team to be appropriate and necessary for the student 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 agency, referrals to agencies which provide assistance to individuals with disabilities, employment of students including both employment by the this agency, and assistance in making outside employment available.

Students in Public or Private Institutions (34 CFR 300.2) (not applicable for state board operated programs and charter schools)

This agency is responsible for the provision of special education and related services for a student with a disability who resides in public and private institutions or other alternative residential settings. Students with disabilities or suspected disabilities shall be referred to this agency by a representative of the facility or by the parent for evaluation, development of an IEP, and placement. The residential placement of such students will have been made by the Missouri departments of Mental Health or Social Services or by a court of competent jurisdiction. This agency may also provide the special education and related services required by such students with disabilities. When this agency does provide such services, the services will be under the general supervision of the Department of Elementary and Secondary Education. The Department of Mental Health shall provide special education and related services for any student who is placed outside of his/her official domicile and is determined to be dangerous to himself or others or is medically fragile. Special education and related services for student who reside in public and private institutions shall be provided in the least restrictive environment.

Technical Assistance and Training Activities (34 CFR 300.119)

The Department of Elementary and Secondary Education (DESE) will conduct the following activities to ensure that teachers and administrators in this agency 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 this agency to determine compliance with the least restrictive environment provisions;
C. training/workshops for this agency's personnel provided prior to and following monitoring activities regarding least restrictive environment provisions;
D. technical assistance as may be requested by this public agency 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)

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

A. an annual review of this public agency's count of students with disabilities and placement data;
B. investigation of any child complaint filed;
C. periodic monitoring of this agency to determine appropriate implementation of policies and procedures; and
D. review, approval, and subsequent verification of any corrective actions required of this agency with respect to violations of least restrictive environment requirements.

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

A. shall review the agency's justification for its actions, and
B. shall assist in planning and implementing any necessary corrective action.

## 4. TRANSITION OF CHILDREN FROM PART C SERVICES TO PART B SERVICES

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. For the purposes of transition of children from Part C services to Part B services, this agency will follow the State Regulation for Implementing Part C of IDEA.

Notification to LEA from Part C

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

Notification includes the following directory information: child's name and birth date and parent's name, address, and telephone number. When the LEA receives complete directory information, this constitutes a referral to Part B.
The Part C program has an opt out policy that allows parents to object to notification to the LEA. If a parent first opts out of notification to the LEA and subsequently requests notification to the LEA, there may be a gap in services if the decision was made less than 90 days from the child's third birthday.

Transition Conference with LEA

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

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

Timelines for IEP Development and Implementation

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

The only exceptions to this requirement are (1) if the child was referred to Part C less than 90 days before the child's third birthday; (2) if the parent does not give parental consent to evaluate the child, which delays an evaluation by the public agency 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 public agency and subsequent development of an IEP.

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

An IEP is developed in accordance with Regulation IV, 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 the Part C State Plan, may choose to: (1) continue Part C services until the initiation of the local public agency'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. Part C State Regulation is incorporated herein by reference. This agency ensures that it will follow that regulation.
See Part C State Regulation for Implementing the IDEA, General Provisions, Section F, Transition to Preschool Programs.

## V. PROCEDURAL SAFEGUARDS/DISCIPLINE

The following statements reflect the policy which the Missouri Department of Elementary and Secondary Education (DESE) 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

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

This agency shall provide proper notification to ensure parents have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of his/her child and the provision of a free appropriate public education to his/her 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 this agency's personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The individualized education program (IEP) team determines the educational placement for each child with a disability.

### 2. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

The parents of a student with a disability have a right to obtain an Independent Educational Evaluation (IEE) of the student. That right is subject to the requirement that the independent evaluation must meet the educational evaluation criteria used by this 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 this agency responsible for the education of the student in question.

The right to an independent educational evaluation assures that:

A. upon requesting an IEE, information about where an independent evaluation may be obtained and this agency's criteria applicable for independent educational evaluations will be given to parents.

B. 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, this agency must, without unnecessary delay, either file a due process hearing as described in Regulation V. to show that the 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 due process hearing decision determines that the evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense.

1) "Public expense" means that this 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. the responsible public agency may request, but not require, notification from parents before an IEE is conducted. If a parent requests an IEE, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

D. if this 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 will be based on:

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

This agency may only impose limitations on the cost of an IEE if this agency uses those same limitations when conducting an evaluation. If this 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 student's unique needs and other unique circumstances, be obtained within those cost limitations. If the cost of an IEE at public expense exceeds this agency's cost limitations, this agency will either:

(a) initiate a due process hearing or
(b) pay either the full cost of the IEE.

E. if this 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 specifies that this agency will pay the fee for the independent evaluation up to the maximum established. Additionally, the policy anticipates that a student's "unique circumstances" may justify an evaluation that exceeds the allowable cost criteria.

F. if this 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, this 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 agency's own evaluations and exceptions for unique circumstances must be considered.

H. a parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parents disagrees.

I. 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) will be considered by this 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. 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**

Written notice will be given to parents a reasonable time before the agency proposes to 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 will 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, this agency shall ensure the following:

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

Content of Notice

The written notice sent to parents by this agency shall contain the following:

A. a description of the action proposed or refused by this agency;
B. an explanation of why this agency proposes or refuses to take the action;
C. a description of each evaluation procedure, test, record, or report this agency used as a basis for the proposal or refusal;
D. a statement that the parents of a student 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 any other factors which are relevant to this agency's proposed or refused action; 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 student with a disability and a copy of the Parents' Bill of Rights, per section 161.850 RSMo, shall be given to parents only one time a school year, except that a copy also shall be given to the parents:

A. Within five school days of 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 the 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 student 's placement during the pendency of due process proceedings; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents of students 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

This agency is responsible for making FAPE available to a student with a disability and must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student. This agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

If the parent of a student fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services,

(1) 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 student;
(2) The public agency will not be considered to be in violation of providing FAPE to the student for the failure to provide the student with the special education and related services for which for which the parent refuses to or fails to provide consent; and
(3) The public agency is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which the public agency requests such consent.

If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services,

(1) The public agency may not continue to provide special education and related services to the student, but must provide prior written notice in accordance before ceasing the provision of special education and related services;
(2) The public agency may not use mediation or a due process hearing to obtain agreement or a ruling that the services may be provided to the student;
(3) The public agency will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
(4) The public agency is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which the public agency requests such consent.

Parental Consent for Reevaluations

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

Informed parental consent need not be obtained if the public agency can demonstrate it made reasonable efforts to obtain such consent and the child's parent failed to respond.

Other Consent Requirements

Parental 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 students unless, before administration of that test or evaluation, consent is required of parents of all students.

If a parent of a student 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, this agency may not use the consent override procedures. The agency is not required to consider the student as eligible for special education and related services.

This public agency may not use a parent's refusal to consent to one service or activity under 34 CFR 300.300(a), (b), (c), or (d)(2) to deny the parent or child any other service, benefit, or activity of the public agency, except as required under the Individuals with Disabilities Education Act (IDEA).

Definition of "Efforts"

To show reasonable efforts, the public agency must have a record of at least two separate attempts to obtain written, informed parental consent. Documentation of the public agency's attempts could include 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 workplace and the results of those visits

Parental Consent to Access Public Insurance

Before accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, a public agency must provide written notification, to the student'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 student'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 student'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 student outside of the time the student 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 public agency 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 to the agency responsible for the administration of the State's public benefits or insurance program at any time.

