



MISSISSIPPI
Department of Education

"Quality education for every child...every child a reader"

Draft Policies 2006

Regarding children with Disabilities under the
Individuals with Disabilities Education Act Amendments
of 2004 (IDEA 2004)



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I. CHILD IDENTIFICATION

Child Find

Local educational agencies (LEAs), including publicly funded programs serving children with disabilities, must develop and implement procedures that ensure that all children - - residing in or receiving services within their jurisdiction, birth to age 21, regardless of the severity of their disabilities, and who need special education and related services - - are identified, located, and evaluated. Child Find includes a practical method of determining whether such children are currently receiving needed special education and related services.

A. Child Find for Children and Youth Age 3-21. Child Find must identify, locate, and evaluate all children within the agency's jurisdiction who are:

1. *Highly mobile children with disabilities* (i.e., migrant children and homeless children), children who are wards of the State, and children who are suspected of having a disability and are in need of special education, ***even though they are advancing from grade to grade;***
2. ***Children with disabilities who are receiving home-school instruction (MS interpretation);***
3. Secondary schools or religious schools. Private school Child Find activities must be similar to those undertaken for the agency's public school children, and must be completed in a comparable time period. These Child Find activities must be designed to ensure the equitable participation of parentally placed private school children with disabilities, as well as an accurate count of these children;
4. Children with disabilities who are currently receiving needed special education and related services.

Reference citation: IDEA 2004 §612(a)(3), (a)(9), and (a)(10)(ii);

Federal draft regulations §300.111 and §300.131

B. Transition from IDEA Part C to Part B Preschool Programs. LEAs must participate in a transition planning conference arranged by the designated lead agency for children who participated in early

intervention programs. To experience a smooth and effective transition to preschool programs, LEAs must have procedures describing evaluation and transition planning. LEAs *must* make a free appropriate public education available to each eligible child residing in their jurisdiction no later than the child's third birthday; and have an Individualized Education Program (IEP) in effect for the child by that date. ***If the child's third birthday falls during the summer months, the IEP Team (along with IDEA 2004 Part C personnel who participated in planning) will determine when the local educational agency will begin providing special education services.***

Reference citation: IDEA 2004 §612(a)(9); Federal draft regulations §300.111

Intervention Strategies in the General Education Class

In accordance with MS Three Tier Intervention Model, adopted January 21, 2005, scientific, research-based intervention strategies must be implemented in the general education program when a child is noted to be experiencing difficulties. No later than sixteen (16) weeks after initiation of intensive intervention, a decision to determine suspicion of disability must be made by the Teacher Support Team, based on collected data. Interventions in the general education program may be waived for a child who has severe problems that require immediate attention.

Reference citation: Federal draft regulations §300.309 refers to scientifically-based instruction and repeated assessments of achievement prior to, or as part of, the referral process.

Referral

LEA must develop and implement procedures regarding the processing of referrals for special education evaluations.

- A. Sources of Referrals. A parent of a child, Mississippi Department of Education (MDE), other State agency, or LEA may initiate a written referral for an initial evaluation to determine if the child is a child with a disability.

Reference citation: IDEA 2004 §614(a)(1)(B); Federal draft regulations §300.301(b)

- B. Review of Referrals. *The District Review Team (DRT) must review the referral and supporting data to determine if the child will be evaluated for special education service based on documentation that the child is suspected of having a disability. If the DRT determines that the child should not be evaluated for special education services, written notice that meets the requirements set forth in the Policies in Section II. Evaluations must be given to parents, and the child must be referred back to the Teacher Support Team. If the DRT determines that the child should be evaluated for special education services, the consent requirements set forth in the Policies in Section II. Evaluations must be followed.*
- C. *LEAs must ensure that referrals are not limited by the number per year or the time of year that referrals are accepted.*

Timeline for Evaluation

A local educational agency has sixty (60) calendar days from the date of receipt of signed parent permission to conduct an evaluation to determine whether the child is a child with a disability and in need of special education. School holidays of three or more days are excluded from this timeline. If initiation of the timeline occurs in another local educational agency, the receiving local educational agency must use the 60-day timeline or obtain parent agreement to extend the timeline for completing the process. EXCEPTION: The timeline does not apply if the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

Reference citation: IDEA 2004 §614(a)(1)(C); Federal draft regulations §300.300, §300.323

II. EVALUATIONS

Initial Evaluations

Local educational agencies must develop and implement comprehensive, full and individual non-discriminatory assessment/evaluation procedures to evaluate those children suspected of having a disability that adversely affects their educational performance and who may need specially designed instruction. Initial evaluations must be conducted before the initial provision of special education and related services.

A. **Parental Consent.** If the District Review Team (DRT) determines that the child should be considered for evaluation, the following must be addressed:

1. Before an initial evaluation can be conducted, the LEA *must* obtain written informed consent from the parent or legal guardian. If consent for evaluation is refused or if the parent fails to respond to a request for consent, the LEA may pursue an evaluation through mediation and/or due process. (Mediation and due process policies are described in the Policies in Section VIII. Procedural Safeguards.) LEA should use their consent override procedures only in rare circumstances.

Reference citation: IDEA 2004 §614(a)(1)(D); Federal draft regulations §300.300

2. Parental consent for evaluation *must* not be construed as consent for placement for receipt of special education and related services.

Reference citation: IDEA 2004 §614(a)(1)(D); Federal draft regulations §300.300

3. Consent for wards of the state. If the child is a ward of the State and is not residing with the child's parent, the LEA *must* make reasonable efforts to obtain the informed consent of the parent for an initial evaluation to determine whether the child is a child with a disability.