## 1. ADMINISTRATIVE HEARING RIGHTS

Mediation (34 Cfr 300.506)

DESE makes mediation available to allow parents or adult students and 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. DESE-funded mediation is not available to resolve disputes between parents or between public agencies and persons other than the parent (or adult student).

A. Process

1) The parties must mutually agree to mediate and request mediation from DESE's Office of Special Education.

2) DESE will maintain a trained mediator list and assign a mediator on a rotational basis. Once assigned, DESE will send a letter empowering the mediator to proceed. Mediators will not be paid if they have not been empowered by DESE.

3) Mediation must be scheduled within 15 days of the assignment of a mediator.

4) Mediation must be conducted at a time and place that is convenient to both parties.

5) Mediation must be completed within 30 days of the assignment of the mediator.

6) 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 mediation, or the parties involved agree in writing to extend the time limit.

7) Any agreement reached during mediation must be in writing and delivered to each party.

8) No more than three persons can accompany each party unless the parties mutually agree on additional participants.

9) No attorney shall participate or attend on behalf of any party at the mediation session. However, parents may be accompanied by a lay advocate.

10) 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.

11) 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.

12) 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.

13) If the parties are not able to reach an agreement through the mediation process, the mediator will notify DESE.

B. Mediator Qualifications

1) Mediators must be impartial and free of any conflict of interest.

2) Mediators shall not be employees of 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 public agency solely because

he or she is paid by the agency to serve as a mediator.

3) Mediators must have a minimum of 16 hours of training as a mediator.

4) Mediators, to be placed on DESE's mediator list, must meet all regulations, requirements, and must agree to be compensated at a rate set by DESE and provide DESE 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 DESE's 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 FAPE 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

(1) this public agency specifically misrepresented that it had resolved the issues identified in the complaint, or

(2) This public agency withheld information that it was required to provide under Part B of IDEA.

DESE 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 public agency files a due process complaint.

Content Of 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 DESE.

The content of the complaint must include:

(1) The name of the student;

(2) The address of the student's residence;

(3) The name of the student's school;

(4) If the student is a homeless child or youth, the student's contact information and the

name of the student's school;

(5) A description of the nature of the problem of the student relating to the proposed or refused action, including facts relating to the problem; and

(6) 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 DESE if received during business hours of the Office of Special Education as posted on the DESE website. Complaints received after business hours will be deemed filed the following business day.

Administrative Hearing Commission To Process And Hear The Complaints

Within two 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 public agency) notifies the Administrative Hearing Commission and the other party, in writing, within 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 calendar days of receiving the notification, that the receiving party (parent or the 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 public agency, in writing, immediately.

Complaint Amendment

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

(1) 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

(2) By no later than five 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 15 calendar days of receiving the complaint) and the time period for resolution (within 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 which will rule on the request.

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 10 calendar days of receiving the due process complaint, send a response to the parent and the Administrative Hearing Commission that includes:

(1) An explanation of why the public agency proposed or refused to take the action raised in the due process complaint;

(2) A description of other options that the student's IEP team considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, assessment, record, or report the public agency used as the basis for the proposed or refused action; and

(4) A description of the other factors that are relevant to the public agency's proposed or refused action.

Providing the information in items 1-4 above does not prevent the public agency from asserting that the due process complaint was insufficient.

Response To A Due Process Complaint

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

Model Forms (34 Cfr 300.509)

DESE has developed model forms to help parties 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, as long as it contains the required information for filing a due process complaint.

Resolution Process (34 Cfr 300.510)

Resolution Meeting

Within 15 calendar days of receiving notice of a parent's due process complaint or amended complaint, and before the due process hearing begins, the public agency must convene a meeting with the parent and the

relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint. The meeting:

(1) Must include a representative of the public agency who has decision-making authority on behalf of the public agency, and

(2) May not include an attorney of the public agency unless the parent is accompanied by an attorney.

Parents and the 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 public agency agree, in writing, to waive the meeting or if the parent and the public agency agree to use the mediation process.

The public agency shall notify DESE 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 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 45 calendar day timeline for issuing a final decision begins at the expiration of the 30 calendar day resolution period, with certain exceptions for adjustments made to the 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 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 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 45 calendar day due process hearing timeline begin.

Adjustments to the 30 Calendar Day Resolution Period

The 45 day timeline for the due process hearing starts the day after one of the following events:

(1) Both parties agree, in writing, to waive the resolution meeting;

(2) After either the mediation or the resolution meeting starts but before the end of the 30 calendar day resolution period, the parties agree, in writing, that no agreement is possible; or

(3) Both parties agree, in writing, to continue the mediation process at the end of the 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:

(1) Signed by the parent and a representative of the public agency who has the authority to bind the agency, and

(2) 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 business days of the agreement's execution.

State-Level Due Process Hearings

Impartial Due Process Hearing (34 Cfr 300.511)

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 IDEA.

Hearing Commissioners:

(1) Shall not have a personal or professional interest in the matters that are before them which would conflict with their objectivity in the hearing;

(2) Shall have an affirmative obligation to seek out any conflict of interest and withdraw from any matter in which a conflict is identified;

(3) Shall not have been employed within the last five years by a public agency or organization engaged in special education parent or student advocacy;

(4) Shall not have performed work for a public agency or for a parent or student as a special

education advocate within the last five years as an independent contractor or consultant;

(5) Shall not have been employed within the last five years by the State Board of Education or DESE;

(6) Shall not have performed work for the State Board of Education or DESE within the last five years as an independent contractor or consultant;

(7) Shall not have been a party to a special education proceeding as an attorney, parent, or student;

(8) 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; and

(9) Must have the knowledge and ability to conduct hearings, and to make and write decisions consistent with appropriate, standard legal practice.

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 Commissioner.

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

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

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

Hearing Rights (34 Cfr 300.512)

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 that has not been disclosed to that party at least five 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.

At least five business days prior to a hearing conducted pursuant to 34 CFR 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

Hearing Commissioners have discretion to bar any party that failed to comply with 34 CFR 300.512(b)(1) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

In addition, the parents, or the student if he/she is 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.

Hearing Procedures

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

Administrative Hearing Commission Orders

The Hearing Commissioner has the authority to take any actions necessary to ensure the compliance with all requirements of the law. If the Hearing 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 Hearing 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 Hearing 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.

Consolidation of Cases

The Hearing Commissioner may consolidate two 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.

A party requesting consolidation must serve a written request for consolidation on all parties to the cases to be consolidated and the Hearing Commissioner. Any party objecting to the request must serve and file their objections within five calendar days following service of the request for consolidation. The Hearing Commissioner will rule on the request for consolidation.

Communication With Hearing Commissioners

No party or attorney may communicate with the Hearing Commissioner on the merits of the case unless all parties have the opportunity to participate. Communication with the Hearing Commissioner should be directed to the Administrative Hearing Commission's primary telephone number, 573-751-2422.

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

Site of The Hearing

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

Pre-Hearing Conference

The Hearing Commissioner has the option to conduct a prehearing conference.

Subpoenas

Parties may request subpoenas for witnesses from the Hearing Commissioner in accordance with section 536.077, RSMo.

Evidence

The parties shall exchange lists of exhibits and lists of their witnesses at least five business days before the hearing including 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.

Evidence or testimony may also be excluded at the hearing if

(1) It is cumulative, irrelevant, or unnecessary;

(2) It represents the legal conclusion of a witness; or

(3) It is speculation on the part of the witness.

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

Admissibility of evidence shall be determined by the Hearing Commissioner in accordance with Missouri law, including but not limited to Section 536.070, RSMo, and IDEA and supporting regulations.

The Hearing Commissioner may, at their 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.

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

Hearing Commissioner has authority to question witnesses and request information.

Length of Presentations

The Hearing 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 days. Any hearing exceeding two days requires good cause to be shown and must be documented on the record.

Hearing Decisions (34 Cfr 300.513)

A decision on whether a student received FAPE must be based on substantive grounds.

In matters alleging a procedural violation, the Hearing Commissioner may find that a student did not receive FAPE only if the procedural inadequacies

(1) Impeded the student's right to FAPE;

(2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to their child; or

(3) Caused a deprivation of an educational benefit.

None of the provisions described above shall be interpreted to prevent the Hearing Commissioner 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 Hearing Commissioner 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 Hearing Commissioner shall make the determination whether such a change is necessary.

Findings And Decision To Advisory Panel And General Public (34 Cfr 300.514)

The Administrative Hearing Commission shall mail a copy of the written findings and decision to each party and to DESE. DESE 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 45 days of the expiration of the 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 Hearing Commissioner. The Hearing Commissioner cannot grant an extension without a request from one or both parties.

Civil Proceedings (34 Cfr 300.516)

Any party aggrieved by the findings and decisions made in a hearing may appeal the decision within 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 IDEA judicial review requirements at 34 CFR 300.516, 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.

Decision Review Procedures

In a case where review of the Commission's decision is sought by a school district or a parent or guardian, either party may appeal pursuant to section 162.962, RSMo.

Attorneys' Fees (34 Cfr 300.517)

Only a court of competent jurisdiction can award attorneys' fees.

In any action or proceeding brought under Section 615 of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs

(1) To a prevailing party who is the parent of a student with a disability;

(2) To a prevailing party who is DESE or a public 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

(3) To a prevailing party who is DESE or a public agency against the attorney of a parent, or against the parent, if the parent's request for a due process hearing 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 attorneys' fees or costs of a party related to any action or proceeding under Section 615 of IDEA and 34 CFR 300.517(e). A public agency may use Part B funds for conducting an action or proceeding under Section 615 of IDEA.

A court awards reasonable attorneys' fees under Section 615(i)(3) of IDEA consistent with the following:

(1) The award must be based on prevailing rates in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded;

(2) Attorneys' fees may not be awarded 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 10 days before the proceeding begins; the offer is not accepted within 10 days; and the court or Hearing Commissioner finds that the relief finally obtained by the parents 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;

(3) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action;

(4) Attorneys' fees may not be awarded related to a resolution meeting; and

(5) The court may reduce the amount of attorneys' fees awarded if: the parent or the parent's attorney, during the course of the action or proceeding, 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 or proceeding; or the attorney representing the parent did not provide to the public agency the appropriate information in the due process request notice required by regulation.

Attorneys' fees may not be reduced if the court finds the state or public agency unreasonably protracted the final resolution of any action or there was a violation of Section 615 of IDEA.

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 student shall remain in their 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 public agency can agree to a change.

If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of IDEA to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency

must provide those special education and related services that are not in dispute between the parent and the public agency.

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

If the Hearing Commissioner 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 public agency and the parents for purposes of the student's right to remain in their current placement pending any administrative or judicial proceeding.

2. **EDUCATIONAL SURROGATES**
   This agency has established the following for the appointment of an educational surrogate:

   Identifying the Need for Appointment

   Any person may advise this 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 agency responsible for providing education to students with disabilities or directly to the Department of Elementary and Secondary Education, Office of Special Education.

   Process of Appointment

   When this agency 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 of Special Education, on behalf of the State Board of Education, shall, within thirty (30) days, appoint a person to act as an educational surrogate. The Office of Special Education 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 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 student with a disability as defined in Section 162.675, RSMo, when:
   - the student has no identified parent;
     - the student has parents who, after reasonable efforts, cannot be located by this agency;
     - the student 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
   - the student is an unaccompanied homeless youth.

Definitions

When determining a child's eligibility to receive a surrogate appointment, 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.

Qualifications for Appointment

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

A. be at least 18 years of age;
B. not be an employee of DESE, this agency or any other agency that is involved in the education or care of the student 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 student;
D. not be a contractor of this public agency;
E. be free from any personal or professional interest that may conflict with the interests of the student represented; and
F. have knowledge and skills that ensure adequate representation of the student.

In the case of a student who is a ward of the State and has no parent as defined above, the educational surrogate alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the above requirements.

In the case of a student 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 surrogate 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. DESE shall provide the educational surrogate training and may require assistance from this agency to present an effective training session.

This Agency's Responsibilities

Specifically, this agency shall:

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

Duties of the Educational Surrogate

An individual appointed to act as an educational surrogate shall:

A. complete and return to DESE 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 student, as well as the provision of a free appropriate public education to the student; and
D. notify the public agency or DESE 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 DESE and pursuant to State Office of Administration guidelines. Such expenses do not include attorney fees or child care/babysitting expenses.

Evaluation

DESE will send to this public agency an evaluation form to complete for each educational surrogate in which they will recommend the continuation or termination of the surrogate appointment. This public agency shall provide brief written discussions supporting a recommendation of termination and attach any existing documentation. Upon receipt of a recommendation of termination, the Office of Special Education 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 21.

## 3. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

When a student with a disability reaches age 18, or otherwise is emancipated in accordance with state law, this 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.

## 4. DISCIPLINARY ACTIONS/REMOVALS/EXPEDITED HEARINGS

Authority of School Personnel

This agency's staff 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 student with a disability who violates a code of student conduct.

Ten (10) School Days or Less

This agency may remove a student 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 students without disabilities) without providing services. This agency 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 student has been removed from his or her placement for a total of ten (10) school days in the same school year, this agency 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 this agency seeks 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 I determined not to be a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which the procedures would be applied to students without disabilities, expect services must be provided to ensure the student receives a free appropriate public education, although it may be provided in an interim alternative educational setting.

Change of Placement

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

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

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

The public agency 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 student with a disability who has been removed from the student's current placement may be provided in an interim alternative educational setting.

A public agency is only required to provide services to a student with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if it provides services to a student without disabilities who has been similarly removed.

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

A. continue to receive educational services, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student'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 student 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 student's teachers, shall determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

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

Manifestation

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, this public agency, the parent, and relevant members of the IEP Team (as determined by the parent and this agency) shall review all relevant information in the student's file, including the student'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 student's disability; or if the conduct in question, was the direct result of this public agency's failure to implement the IEP.
If this public agency, the parent, and relevant members of the IEP Team (as determined by the parent and the public agency) determine that either the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or, if the conduct in question, was the direct result of this agency's failure to implement the IEP applicable for the student, the conduct shall be determined to be a manifestation of the student's disability.

Determination that Behavior Was a Manifestation
If this public agency, the parent, and relevant members of the IEP Team make the

determination that the conduct was a manifestations of the student's disability, the IEP Team shall conduct a functional behavioral assessment, and implement a behavioral intervention plan for such student, provided that this public 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 student must be returned to the placement from which the student was removed, unless the parent and this public 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 student's disability, this agency's personnel may remove a student to an interim alternative educational setting (determined by the student's IEP Team) for up to forty-five (45) school days, if the student:

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 DESE or a public agency;
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 DESE or a public agency; 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 DESE or a public agency.