EXCEPTION: The agency is *not* required to obtain informed consent from the parent of a child for an initial evaluation if:

- a. Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
- b. The rights of the parent of the child have been terminated in accordance with Mississippi law; or
- c. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Mississippi law, and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

Reference citation: IDEA 2004 §614(a)(1)(D)(iii); Federal draft regulations §300.300

B. Evaluation Procedures

1. Before the initial provision of special education and related services, a full and individual comprehensive assessment of the child's educational needs, *including parental input*, must be conducted.
2. The child must be assessed in all areas related to the suspected disability.
3. *No single measure or assessment may be used* as the sole criterion for determining whether the child has a disability or in determining an appropriate educational program for a child.
4. Tests must be provided and administered:
 - a. In the child's *primary* language, and
 - b. In the form most likely to yield accurate information on *how the child performs* academically, developmentally, and functionally.
5. Assessment instruments must be valid and reliable for the specific purpose for which they are used in order to determine the educational needs of the child. These instruments must be administered by trained and knowledgeable personnel in compliance with the *qualifications and* instructions required by the *test publisher. Guidelines for evaluating the technical properties of instruments will be provided by MDE.*

6. Non-discriminatory assessment/evaluation procedures must be selected and administered for evaluation and placement of children with disabilities for services so as not to discriminate on a cultural or linguistic basis.
7. *A variety of assessment tools and strategies must be used* to gather relevant functional, developmental, academic, cognitive, behavioral, and physical information, to include information provided by the parent, that may assist in determining:
 - a. Whether the child is a child with a disability and, if found eligible and
 - b. The content of the child's individualized education program, including information related to enabling the child to be involved and progress in the general curriculum, or, for preschool children, to participate in age-appropriate activities.
8. Assessments of children with disabilities who transfer from one LEA to another LEA in the same academic year must be coordinated with the child's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

Reference citation: IDEA 2004 §614(b)(2) and (3); Federal draft regulations §300.304 and §300.305

C. Additional Requirements for Evaluation and Reevaluation. As part of an initial evaluation and as part of all required reevaluations, the District Review Team (DRT) must:

1. Review existing evaluation data on the child, including: evaluations and information provided by the parents of the child; current classroom-based, local, or state assessments and classroom observations; and observations by teachers and related services providers; and

2. On the basis of the review of existing evaluation data and input from the child's parents, identify what additional data, if any, are needed to determine:
 - a. Whether the child has a disability, and the educational needs of the child; or, in the case of a reevaluation of a child, whether the child continues to have a disability and the educational needs of the child.
 - b. The present levels of academic achievement and related developmental needs of the child;
 - c. Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - d. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate in the general curriculum.
3. The LEA must administer any assessments and other evaluation measures as may be needed to produce the data identified by the District Review Team (DRT).

Reference citation: IDEA 2004 §614(c)(1) and (2); Federal draft regulations §300.305

Screening

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

Reference citation: IDEA 2004 §614.(a)(1)(E); Federal draft regulations §300.302

Out-of-State Evaluations

Out-of-state evaluations may be used to determine eligibility for special education services at the discretion of the local educational agency, if the evaluation meets the requirements contained in the section on Initial Evaluations above.

Reevaluation

Once the initial evaluation to determine whether a child has a disability is completed, any subsequent evaluation is considered to be a reevaluation that requires parental consent in accordance with the Paragraph A in the above section on Initial Evaluations. Such informed parental consent need not be obtained if the LEA can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

Reference citation: IDEA 2004 §614 (c)(3)

A. Reevaluation Requirements.

1. *A reevaluation must be conducted if the IEP Team determines that the education or related services needs (including improved academic achievement and functional performance) of a child warrants a reevaluation. In addition, a reevaluation must be conducted if the child's parents or teachers request it.*
2. Reevaluations *must* not occur more frequently than once a year unless the parent and the LEA agree otherwise. Reevaluations must occur at least once every three years (*or more frequently as determined by the District Review Team*) unless the parent and the LEA agree that a reevaluation is unnecessary. The LEA must maintain written documentation of the IEP Team's decision regarding reevaluation.

Reference citation: IDEA 2004 §614(a)(2); Federal draft regulations §300.303

3. If the IEP Team and other qualified professionals, as appropriate, *find* that no additional data are needed to determine whether the child continues to be eligible and to determine the educational needs of the child, the LEA must provide written notice to the child's parents of

the reasons for that determination and their right to request an assessment. The LEA will not be required to conduct an assessment to determine continued eligibility unless requested by the child's parents.

Reference citation: IDEA 2004 §614(c)(4)

4. Before determining that a child is no longer a child with a disability, the LEA must reevaluate the child. (See Change in Eligibility in Section V. Individualized Education Programs for policy on exits due to graduation with a regular diploma or reaching maximum age.

Reference citation: IDEA 2004 §614(c)(5); Federal draft regulations §300.305

III. ELIGIBILITY

Determination of Eligibility and Educational Need

Upon completion of the administration of assessments and other evaluation measures:

- A. The determination of whether the child is a child with a disability (as defined in IV Policies on Definitions and II Evaluation Criteria) and *the determination of the educational needs of the child, must* be made by a team of qualified professionals and the parent of the child according to the Policies on Evaluations; and
- B. A copy of the evaluation report and the documentation of determination of eligibility *must* be given to the parent.

Reference citation: IDEA 2004 §614(b)(4); Federal draft regulations §300.308.

Special Rule for Eligibility Determination

In making a determination of eligibility, a child *must* not be determined to be a child with a disability if the determinant factor for such determination is:

- A. Lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in §1208[3] of the Elementary and Secondary Education Act of 1965);

- B. Lack of instruction in math;
- C. Limited English proficiency; or
- D. *Cultural differences.*

Reference citation: IDEA 2004 §614(b)(5); Federal draft regulations §300.306(b)

Determination of Specific Learning Disabilities (SLD)

When determining whether a child has a Specific Learning Disability as defined in the Sections on IV Definitions and Evaluation Criteria:

- A. An LEA *is not* required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, reading fluency, mathematical calculation, or mathematical problem solving.
- B. An LEA *must* use a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures.
- C. *One year from adoption MS Special Education Policy by the State Board of Education, all local education agencies must use Response to Intervention (rather than a severe discrepancy between achievement and intellectual ability) in procedures for determination of Specific Learning Disability.* (See procedures for SLD determination in the Policies on IV. Definitions and Evaluation Criteria.)

Reference citation: IDEA 2004 §614(b)(6)(A)and (B); Federal draft regulations §300.307

IV. DEFINITIONS AND EVALUATION CRITERIA

Autism Spectrum Disorder (ASD)

Definition: Autism Spectrum Disorder refers to any disorder in the range of pervasive developmental disorders (PDDs) as cited in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DMS-IV)

published by the American Psychiatric Association. This group of developmental disorders includes, but is not limited to, the following:

- A. Autism (AU) – A developmental disorder characterized by marked difficulty in communication and social relations and by the presence of atypical behaviors such as unusual responses to sensations, repetitive movements, and insistence on routine or sameness. Autism is usually evidenced prior to age 3 although it is sometimes not formally diagnosed until later in life. Eligibility determination is based on behavioral rather than medical, anatomic, educational, or genetic markers. 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.
- B. Asperger Syndrome (AS) – Characterized by marked and sustained social and behavioral impairment but not significant cognitive or language delays. Individuals with AS have difficulties with transitions or changes and a desire to maintain sameness. Individuals often have obsessive routines and may be preoccupied with a particular subject of interest. These individuals have difficulty reading nonverbal cues (body language); difficulty determining proper body space; and may be sensitive to sounds, tastes, smells, and sights. Individuals with AS may display average to above average intellectual functioning, and many (although not all), exhibit exceptional specific skills or talents. Further difficulty is experience by individuals with AS in the understanding of language in a social context and can be very literal in language interpretation. Also evident is a great deal of motor clumsiness and awkwardness.
- C. Pervasive Developmental Disorder--Not Otherwise Specified (PDD-NOS) – A diagnosis used when a child displays fewer criteria than are required for a diagnosis of autism but does evidence problems consistent with autism that constitute a developmental risk. PDD-NOS can be

considered as a milder form of autism and is often used when a child is too young for a more definitive diagnosis or when a child demonstrates fewer of the characteristics that are considered in a definitive diagnosis. Children diagnosed as having PDD-NOS often exhibit higher language and cognitive skills than children with an autism diagnosis.

Reference citation: Current Diagnostic and Statistical Manual IV-TR

Minimum Eligibility Criteria. A child who meets the definition of an Autism Spectrum Disorder, as stated above and as defined through the following procedures, shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies in Section II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 1. Vision and hearing;
 2. General physical condition;
 3. Academic performance;
 4. Communication status; and
 5. Social/behavioral.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies on II. Evaluations) must include, but are not limited to:
 1. A current norm-referenced individual test(s) providing information which concludes or indicates that:
 - a. The child has significant deficits in verbal communication as measured by an instrument designed to detect impaired ability in expressive language. Such an instrument may also measure receptive language but due to the definition of an Autism Spectrum Disorder, deficits must be demonstrated in verbal communication; and
 - b. The child has significant deficits in social interaction or in the ability to build or maintain appropriate interpersonal relationships.

2. A current standardized individual achievement test(s), if appropriate, or norm-referenced developmental test(s) that supports the need for special education;
 3. A published instrument designed to detect autistic characteristics that indicate the child manifests the characteristics of an Autism Spectrum Disorder;
 4. Behavioral observations and, as appropriate, task analyses;
 5. Information regarding the developmental history of the child to determine age of onset of evident autistic characteristics;
 6. Required follow-up examinations concerning hearing, vision and general physical condition, as necessary. The results of the examination(s) must support the data regarding the child's learning problems being primarily the result of an Autism Spectrum Disorder; and
 7. A statement of diagnostic impressions from a MDE licensed psychometrist and/or school psychologist, or clinical psychologist or Board-certified psychiatrist or MDE-approved specialist in autism diagnosis, based on an assessment. The statement must be included in the professional's report following an observation(s) of the child as well as a review of assessment data by the professional.
- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History; teacher recommendations; scientific, research-based interventions; parent input; assessment data; and social or cultural background to ensure that:
1. Data collected consistently support the conditions of the disability and the need for special education and related services or an explanation of an inconsistency is documented; and
 2. The child's disability is not due to the lack of scientific, research-based instruction in reading or math or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Deaf-Blind (DB)

Definition. The child who is deaf-blind is one who has a combination of auditory and visual disabilities that adversely affect a child's educational performance. These disabilities must also cause such severe communication and other developmental and educational needs so that the child cannot be accommodated in special education programs designed solely for children with hearing impaired or with visually impaired disabilities.

Minimum Eligibility Criteria. A child who meets the definition of Deaf-Blind as stated above and as defined under the conditions of a Hearing Impaired and a Visually Impaired disability shall be eligible for special education and related services.