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)

If the parent of a student with a disability disagrees with any decision regarding placement, or the manifestation determination under this subsection, or this public agency believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, they may request a due process hearing.

Authority of Commission in Expedited Hearings

The Administrative Hearing Commission will hold the due process hearing and make a decision. The Commission may:

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

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

Whenever a parent or a public agency 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 public agency 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 this agency has filed a due process complaint related to disciplinary matters, the student must (unless the parent and DESE or public agency agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, 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 Students 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 students without disabilities if this public agency did not have prior knowledge of the disability. If this public agency is deemed to have knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action, the student may assert any of the protections for students with disabilities in the area of discipline. This public agency 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 student; 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.

This public agency would not be deemed to have knowledge that the child is a student with a disability, if this agency conducted an evaluation and determined that the student was not a student with a disability; or determined that an evaluation was not necessary and provided proper Prior Written Notice Refused prior to the behavior incident; or, if the parent of the student has not allowed an evaluation of the student 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 this public agency is not deemed to have knowledge that the

student is a student with a disability prior to the behavior that precipitated the disciplinary action), the child remains in the educational placement determined by the public agency, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability, this public agency 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 this public agency 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 student 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)).

## B. PUBLIC AGENCY ELIGIBILITY

### A. GENERAL REQUIREMENTS

**1. SUBGRANTS TO PUBLIC AGENCIES (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 (DESE) to award subgrants to public agencies as described in 34 CFR 300.705.

**2. CONDITION OF ASSISTANCE (34 CFR 300.200)**
This 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 DESE that the 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)**
This public agency, in providing for the education of students 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 DESE 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 DESE 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 DESE for approval.

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

This public agency must provide DESE with information necessary to enable DESE to carry out its duties under Part B of the Act including information relating to the performance of students with disabilities participating in programs carried out under Part B of IDEA.

## 5. HEARINGS RELATED TO PUBLIC AGENCY ELIGIBILITY (34 CFR 300.221 and 300.155)

It is the policy of DESE to provide a public agency with notice and án 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 DESE violate state or federal statute or regulation. DESE shall provide a public agency with notice of intent to determine ineligibility. That notice shall contain:

a) a statement of the basis upon which DESE 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 DESE determines that its action was contrary to state or federal statutes or regulations, which govern the applicable program, DESE, shall rescind its action.
The ruling by the Commissioner of Education or a designee shall be final unless appealed pursuant to Federal regulations. 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.

DESE 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 this public agency 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 this public agency 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 students 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 this public agency's Part B Budget Application; and
e) directed 100 percent towards special education unless otherwise allowed.

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

Funds provided to this public agency 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 student with a disability in accordance with the IEP of the student, even if one or more students 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. This public agency 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:
    - (i) professional development (which may be provided by entities other than private agencies) for teachers and other 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
    - (ii) 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 student suspected of having a disability. The amount of funds expended by this public agency for early intervening services under 34 CFR 300.226 shall count toward the maximum amount of expenditures that this public agency 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 this public agency itself or for public agencies working in a consortium of which this public agency 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*. This public agency 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 students 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*. This public agency 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 this public agency under Part B for that fiscal year, divided by the number of students with disabilities in the jurisdiction of this public agency, and multiplied by the number of students 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 this public agency using Part B funds in a school-wide program, including ensuring that students 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 students with disabilities under the Act.

## 3. ACCOUNTING AND PAYMENT PROCEDURES

a) This public agency 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) This public agency must ensure that obligations made with Part B funds only occur between the substantial approval date of the budget application and June 30 of the fiscal year.
c) This public agency must ensure obligated Part B funds are expended by September 30 of each fiscal year.
d) This public agency must ensure Part B funds from the current grant cycle do not pay for expenditures from a prior grant cycle.
e) This public agency must ensure that the public agency's written procurement procedure is followed when purchasing goods and/or services with Part B funds.

f) This public agency shall submit payment requests for Part B funds by the required due dates. Payment request must be based on actual expenditures to date.
g) This public agency must create a coding system for tracking special education expenditures paid with Part B funds, state funds, and local funds separately.
h) This public agency must create a coding system to tie all federal revenue received (Part B, Early Childhood Special Education (ECSE), and High Need Fund (HNF)), to specific expenditures.
i) This public agency must ensure all personnel paid in full or in part with Part B funds must maintain time and effort documentation.
j) This public agency must us the accounting codes identified in the MO Accounting Manual to track special education expenditures.
k) This public agency capital outlay purchases with Part B funds must be prior approved by DESE. This includes equipment, construction/renovation and vehicles/buses.
l) This public agency shall submit a final expenditure report (FER) for Part B funds on or before the required due date.
m) This public agency shall maintain appropriate records to verify all expenditures of funds received under Part B of IDEA.

## 4. EXCESS COST (34 CFR 300.202)

a) This 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) This 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) This 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) Eligibility Standard

(1) For purposes of establishing the public agency's eligibility for an award for a fiscal year, the SEA must determine that the public agency budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the public agency spent for that purpose from the same source for the most recent fiscal year for which information is available:

(i) Local funds only;
(ii) The combination of State and local funds;
(iii) Local funds only on a per capita basis; or
(iv) The combination of State and local funds on a per capita basis.

(2) When determining the amount of funds that the public agency must budget to meet the requirement in paragraph (a)(1) of this section, the public agency may take into consideration, to the extent the information is available, the exceptions and adjustment provided in §§ 300.204 and 300.205 that the public agency:

(i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the public agency is budgeting; and
(ii) Reasonably expects to take in the fiscal year for which the public agency is budgeting.

(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the public agency is required to account to the Federal government directly or through the SEA may not be considered in determining whether a public agency meets the standard in paragraph (a)(1) of this section.

b) Compliance Standard
(1) Except as provided in §§ 300.204 and 300.205, funds provided to a public agency 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 public agency from local funds below the level of those expenditures for the preceding fiscal year.
(2) A public agency meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the public agency from at least one (1) of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in §§ 300.204 and 300.205:
(i) Local funds only;
(ii) The combination of State and local funds;
(iii) Local funds only on a per capita basis; or
(iv) The combination of State and local funds on a per capita basis.

(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the public agency is required to account to the Federal government directly or through the SEA may not be considered in determining whether a public agency meets the standard in paragraphs (b)(1) and (2) of this section.

c) Subsequent Years Rule

(1) If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, a public agency fails to meet the requirements of § 300.203 in effect at that time, the level of expenditures required of the public agency for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the public agency's reduced level of expenditures.

(2) If, in any fiscal year beginning on or after July 1, 2015, a public agency fails to meet the requirement of paragraph (b)(2)(i) or (iii) of this section and the public agency is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the public agency for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(i) or (iii) in the absence of that failure, not the public agency's reduced level of expenditures.