Developmentally Delayed (DD)

Definition. Developmentally Delayed is a noncategorical disability for children ages birth through 5. Such a disability is described according to functional and/or developmental levels. Children included in this population either have:

- A. Established delays in two or more of the following areas:
 1. Cognitive – The ability to think, which includes processes such as reasoning, problem solving, inferring, conceptualizing, classifying, symbolizing, imagery and memory;
 2. Fine and/or gross motor – Motor skills requiring the control of small, coordinated movements or motor skills used for body control such as standing, walking and climbing;
 3. Language – The ability to acquire, use and comprehend symbols utilized in communication; and/or
 4. Social – The ability to build or maintain age-appropriate interpersonal relationships and/or adaptive behavior which is the effectiveness

- with which the individual meets the standards of personal independence and social responsibility expected of his age; or
- B. A diagnosed disorder of known etiology which will affect development in a negative fashion and has a high probability of resulting in a developmental delay.

Minimum Eligibility Criteria. A child who meets the definition of Developmentally Delayed as stated above and as defined through the following procedures must be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies in Section II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
1. Vision and hearing;
 2. General physical condition and motor abilities;
 3. Pre-academic or academic performance;
 4. Communication status;
 5. Social/behavioral;
 6. Adaptive behavior; and
 7. Cognitive abilities
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies on II. Evaluations) must include, but are not limited to:
1. Curriculum-based assessments, including criterion-referenced tests administered in areas in which problems are suspected, including the areas of cognitive abilities, fine and/or gross motor, language, social and/or adaptive behavior. Documentation from the Teacher Narrative or Developmental History, screening instrument(s), other support documentation, and/or data collected during the comprehensive assessment must be utilized to determine the problem areas.
 2. Age-appropriate norm-referenced tests administered in the identified problem areas. If the functioning level of the child is such that direct administration of the test to the child is inappropriate, informant-

based tests may be used. However, the informant must be knowledgeable of how the child functions in all areas assessed.

3. Required follow up examinations concerning hearing, vision and general physical condition, as necessary. The results of the examination(s) must support the data regarding the child's learning problems being primarily the result of Developmental Delay.
4. A significant delay in the areas of cognitive abilities, fine and/or gross motor, language, social and/or adaptive behavior is defined as a deficit of 1.5 standard deviations below the test mean on the standardized or norm-referenced test(s) in at least two areas. If a test yields standard scores, these scores must be used in determining a delay. If the test(s) administered does not yield standard scores, a significant delay (25% delay), based on age equivalents in two or more areas, must be evident. Collected data must consistently support a delay.
5. If testing does not indicate delays, the following information must be gathered, if appropriate, to support the need for an eligibility determination, including the need for special education and related services:
 - a. Diagnosis of a chronic or acute medical condition which limits strength, vitality or alertness (i.e., leukemia, severe seizure disorder which is not controlled or which causes drowsiness due to medication, or diabetes) or diagnosis of a disorder of known etiology (e.g., Down Syndrome, Cri du Chat Syndrome) by a physician on the Report of Physical Observation form or in a current medical report; and
 - b. Research to support the predicted developmental delays.

In determining whether a child is Developmentally Delayed, factors as indicated in the definition above must be considered, and all other assessment data must be consistent with the physician's information and research provided.

C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History, teacher recommendations (or recommendations of primary care providers, if appropriate), scientific, research-based interventions, parent input, assessment data, and social or cultural background to ensure that:

1. Data collected consistently support the conditions of the disability and the need for special education and related services or an explanation of an inconsistency is documented; and
2. The child's disability is not due to the lack of scientific, research-based instruction in *age-appropriate developmental or language and cognitive activities*, or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Reference citation: IDEA 2004 §602(3)(B); Federal draft regulations §300.8

Emotional Disability (EmD)

Definition. A child who has an emotional disability exhibits one or more of the following characteristics that adversely affects educational performance over a long period of time and to a marked degree, including:

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

Minimum Eligibility Criteria. A child who meets the definition of an Emotional Disability as stated above and as defined through the following procedures shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies in Section II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 - 1. Vision and hearing;
 - 2. General physical condition;
 - 3. Academic performance;
 - 4. Communication status;
 - 5. Social/behavioral;
 - 6. Emotional; and
 - 7. Cognitive abilities.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies on II. Evaluations) must include, but are not limited to:
 - 1. A written analysis of specific school behaviors and scientifically-based interventions conducted to address those behaviors. If the child does not attend school, the information which describes specific behaviors must be obtained. The description of specific behaviors must be collected over a period of time to ensure that children with temporary emotional problems are not recommended for evaluation of an Emotional Disability. These collected data must be a continual log of behaviors observed during given periods of time. The setting of the observation(s), the task(s) the student was required to perform, the specific behaviors the child exhibited, and the responses and/or reactions of teachers and peers to the student's behaviors should be recorded to give an objective and accurate account of behaviors observed.
 - 2. A norm-referenced assessment of behavior compared to similar aged-peers.

3. A current standardized individual achievement test(s) or, if appropriate, a norm-referenced, developmental test(s) that supports the need for special education
 4. A statement that a child has an emotional disability in accordance with the above definition from a MDE licensed school psychologist, a clinical psychologist, or a psychiatrist. The statement must be included in the professional's report following an observation(s) of the child as well as a review of assessment data by the professional; and
 5. Required follow-up examinations concerning hearing, vision, general physical condition, child's communication skills and, as necessary, and the results of the examination(s) must support the data regarding the child's learning problems being primarily the result of an Emotional Disability.
- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History; teacher recommendations; scientifically-based interventions; parent input; assessment data; and social or cultural background to ensure that:
1. Data collected consistently support the conditions of the disability and the need for special education and related services, or an explanation of an inconsistency is documented; and
 2. The child's disability is not due to the lack of scientific, research-based instruction in reading or math or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Hearing Impaired (HI)

Definition. A child with a hearing impairment is one who is deaf or who is hard of hearing, whether permanent or fluctuating, which adversely affects the

child's educational performance. This includes both unilateral and bilateral hearing loss. The Hearing Impaired category encompasses:

- A. Deaf: A hearing impairment which is so severe that a child is impaired in processing linguistic information through hearing, with or without amplification, and which adversely affects educational performance;
- B. Hard of hearing: Sufficient hearing to allow a child to process information through the auditory channel with or without amplification;
- C. Other severe hearing problems.

Minimum Eligibility Criteria. A child who meets the definition of Hearing Impaired as stated above and as defined through the following procedures shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies in Section II. Evaluations) for initial placement that includes, but is not limited to, assessments in the following areas:
 - 1. Vision and hearing;
 - 2. General physical condition;
 - 3. Academic performance; and
 - 4. Communication status.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies in Section II. Evaluations), must include, but are not limited to:
 - 1. A current standardized individual or group achievement test or, if appropriate, a norm-referenced developmental test(s) that supports the need for special education;
 - 2. An evaluation which assesses communicative skills;
 - 3. Each child must have an audiometric evaluation including a summary report regarding degree of severity; type of loss; use of hearing aid(s); speech reception and/or speech awareness thresholds; speech discrimination scores if appropriate; age of onset if known; intervention, if any; and any additional pertinent information. An

audiogram, statement of Behavior Observation in Sound Field, or Behavior Observation in Free Field must be included; and

4. Required follow-up examinations concerning hearing, vision, and general physical condition, as necessary. The results of the examination(s) must support the data regarding a child's educational problems being primarily the result of a Hearing Impairment.
- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History; teacher recommendations; scientifically-based interventions; parent input; assessment data; and social or cultural background to ensure that:
1. Data collected consistently support the conditions of the disability and the need for special education and related services, or an explanation of an inconsistency is documented; and
 2. A child's disability is not due to the lack of scientific, research-based instruction in reading or math or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Reference citation: New American Speech, Language, Hearing Association (ASHA) guidelines.

Language/Speech (L/S)

Definition: A child with Language/Speech Impairment is one who has a communication disorder, such as impaired language or impaired articulation, fluency, or voice, which adversely affects a child's educational performance. A child with language and/or speech impairments has a disorder which interferes with or limit, to varying degrees, the ability to receive, interpret, formulate, or express oral language.

Minimum Eligibility Criteria. A child who meets the definition of Language/Speech as stated above and as defined through the following procedures shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies on II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 - 1. Vision and hearing;
 - 2. General physical condition;
 - 3. Academic performance, as appropriate; and
 - 4. Communication status.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies on II. Evaluations) must include, but are not limited to:
 - 1. Orofacial examination and, if necessary, a statement from a medical specialist noting physical problems which would interfere with language/speech production.
 - 2. Required follow-up examinations concerning hearing, vision, and general physical condition, as necessary.
- C. The following data, according to each area of a disorder, must support the conditions of the disability and the need for special education and related services. A child must exhibit one or more of the following disorders, which has an adverse effect upon his/her educational performance.
 - 1. Articulation Disorder. A child is considered to have an articulation impairment when his or her speech contains consistent misarticulations, including the substitution of one phoneme for another, omission of phonemes in words, phonemic distortions, and inappropriate additions of phonemes. A child who exhibits misarticulations due to cultural or dialectical differences cannot be considered to have a disability or to be in need of special education

and related services. Information to support an articulation disorder includes:

- a. Two current evaluation instruments, one of which must be an analysis of connected speech. One of these instruments must be a published articulation test; the other may be a criterion-referenced test administered to determine present level(s) of performance. Specific examples of the child's production of phonemes, listing types of errors and any other pertinent information not obtained on the published articulation test must be documented for review by the multidisciplinary team.
 - b. At the beginning of each school year, each LEA must select articulation developmental norms that will be used by all speech pathologists and by all multidisciplinary teams determining eligibility and services for children within the LEA. These norms will be selected based on current research and the protection in evaluation procedures necessary to ensure a disability is not diagnosed due to cultural differences or dialectical differences. A statement by the examiner must be documented that assures that the misarticulations noted are not due to cultural or dialectical differences. This statement should be documented following a review of all comprehensive assessment data.
2. Voice Impairment. A child is considered to have a voice impairment when he or she exhibits abnormality in pitch, loudness, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism that interferes with communication.
- a. Information to support a voice disorder includes two current evaluation instruments, one which must be administered at least ten (10) calendar days after the first, and a physician's statement of release and recommendation(s) for services. The two evaluation instruments may be the same measure and may either be a criterion-referenced test, a published assessment tool, or a

standardized instrument. The evaluation instruments must give a complete assessment of the different parameters of voice including pitch, laryngeal quality, resonance, and loudness.

3. Fluency Impairment. A child is considered to have a fluency impairment when he or she exhibits disruptions in the normal flow of verbal expression that occur frequently, or are markedly noticeable and are not readily controllable by a child. These disruptions occur to such a degree that the child and/or the listeners evidence reactions to the manner of speech which impedes communication.
 - a. Information that supports a fluency disorder includes two current evaluation instruments. One of these measures must be a published instrument; the other must be an analysis of dysfluent behavior in conversational speech. The conversational speech sample must include the number of stuttered words within a specific time frame. The two instruments used must indicate the number, types, severity, and secondary characteristics in as many settings as possible (e. g., reading, monologue, and conversation).
4. Language Impairment. A child is considered to have a language impairment when communication abilities are not comparable to those of other children of the same chronological age, gender, ethnicity, or cultural and linguistic background. A language impairment is an impaired ability to acquire, use, and/or comprehend symbols utilized in communication. A variety of assessment tools and strategies should be used to gather relevant functional and developmental information about the child. Information that supports a language impairment includes:
 - a. Two current evaluation instruments which indicate an impaired ability in receptive and/or expressive phonology, morphology, syntax, semantics, and/or pragmatics. At least one instrument must be a standardized instrument or, for a child with severe disabilities or when an age-appropriate standardized instrument is

not available on the market, a norm-referenced measure may be used. One instrument may be a criterion-referenced test.