(3) If, in any fiscal year beginning on or after July 1, 2015, a public agency fails to meet the requirement of paragraph (b)(2)(ii) or (iv) of this section and the public agency is relying on the combination of State and local funds, or the combination of State and local funds on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the public agency for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(ii) or (iv) in the absence of that failure, not the public agency's reduced level of expenditures.

d) Consequence of Failure to Maintain Effort

(1) If a public agency fails to maintain its level of expenditures for the education of children with disabilities in accordance with paragraph (b) of this section, the SEA is liable in a recovery action under section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the Department, using non-Federal funds, an amount equal to the amount by which the public agency failed to maintain its level of expenditures in accordance with paragraph (b) of this section in that fiscal year, or the amount of the public agency's Part B subgrant in that fiscal year, whichever is lower.

e) 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 public agency 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:

(i) the voluntary departure, by retirement or otherwise, or departure by just cause, of special education or related services personnel;
(ii) a decrease in the enrollment of children with disabilities;
(iii) 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;
(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; and
(v) the assumption of cost by the high cost fund operated by the SEA under 34 CFR 300.704(c).

c) Adjustment to Fiscal Effort (34 CFR 300.205)

In any fiscal year for which a public agency's Federal allocation exceeds the amount the public agency received in the previous fiscal year, the public agency 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 public agency exercises the authority to reduce the state or local effort, the public agency must use an amount of state or 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 public agency is using funds under the ESEA for those activities.
If the SEA determines that a 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 public agency under section 616, the SEA must prohibit the public agency from reducing the level of expenditures for that fiscal year.

The amount of funds expended by the public agency for early intervening services under 34 CFR 300.226 shall count toward the maximum amount of expenditures that the 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 this public agency 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
   (i) All expenditures must follow the public agency's procurement guidelines.
   (ii) Public agencies may not collect or charge tuition costs for allowable ECSE services; however, the public agency may charge for tuition related to general early childhood education that is not part of the Individualized Education Program (IEP).

2) Contractual Expenditures
   Placement of students outside of this public agency for instructional services must be through an approved private agency 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 and caseload requirements as stated herein.

4) Equipment Expenditures
   (i) 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.
   (ii) All equipment items purchased with ECSE funds are the property of the public agency's ECSE program and must remain with the program.
   (iii) All individualized equipment purchases must be IEP driven.

5) Lease Expenditures
   (i) Leases are allowed for facilities, modular units, buses, vehicles, and office equipment.
   (ii) Facility lease payments are made in accord with 5 CSR 30-640.200.

6) Capital Outlay
   Funding for ECSE Capital Outlay, including but not limited to: facility renovation, facility construction, facility purchase, copiers, and vehicles/buses is not permitted and will not be reimbursed unless the public agency had an

approved ECSE capital cost purchase agreement with the Department prior to July 1, 2015.

7) Operation of Plant Expenditures
   (i) For ECSE programs in stand-alone facilities with no other programs, all utilities and custodial costs may be charged to the ECSE program.
   (ii) 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
   (i) Teachers, administrators, and other direct services staff (OT, PT, SLPs, Interpreters, etc.) are allotted $300 per FTE for professional development activities. Part-time staff must be prorated based on these flat rate amounts.
   (ii) Paraprofessionals are allotted $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
   (i) Start-up costs of $10,000 are allotted for a new classroom when the public agency 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.
   (ii) A public agency 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.
   (iii) Start-up costs of $1,200 per FTE are allotted for each new itinerant position that meets minimum caseload requirements.

10) Supplies/Program Maintenance Expenditures
   (i) 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
   (i) 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.
   (ii) 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 public agency will be based upon a review of the public agency'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 Early Childhood Special Education Classroom | 10-20 |
| Teacher of Integrated Classroom | 10-20 |
| Itinerant Teacher (teachers who move from class to class within a facility or travel to other facilities) | 12-22 |
| Teacher of Severe/Low Incidence Classrooms | 4-10 |
| Paraprofessional in ECSE Centerbased Self Contained Classroom or Integrated Classroom | 10-20 |
| Paraprofessional in ECSE Severe/Low Incidence Classrooms | 4-10 |
| Diagnostic Staff – for each position | 160+ |
| Related Services Staff Employed by District (Occupational Therapist, Physical Therapist, Speech Therapist) | 35-50 |
| ECSE Dedicated Program or Process Coordinator (Administrator) | 180+ |
| ECSE Secretary | 180+ |
| Nurse (FTE can be increased if additional nursing needs are specifically addressed in IEPs) | 175+ |
| Social Worker<br>General<br>Diagnostic Related Services | 175+<br>160+<br>35-50 |

## 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 public agencies with respect to:

1. The identification of students as students with disabilities, including the identification of students as students with disabilities in accordance with a particular impairment;
2. The placement in particular educational settings of these students; 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 students as students with disabilities, or the placement in particular educational settings of these students, 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 public agency identified with significant disproportionality to reserve the maximum amount of funds specified under the IDEA to provide comprehensive coordinated early intervening services to serve students in the public agency, particularly, but not exclusively, students in those groups that were significantly over identified; and
3. Require the public agency 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)

This public agency has, through approved policy, selected the following check marked method of providing instructional materials for students with blind or other print disabilities: (only one should be checked)

_X_ This public agency will 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 DESE.

____ This public agency is not required to coordinate with the NIMAC. If this public agency chooses not to coordinate with the NIMAC, this public agency must provide an assurance to DESE that this public agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. "In a timely manner" means that the 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 this public agency of its responsibility to ensure that students 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)

This public agency must cooperate with efforts of the ESEA to ensure the linkage of records pertaining to migratory students with disabilities for the purpose of electronically exchanging health and educational information among the states for these students.

## 4. PERSONNEL (34 CFR 300.201)

This public agency 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 VIII, 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 the Uniform Grant Guidance.

## 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. Factors to consider when determining caseload for grades K-12 are listed below.

a) Caseloads and Class Size Requirements for Early Childhood Special Education (ECSE) See Missouri State Plan Regulation IX for ECSE Requirements.
b) Class Size/Caseload Standards for Grades K-Twelve (12)

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

Missouri allows paraprofessionals who are appropriately trained and supervised to be used to assist in the provision of special education and related services to students with disabilities. Supervision is provided by a properly certificated teacher appropriate for the setting. Public agencies must provide each paraprofessional, including those who hold a teaching certificate, with the orientation and initial training necessary for the individual to perform the duties associated with the work

assignment prior to working with the student. At a minimum, such training shall include information and experiences related to:

(1) The type of disabilities displayed by the students with whom they will work;
(2) Basic principles of behavior modification;
(3) Basic instructional techniques expected to be used (demonstration, modeling, cueing, reinforcement, correction, etc.); and
(4) 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 within six (6) months of hire and a minimum of ten (10) hours of training yearly in subsequent school years.

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 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 students (younger students 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

## C. PRIVATE SCHOOLS AND AGENCIES

### 1. CHILDREN PLACED IN APPROVED PRIVATE AGENCIES BY PUBLIC AGENCIES

A private school is defined as any nonpublic, nonprofit private school or facility, including religious schools, that meets the definition of an elementary or secondary school under §160.011, RSMo, as well as home schools under § 167.012, RSMo and Family Paced Education schools under § 167.013, RSMo.

Responsibility of the SEA (34 CFR 300.146)

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

Implementation by the SEA (34 CFR 300.147)

DESE 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 DESE receive a copy of State Standards and Regulations for special education.

DESE will provide representatives from approved private 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 public agency 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 DESE as outlined herein.

Responsibility of this Public Agency

Public agencies 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 cannon be used to pay for services from unapproved private agencies.

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

- This public agency is not required to pay for the cost of education, including

special education and related services, of a student with a disability at a private school or facility if this public agency made FAPE available to the student and the parents elected to place the student in a private school or facility. However, this public agency shall include that student in the population whose needs are addressed consistent with 34 CFR 300.131-300.144.