- b. A significant delay for all children is defined as a deficit of 1.5 standard deviations below the test mean on the standardized or norm-referenced test(s). If a test yields standard scores, these scores must be used in determining a delay. If the test(s) administered does not yield standard scores, a significant delay (25% delay), based on age equivalents, in the language area must be evident. Collected data must consistently support a delay.
- c. For children age 5 and below, the multidisciplinary team must ensure that an evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs for IEP development. Therefore, a review of the areas of evaluation for children ages 5 and below must be conducted.
- d. A statement by the language/speech examiner must be documented that assures that the language impairment is not due to cultural differences. This statement should be documented following a review of all comprehensive assessment data, and must be based on current scientifically based research and best practices. The core members of the multidisciplinary team must ensure that protections in evaluation procedures are implemented so that a child is not diagnosed as having an impairment due to cultural differences.

D. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History; teacher recommendations; scientifically-based interventions; parent input; assessment data; and social or cultural background to ensure that:

- 1. Data collected consistently support the conditions of the disability and the need for special education and related services or an explanation of an inconsistency is documented; and

2. A child's disability is not due to limited English proficiency, dialectical differences, cultural differences, or a lack of language stimulation in the child's environment

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Intellectual Disability (Also referred to as Mental Retardation)

Definition. A child who has an intellectual disability, also known as mental retardation, exhibits learning problems which vary in degree from mild to severe. A child has significantly subaverage intelligence existing concurrently with deficits in adaptive behavior and in academic functioning or performance that adversely affects a child's educational performance. Delays in cognitive abilities, adaptive behavior, and developmental milestones must have been evidenced during a child's developmental period and, upon entering school, such delays must have adversely affected a child's educational performance.

Minimum Eligibility Criteria. A child who meets the definition of Intellectually Disability, as stated above and as defined through the following procedures, shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies on II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 1. Vision and hearing;
 2. General physical condition;
 3. Academic performance;
 4. Communication status;
 5. Adaptive behavior; and
 6. Cognitive abilities.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies on II. Evaluations) must include, but are not limited to:

1. A current standardized test(s) providing information which concludes or indicates that:
 - a. The child's academic functioning level is significantly subaverage as measured by an individual achievement test,
 - b. A child has significant deficits in adaptive behavior as measured by an adaptive behavior scale (the informant must be knowledgeable of how the child functions outside the school environment), and
 - c. A child's intellectual functioning is significantly subaverage as measured by an individual intelligence test.
 2. An evaluation of a child's communication skills; and
 3. Required follow-up examinations concerning hearing, vision, and general physical condition, as necessary. The results of the examination(s) must support the data regarding a child's learning problems being primarily the result of intellectual disability.
- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History; teacher recommendations; scientifically-based interventions; parent input; assessment data; and social or cultural background to ensure that:
1. Data collected consistently support the conditions of the disability and the need for special education and related services or an explanation of an inconsistency is documented; and
 2. A child's disability is not due to the lack of scientific, research-based instruction in reading or math or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Multiple Disabilities (MD)

Definition. A child with Multiple Disabilities is one who has a combination of disabilities that adversely affects a child's educational performance. The

disability must also cause such severe educational needs that the child cannot be accommodated in a special education program designed solely for one of the disabilities. The term does not include a Deaf-Blind disability, *nor can Specific Learning Disability be one of the conditions.*

Minimum Eligibility Criteria.- A child who meets the definition of Multiple Disabilities, as stated above and as defined under the conditions of each disability, resulting in the combination of disabilities, shall be eligible for special education and related services.

Orthopedic Impairment (OI)

Definition. Orthopedic Impairment means a severe orthopedic impairment that adversely affects a child's education performance. Orthopedic Impairments include those caused by a congenital anomaly (e.g., clubfoot or absence of one or more members), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments resulting from other causes (e.g., cerebral palsy, amputation and fractures or burns causing contractures).

Minimum Eligibility Criteria. A child who meets the definition of Orthopedic Impairment, as stated above and as defined through the following procedures, shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies on II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 1. Vision and hearing;
 2. General physical condition and motor abilities;
 3. Academic performance;
 4. Social/behavioral; and
 5. Communication status.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies on II. Evaluations) must include, but are not limited to:

1. For a child who exhibits an orthopedic impairment, a licensed physician's report that provides:
 - a. Diagnostic information regarding a child's congenital or acquired orthopedic impairment;
 - b. Recommendations as to beneficial programming procedures; and
 - c. Precautions that should be taken as well as limitations in providing an education for a child.

The results of the examination must support the data regarding a child's educational problems being primarily the result of an Orthopedic Impairment.

2. A current standardized individual achievement test, if appropriate, or a norm-referenced developmental test(s) that supports the need for special education,
 3. An evaluation of a child's communication status.
 4. Required follow up examinations concerning hearing and vision. The results of the examination(s) must support the data regarding a child's educational problems being primarily the result of Orthopedic Impairment.
- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History; teacher recommendations; scientifically-based interventions; parent input; assessment data; and social or cultural background to ensure that:
1. The data regarding a child with a congenital or acquired orthopedic impairment indicate that the condition adversely affects the child's educational performance;
 2. Data collected consistently support the conditions of the disability and the need for special education and related services or an explanation of an inconsistency is documented; and

3. A child's disability is not due to the lack of scientific, research-based instruction in reading or math or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Other Health Impairment (OHI)

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 a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), and which adversely affects a child's educational performance.