DISAGREEMENTS ABOUT FAPE

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the student, and the question of financial responsibility are subject to the due process procedures in Regulation V.

REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT

If the parents of a student with a disability, who previously received special education and related services under the authority of a public agency, enroll the student 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 student 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 Missouri Department of Elementary and Secondary Education (DESE) and public agencies.

LIMITATION ON REIMBURSEMENT

The cost of reimbursement described in Reimbursement for Private School Placement may be reduced or denied

(1) If

a. at the most recent IEP tTeam meeting that the parents attended prior to removal of the student from the public agency, the parents did not inform the IEP tTeam Regulation XIII – Private Schools Page 125
that they were rejecting the placement proposed by the public agency to provide FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public agency expense,; or
b. at least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public agency, the parents did not give written notice to the public agency of the information previously described in paragraph (1)(a) this section; and

(2) If, prior to the parents' removal of the student from the public agency, the public agency informed the parents, through the notice requirements described in 34 CFR 300.503(a)(1), of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation,; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

EXCEPTION
Notwithstanding the notice requirement, the cost of reimbursement:

(1) Must not be reduced or denied for failure to provide the notice if:
a. the public agency prevented the parent from providing the notice;
b. the parents had not received notice; or,
c. maintaining the student in the public agency placement would likely result in physical harm to the student; 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 student in the public agency would likely result in serious emotional harm to the student

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

Child Find for Private School Children with Disabilities (34 CFR 300.451131)

This public agency shall locate, identify, and evaluate all private school students with disabilities, who are enrolled by their parents in private schools (including religious/parochial schools, home schools, and private elementary schools and secondary schools) located in the public agency's boundaries.

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

In carrying out these requirements, this public agency 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 and reevaluations, may not be considered in determining if this public agency has met its proportionate share obligation under Expenditures/Proprtionate Share.

The child find process must be completed in a time period comparable to that for students attending this public agency consistent with Regulation III.

This public agency in which private 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 Missouri, but attend a private school located in Missouri.

## 4. PUBLIC AGENCY 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 of students with disabilities who are enrolled by their parents in private schools located in the district served by the public agency, provision must be made for the participation of private school students 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 under Equitable Servcies Determined.

This public agency shall ensure that a services plan is developed and implemented for each parentally-placed private school student with a disability who has been designated by this public agency in which the private school is located to receive special education and related services.

This public agency must maintain in its records and provide to DESE, the following information related to parentally-placed private school students:

- the number of students evaluated;
- the number of students determined to be students with disabilities; and
- the number of students served.

Expenditures/Proportionate Share (34 CFR 300.133)

This public agency must spend the following on providing special education and related services (including direct services) to parentally-placed private school students with disabilities:

For students ages 3 to 21 with disabilities, an amount that is the same proportion of this public agency's total subgrant under Section 611(f) of IDEA as the number of private school students eligible under IDEA ages 3 to 21 who are enrolled by their parents in private schools located in the public agency's boundaries is to the total number of students eligible under IDEA in its jurisdiction ages 3 to 21.

For student aged 3 through 5, an amount that is the same proportion of the public agency's total subgrant under section 619(g) of IDEA as the number of parentally-placed private school students with disabilities aged 3 through 5 who are enrolled by their parents in a private elementary school located in the public agency's boundaries is to the total number of students with disabilities in its jurisdiction aged 3 through 5. Children aged 3 through 5 are considered to be parentally-placed private school students with disabilities enrolled by their parents in private elementary schools if they are enrolled in a private school that meets the definition of elementary school in 34 CFR 300.13.

If this public agency 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, this public agency must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school students 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 students with disabilities, this public agency, 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 students eligible under IDEA attending private schools located in this public agency. Child find activities may not be charged to the proportionate share obligations.

State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities.

Reporting Requirements

After timely and meaningful consultation with representatives of parentally-placed private school students with disabilities, this public agency must determine the number of parentally-placed private school students with disabilities attending private schools located in this public agency's boundaries 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 this public agency must spend on providing special education and related services to parentally-placed private school students with disabilities in the next subsequent fiscal year.

Consultation (34 CFR 300.134)

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

A. the child find process, including how parentally-placed private school students 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 students with disabilities, including the determination of how the proportionate share of those funds was calculated;
C. the consultation process among this public agency, private school officials, and representatives of parents of parentally-placed private school students with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed students 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 students 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 students; and
3) how and when those decisions will be made; and

E. if this public agency disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) and how this public agency will provide to the private school officials a written explanation of the reasons why this public agency 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, this public agency 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, this public agency must forward the documentation of the consultation process to the DESE.

Compliance (34 CFR 300.136)

A private school official has the right to submit a complaint to DESE through the child complaint process, outlined in Regulation V, that this agency:

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 DESE the basis of the noncompliance by this public agency and the applicable private school provisions Regulation XIII. This public agency must forward the appropriate documentation to DESE.

If the private school official is dissatisfied with the decision of DESE, 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 DESE. DESE must forward the appropriate documentation to the Secretary.

Equitable Services Determined (34 CFR 300.137)

No parentally-placed private school student 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 the services that will be providedto parentally-placed private school students with disabilities must be made in accordance with the Consultation and the

following.

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

This public agency must make the final decisions with respect to the services to be provided to eligible parentally-placed private school students.

Equitable Services Provided (34 CFR 300.138)

The services provided to parentally-placed private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in this public agency, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school students with disabilities do not have to meet the special education teacher qualification requirements in 34 CFR 300.156.

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

Each parentally-placed private school student 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 this public agency will provide to the student in light of the services that have been determined to be made available to parentally-placed private school students with disabilities.

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

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 students with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

Location of Services and Transportation (34 CFR 300.139)

Services to parentally-placed private school students with disabilities may be provided on the premises of private, including religious schools, to the extent consistent with law.

If necessary for the student to benefit from or participate in the services provided

under Regulation XIII, a parentally-placed private school student with a disability must be provided transportation from the student's school or the student'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 student's home, depending on the timing of the services.The cost of the transportation may be included in calculating whether this public agency has met expenditure requirements. Public agencies are not required to provide transportation from the student's home to the private school. If the public agency provides transportation from the student's home to the private school, the cost cannot be used in calculating whether the public agency has met expenditure requirements.

Due Process Complaints and State Complaints (34 CFR 300.140)

The due process procedures, outlined in Regulation V, only apply to complaints that a public agency has failed to meet the child find requirements. Any due process complaint regarding the child find requirements must be filed with the public agency in which the private school is located, and a copy must be forwarded to DESE.

Any complaint that the public agency has failed to meet all other requirements pertaining to parentally-placed private school students must be filed in accordance with the child complaint process outlined in Regulation V. Complaints filed by a private school official must be filed with DESE in accordance with the procedures outlined in Compliance

Funds Cannot Benefit a Private School (34 CFR 300.141)

This public agency may not use Part B funds available under Section 611 or 619 of the Act to finance the existing level of instruction in the private school or to otherwise benefit the private school.

This public agency must use Part B funds available under Sections 611 and 619 of the Act to meet the special education and related services needs of parentally-placed private school students, 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)

The public agency may use funds available under IDEA to make public school personnel available in other than public facilities

(1) To the extent necessary to provide services under Regulation XIII for parentally-placed private school students with disabilities; and
(2) If those services are not normally provided by the private school.

A. This public agency may use funds available under IDEA 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 their regular hours of private school duties; and
2) The employee performs the services under public supervision and control.

Separate Classes (34 CFR 300.143)

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

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

A public agency must control and administer the funds used to provide special education and related services under Regulation XIII and hold 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 students with disabilities.

The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

The public agency must ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private facility.

The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes, or removal is necessary to avoid unauthorized use of equipment and supplies for other than Part B purposes.

No funds under Part B of IDEA may be used for repairs, construction, or minor remodeling of private school facilities.

Listed below are the statutes of missouri that provide a legal basis and source for missouri's policy relating to private schools:

(1) Article I, Section 7
(2) Article IX, Section 8
(3) Section 162.996, RSMo
(4) Section 167.012, RSMo
(5) Section 167.013, RSMo

## D. STATE OPERATED PROGRAMS

### 1. STATE EDUCATION AGENCY (SEA) PROVISION OF DIRECT SERVICES

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

### 2. MISSOURI SCHOOLS FOR THE SEVERELY DISABLED

#### REGULATIONS FOR SERVICES

A system of day school services in a separate school settings, was established by state law to serve students with severe disabilities referred to the State Board of Education by public agencies 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 public agency supports separate school placement as the student's least restrictive educational environment, the LEA may request a determination of student eligibility for services. The following procedural information is provided to assist public agencies in accessing services from MSSD.

#### ELIGIBILITY CRITERIA FOR MSSD

- This public agency must establish the existence of a severe or profound intellectual disability. Students with severe disabilities generally have significant cognitive deficits, which must be demonstrated in the evaluation report. The public agency must submit an evaluation report that includes the information described below:

1. Cognitive Functioning: The evaluation report must show that the student obtains scores that are four or more standard deviations below the mean using a standardized measure of cognitive functioning. When a standardized measure of cognitive ability cannot be obtained due to a combination of sensory and/or motor impairments, and evaluation information indicates significant deficits in cognitive ability and adaptive behavior skills, the evaluation report must include a description of the student's intensity of needed supports across all life areas, as defined by the American Association on Intellectual and Developmental Disabilities (AAIDD) classification system; and
2. Adaptive Functioning: The evaluation report must include a composite score that is four or more standard deviations below the mean using a normative referenced standardized measure of adaptive behavior.

Only assessment results from comprehensive evaluations less than three years old and consistent with the procedures in Regulation III will be considered during the MSSD eligibility process.

- Students who educationally benefit from special education and related services that can be provided by the public agency are not considered eligible for services through MSSD.

- Students who would otherwise be eligible for MSSD based on the severity of the disability will not be accepted if they require homebound placement as such a placement would preclude attendance at a separate day program such as MSSD. Students who otherwise qualify and require only intermittent services in the home will be eligible for referral.

- An eligible student with a severe disability who attains the age of five before the first day of August of the school year beginning in that calendar year may enroll in MSSD. Extended School Year services shall be provided to students eligible for such services.

**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 public agency pending the determination of such need. This includes students whose performance indicates possible functioning within the range of severe to profound intellectual disability.

2. The public agency in which the student resides shall complete a comprehensive evaluation which is current within three years. A reevaluation 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 public agency 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 public agency 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 team is considering separate school placement at MSSD, the public agency shall request an eligibility review. The IEP team shall provide justification as to why MSSD would be the least restrictive educational environment for the student. The justification documentation must include information that the public agency has:

a. Considered educating the student in the public agency;

b. Identified supplementary aids and services that would be needed to educate the student in the public agency; and
c. Articulated why the public agency cannot serve the student in the public agency in a placement that would benefit the student.

The public agency must submit to MSSD any supporting evidence for each of the preceding statements that justify the IEP team's decision, including but not limited to, evaluation report, current IEP, preceding IEPs, if applicable, and related educational records and other pertinent information for all services provided by the public agency. MSSD may request additional information on an individual student basis if necessary.

5. Following a professional review of this information, the public agency shall be notified whether the student is eligible for services through MSSD. The eligibility determination is not appealable and is a unilateral determination made by MSSD. If the student is determined eligible, MSSD will send the public agency recommendations for needed instruction and services as appropriate.

6. Should the public agency be notified that the student is eligible for MSSD, the public agency may refer the student. If the public agency chooses to refer the student, the public agency shall follow Referral Procedure.

**REFERRAL PROCEDURE**

1. Once the student has been deemed eligible, the public agency shall notify parents of the eligibility decision and hold an IEP meeting to consider changing the student's placement in the least restrictive environment. Public agencies are encouraged to involve a local MSSD administrator in the referral process. MSSD administrators will honor requests to participate whenever possible. If the IEP team changes placement to public separate day facility/MSSD, the team should consider recommendations from MSSD and modify the IEP accordingly. The IEP provided at time of referral must reflect the actual number of minutes of service per week needed to provide FAPE.

2. The public agency shall provide the parents prior written notice of the change in placement and services and an explanation of the Procedural Safeguards notice, including an explanation of their right to appeal the action through a due process hearing.

3. The public agency will send the completed referral form, IEP reflecting placement at MSSD, and prior written notice of the change of placement to MSSD.

4. Upon receipt of the completed referral form, IEP for separate placement, and prior written notice of the change of placement, MSSD will provide enrollment documents to the parent and public agency.

5. The public agency shall assist parents with enrollment, including timely completion of enrollment forms. The public agency shall provide special education and related services for a reasonable time after providing parents with prior written notice of the change of placement, or until the child enrolls at MSSD, whichever occurs first. MSSD will notify the public agency of the date of the student's enrollment.

## ANNUAL AND SUBSEQUENT IEP REVIEW

The public agency shall ensure that the IEP team reviews the student's IEP periodically, but not less than annually. IEP annual reviews will consider placement in the least restrictive environment in accordance with Regulation IV.

(1) The public agency will convene IEP team meetings in collaboration with MSSD.

(2) MSSD may request an IEP team meeting at any time to address progress toward meeting goals, behavior concerns, health concerns, or any other matter impacting provision of FAPE in the least restrictive environment.

(3) At any time, the IEP team may determine that the student is no longer eligible for MSSD because MSSD can no longer provide FAPE in the least restrictive environment.

The IEP team should carefully consider whether all options for supporting the student in the current placement have been exhausted, as demonstrated by documentation. Examples of documentation include, but are not limited to:

a. review of progress monitoring data and/or behavioral data;
b. reevaluation to obtain new assessment results;
c. behavior intervention plan; and
d. review of the IEP present level statements, goals, services, related services, accommodations, modifications, and placement.

If the IEP team determines that MSSD is no longer the appropriate placement, the public agency will provide the parent with prior written notice of the change in placement and services. The public agency and MSSD will determine the effective date of the change of placement to transition the student to the new placement.

## REEVALUATION

Public agencies shall consult with MSSD regarding reevaluations. The public agency shall conduct a reevaluation as required by Regulation III. 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.

### 1. TRANSFER OF STUDENTS ENROLLED IN MSSD

A student who is enrolled in an MSSD school and moves from one public agency to another (including those moves to another public agency 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 30 days, during which the new public agency follows the transfer procedures provided within Regulation III 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 public agency will complete the Justification for Continued Separate School Placement form. If, during the thirty 30-day interim period, the new public agency fails to provide the Justification for Continued Separate School Placement form, the student will not be served by MSSD and shall be served by

the public agency through a placement other than MSSD.