Minimum Eligibility Criteria. A child who meets the definition of Other Health Impairment as stated above and as defined through the following procedures shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies on II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 1. Vision and hearing;
 2. General physical condition and motor abilities;
 3. Academic performance;
 4. Social/behavioral; and
 5. Communication status.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies on II. Evaluations) must include, but are not limited to:
 1. For a child who exhibits other health impairment (excluding ADD and ADHD) a licensed physician's report that provides:

- a. Diagnostic information regarding a child's congenital or acquired physical disability;
 - b. Recommendations as to beneficial programming procedures; and
 - c. Precautions that should be taken, as well as limitations in providing an education for a child. The results of the examination must support the data regarding a child's educational problems being primarily the result of Other Health Impairment.
2. A current standardized individual achievement test, if appropriate, or a norm-referenced developmental test(s) that supports the need for special education;
 3. For attention deficit disorders, current norm-referenced rating scales designed to identify children with ADD and ADHD that are completed by the teacher(s) and parent(s) that support a child manifests ADD or ADHD characteristics and indicates a serious level of concern. If a child has more than one teacher, a rating scale must be completed by all teachers;
 4. For attention deficit disorders, including ADD or ADHD, an observation by a member of the Multidisciplinary Team which verifies a child exhibits behaviors resulting from these disorders;
 5. An evaluation of a child's communication status;
 6. Required follow up examinations concerning hearing and vision. For children suspected of ADD or ADHD, a follow up physical examination will be conducted only when the team determines such an examination is warranted to verify the presence of this type of impairment or other significant health factors that are indicated that warrant the examination. The results of the examination(s) must support the data regarding a child's educational problems being primarily the result of Other Health Impairment.
- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History, teacher recommendations,

scientifically-based interventions, parent input, assessment data, and social or cultural background to ensure that:

1. Data collected consistently support the conditions of the disability and the need for special education and related services or an explanation of an inconsistency is documented; and
2. A child's disability is not due to the lack of scientific, research-based instruction in reading or math or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Specific Learning Disability (SLD)

Definition. A child with a Specific Learning Disability is one who has 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 impaired 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 a child who has learning problems which are primarily the result of visual, hearing, or motor disability, of intellectual disability, of emotional disturbance or of environmental, of cultural differences, or economic disadvantage.

Minimum Eligibility Criteria. A child who meets the definition of Specific Learning Disability as stated above and as defined through the following procedures shall be eligible for special education and related services. Response to Intervention is included in the following procedures.

- A. A child must have a comprehensive assessment (refer to Policies on II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 1. Vision and hearing;
 2. General physical condition;

3. Social/behavioral;
 4. Academic performance, including basic reading skills, reading comprehension, mathematics calculation and mathematics reasoning; and
 5. Communication status, including oral expression, listening comprehension and written expression.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies on II. Evaluations), must include, but are not limited to:
1. A current individual standardized achievement test(s) that measures academic performance including the students' strengths and needs. A Specific Learning Disability will be determined by verifying a specific weakness compared to the child's strengths by a difference of at least 1.5 standard deviation in one or more of the following areas:
 - a. Basic reading skills;
 - b. Reading comprehension;
 - c. Reading fluency;
 - d. Mathematics calculation;
 - e. Mathematics reasoning;
 - f. Oral expression;
 - g. Listening comprehension; and
 - h. Written expression.
 2. The core members of the team must ensure that the Consideration for SLD Form is completed appropriately or that the information contained on the form is included in the Summary Report. An observation of a child must be completed in accordance with procedures addressed in Policies on Evaluations.
 3. The areas in which a child is determined to have a learning disability must be noted in the Summary Report.
 4. Required follow up examinations concerning hearing, vision and general physical condition, as necessary. The results of the

examination(s) must support the data regarding a child's educational problems being primarily the result of a Specific Learning Disability.

- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History, teacher recommendations, scientific, research-based interventions, parent input, assessment data, and social or cultural background. Personnel must use a process (Response to Intervention/RtI) that determines if a child responds to scientific, research-based interventions as part of the evaluation procedures. These procedures must ensure that:
1. A child did not achieve commensurate with his or her age peers when provided with learning experiences appropriate for a child's age and ability levels;
 2. All data collected consistently support the conditions of the disability and the need for special education and related services, or an explanation of the inconsistency is documented; and
 3. A child's disability is not due to
 - a. The lack of scientific, research-based instruction in reading or math;
 - b. Limited English proficiency;
 - c. *Cultural differences*; or
 - d. Learning problems that are primarily the result of visual, hearing or motor disability, of intellectual disability, of emotional disturbance, or of environmental or economic disadvantage.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Reference citation for Response to Intervention: IDEA 2004 §614(b)(6)(A)and (B); Federal draft regulations §300.307.

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 child's educational performance. The term applies to 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; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

Minimum Eligibility Criteria. A child who meets the definition of Traumatic Brain Injury as stated above and as defined through the following procedures shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies Section II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 1. Vision and hearing;
 2. General physical condition and motor abilities;
 3. Academic performance;
 4. Social/behavioral;
 5. Emotional;
 6. Communication status; and
 7. Cognitive abilities.
- B. Assessment data collected (as shown in Paragraphs B and C of Initial Evaluations in the Policies Section II. Evaluations) must include, but are not limited to:
 1. A narrative provided by the teacher(s) who has taught the child or is familiar with the child's educational functioning levels. If the child has returned to school, the narrative must clearly describe the child's educational performance levels prior to the brain injury and the

child's performance observed following the injury. If the child has not returned to school, the narrative may address only the child's performance prior to the injury. In order to compare the performance levels of the child prior to and following the injury, the narrative should include, but not be limited to, information regarding academic grades and/or functioning, social/behavioral competencies, emotional factors, motor/physical abilities, and language/speech skills.