## TRANSFER OF STUDENTS WITH SEVERE DISABILITIES FROM A SEPARATE SCHOOL (DAY) FACILITY (IN MISSOURI PUBLIC AGENCY, A

## SPECIAL SCHOOL DISTRICT, OR AN OUT-OF-STATE PROGRAM)

A 60-day interim placement at MSSD may be available for students with severe disabilities who are changing public agencies due to a change in residence.
These students must have been receiving services in their public agency, through cooperative arrangement with another public agency, 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:

1. The current IEP and comprehensive evaluation report are adopted by the new public agency pursuant to transfer procedures provided within Regulation IV.
2. The new public agency submits a copy of the student's current IEP and comprehensive evaluation report to MSSD with a letter acknowledging adoption of the documents. In the same letter, the new public agency 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 public agency requests that the student be served in a 60-day interim placement to confirm concurrence with placement in MSSD as the least restrictive educational environment for the student.
3. MSSD will issue a letter of interim placement assignment if the information submitted is viewed as substantiating the request.
4. Enrollment documents must be completed at the onset of the sixty (60) day interim placement period. MSSD will notify the public agency of the date of the student's enrollment.
5. During the 60-day interim placement, the public agency shall follow the referral procedures to seek eligibility determination in accordance with MSSD Eligibility Review. If found eligible, the public agency will issue a prior written notice to the parents, guardian or educational surrogate, and MSSD confirming continued placement. If, during the 60-day interim period, the public agency fails to submit the justification for separate school placement, the student will not be served by MSSD and shall be served by the public agency through a placement other than MSSD.

If MSSD is not confirmed as the student's least restrictive educational environment, the public agency is notified of this decision and becomes responsible for providing the required special education and related services in accordance with Regulation V.

## TRANSFER OF STUDENTS WHO PREVIOUSLY ATTENDED MSSD, MOVED OUT OF STATE, AND HAVE RETURNED TO MISSOURI

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

1. The student attended MSSD in the 12 months prior to seeking readmission,
2. The student moved out of state and had an IEP placement other than a separate day school,
3. The student has moved back to Missouri, and

4. The parent agrees to the interim placement at MSSD.

Procedure to implement the interim placement;

1. The current IEP and comprehensive evaluation report are reviewed by the new public agency pursuant to transfer procedures provided within Regulation IV and a decision made accepting or rejecting the IEP and evaluation report is documented.
2. The new public agency submits a copy of the student's current IEP and evaluation report to MSSD with documentation of the acceptance or rejection of the documents. In a letter, the new public agency will verify the previous placement at MSSD within the prior 12 months. In addition, the public agency requests that the student be served in a 60-day interim placement to confirm concurrence with placement in MSSD as the least restrictive educational environment for the student.
3. MSSD will issue a letter of interim placement assignment if the information submitted is viewed as substantiating the request
4. Enrollment documents must be completed at the onset of the 60-day interim placement period. MSSD will notify the public agency of the date of the student's enrollment.
5. During the sixty (60) day interim placement, the public agency shall follow the procedures to seek eligibility determination in accordance with 1-4 above. If found eligible, the public agency will issue a notice of action to the parents, guardian, or educational surrogate, and MSSD confirming continued placement. If, during the sixty (60) day interim period, the public agency fails to submit all the documentation needed to determine eligibility for placement at MSSD, the student will not be served by MSSD and shall be served by the public agency through a placement other than MSSD.

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

## 2. 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 public agencies 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 public agency supports separate school placement as the student's least restrictive educational environment, the local public agency may seek determination of student eligibility for services. The following procedural information is supplied to assist public agencies in accessing services from MSD and MSB.

### ELIGIBILITY FOR MSB AND MSD

- 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.

- 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.
- 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.

**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 seek enrollment in either MSD or MSB program, the following procedures have been adopted by the State Board of Education. The public agency is encouraged to request a professional employee of MSB or MSD to participate in the enrollment and referral 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 public agency programming pending the determination of such need.
2. The public agency in which the student resides shall provide comprehensive and appropriate evaluation information, current within three (3) years. The public agency may be required to submit to MSB or MSD additional evaluations, educational records, or other pertinent information as determined necessary to clarify the student's educational needs. The requested additional evaluations must be obtained in accordance with Regulation III.
3. Following compilation of evaluation information, the public agency 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 IEPs within Regulation IV. The public agency 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 submit documentation of the justification for such placement in writing, including an explanation that MSB or MSD would be the least restrictive educational environment for the student. The justification documentation must include information that the public agency has:

    a. Considered educating the student in the public agency;
    b. Identified supplementary aids and services that would be needed to educate the student in the public agency; and
    c. Articulated why the public agency cannot serve the student in the public agency in a placement that would benefit the student.

This public agency must submit to MSB or MSD any supporting evidence of each of the preceding statements that justify the IEP Team's decision.

5. When the IEP indicates the student is in need of services which this public agency is unable to provide and which may be provided by the MSB or MSD, the public agency 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 public agency shall also be forwarded. MSB or MSD may request additional information if necessary. Following a professional review of this information, the public agency shall be notified whether 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. If the student is determined eligible, MSB or MSD will send the public agency recommendations for instructional programming and services if appropriate.

REFERRAL

1. Should the public agency be notified that the student is eligible for MSB or MSD, the public agency may refer the student after holding an IEP meeting to consider the recommendations from MSB and MSD and modify the IEP accordingly if needed. The IEP, at time of referral, must reflect the actual number of minutes of service per week needed to provide FAPE, or the public agency must reconvene the IEP Team before submitting the referral so as to ensure an IEP Team decision on actual minutes needed to provide FAPE. After the parents have received an explanation of the Procedural Safeguards notice, the public agency shall submit the referral to MSB or MSD. 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.
2. When referring the student, this public agency will send the newly revised IEP to MSB or MSD. Upon acceptance of the referral, MSB or MSD will send enrollment documents to the parents.
3. The public agency will convene an IEP meeting in collaboration with MSB or MSD at least annually to review and/or revise IEPs for students enrolled in MSB or MSD.
4. If at any time MSB or MSD believes a modification to the student's IEP is required, including instances wherein MSB or MSD does not believe MSB or MSD is the Least Restrictive Environment, MSB or MSD will notify the public agency that an IEP Team meeting is necessary. The public agency must hold an IEP Team meeting within a reasonable time of MSB's or MSD's notification to the public agency of the need for an IEP Team meeting. The student's teacher and other appropriate professional personnel from MSD or MSB shall be invited to participate in this meeting. If the IEP Team determines the student is ineligible for services at MSB or MSD, they shall inform the parents of their right to appeal in accordance with the Procedural Safeguards.

**REEVALUATION**

The public agency shall conduct a reevaluation as required by state regulations.

Results of the reevaluation shall be submitted to MSB and MSD for review. Additional data, including additional evaluation information, may be requested by MSB or MSD and must be provided by the public agency to clarify the student's educational needs.

The Department of Elementary and Secondary Education does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, age, veteran status, mental or physical disability, or any other basis prohibited by statute 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, Director of Civil Rights Compliance and MOA Coordinator (Title VI/Title VII/Title IX/504/ADA/ADAAA/Age Act/GINA/USDA Title VI), 7th Floor, 205 Jefferson Street, P.O. Box 480, Jefferson City, MO 65102-0480; telephone number 573-522-1775 or TTY 800-735-2966; fax number 573-522-4883; email **civilrights@dese.mo.gov.**

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