2. A report from a licensed physician that includes a description of the acquired brain injury, cause of the injury, the impairments noted from the injury, and precautions, as well as limitations, to be taken into consideration for planning educational services. If a child has been medically diagnosed as Traumatic Brain Injured and has received services in a medical and/or rehabilitative setting which can provide data related to current functioning, reports from personnel in such facilities can be utilized. Due to the varying array of skills affected by an acquired head injury, the assessment of a child with such an injury is designed to determine specific educational programming information for teachers and parents.
3. Hearing and vision results and any required follow up reports should include information regarding any hearing and/or vision processes which were affected by the acquired injury (e.g., visual field cuts, neurologically based hearing impairments).
4. A current standardized individual achievement test(s), if appropriate, or norm-referenced developmental test(s) that supports the need for special education.
5. A current norm-referenced test(s) designed to assess the child's behavior if problems are identified in this area during the Comprehensive Assessment.
6. A current standardized test(s), if appropriate, which indicate the child's level of functioning in the areas of:
 - a. Memory;

- b. Reasoning; and
 - c. Attention/concentration.
7. A current standardized individual intelligence test, if appropriate.
- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History, teacher recommendations, scientifically-based interventions, parent input, assessment data, and social or cultural background to ensure that:
- 1. Data collected consistently support the conditions of the disability and the need for special education and related services or an explanation of an inconsistency is documented; and
 - 2. The child's disability is not due to the lack of scientifically-based instruction in reading or math or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Visually Impaired (VI)

Definition. A child with a visual impairment is one who has an impairment in vision even with correction, that adversely affects a child's educational performance and includes:

- A. Blind: A child who has so little remaining vision that the child must use Braille as their reading medium;
- B. Partially Sighted: A child who has a significant loss of vision but who are able to use regular or large print as their reading medium. Generally, a child will have a visual acuity between 20/70 and 20/200 in the better eye after correction;
- C. Legally Blind: A child who has a visual acuity of 20/200 or less in the better eye after correction and/or a peripheral field so contracted that the widest diameter subtends an arc no greater than twenty (20) degrees; and
- D. Other severe visual problems.

Minimum Eligibility Criteria. A child who meets the definition of Visually Impaired as stated above and as defined through the following procedures shall be eligible for special education and related services.

- A. Each child must have a comprehensive assessment (refer to Policies on II. Evaluations) for initial eligibility and placement that includes, but is not limited to, assessments in the following areas:
 - 1. Vision and hearing;
 - 2. Social/behavioral;
 - 3. General physical condition and motor abilities;
 - 4. Academic performance; and
 - 5. Communication status.
- B. Assessment data collected (as shown in Paragraphs B and- C of Initial Evaluations in the Policies on II. Evaluations) must include, but are not limited to:
 - 1. A report from an eye specialist which includes a child's visual acuity, if necessary, any diagnosed severe visual problem, and a statement of how the child's visual problem would affect his/her performance in school.
 - 2. A current standardized individual achievement test, if appropriate, or a norm-referenced developmental test(s) that supports the need for special education.
 - 3. An evaluation of a child's communication status.
 - 4. Required follow-up examinations concerning hearing and general physical condition. The results of the examination(s) support the data regarding a child's educational problems being primarily the result of a Visual Impairment.
- C. In addition to the requirements for eligibility listed above, personnel must draw upon information from a variety of sources, including the Teacher Narrative or Developmental History, teacher recommendations, scientifically-based interventions, parent input, assessment data, and social or cultural background to ensure that:

1. Data collected consistently support the conditions of the disability and the need for special education and related services or an explanation of an inconsistency is documented; and
2. A child's disability is not due to the lack of scientifically-based instruction in reading or math or due to limited English proficiency *or cultural differences*.

The required reevaluation includes, but is not necessarily limited to, the areas listed above.

Reference citation: Statutory and regulatory language for DD and SLD are embedded in those sections. Provisions pertaining to overall Definitions and Criteria are at:

IDEA 2004 §602(3)(A) and (B)

IDEA 2004 §614(b)(1)(2)(3)(4)(5) and Federal draft regulations §300.306(b), §300.308, and §300.309

V. INDIVIDUALIZED EDUCATION PROGRAMS (IEP)

IEP Definition

The term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised *by the IEP committee at least annually*.

Reference citation: IDEA 2004 §602(14)

An individualized education program, or an individualized family service plan that meets the requirements of Part C of IDEA 2004 for infants and toddlers with disabilities §636(d) (*Individualized family service plan content*), is developed, reviewed and revised for each child with a disability in accordance with the *requirements below*.

Reference citation: IDEA 2004 §612(a)(4)

IEPs in Effect

- A. Each public agency must ensure that:

1. A meeting to develop an IEP is conducted within thirty (30) days of a determination that the child needs special education and related services; and
2. As soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Reference citation: Federal draft regulations §300.323(c)

- B. At the beginning of each school year, each LEA, MDE, or other State agency, as the case may be, *must* have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program.

Reference citation: IDEA 2004 §614(d)(2)(A)

- C. Programs for children aged 3 through 5: In the case of a child with a disability aged 3 through 5 (or, at the discretion of *MDE*, a 2-year-old child with a disability who will turn age 3 during the school year), the *IEP Committee must* consider the individualized family service plan (IFSP) that contains the material (described in § 636) and that is developed according to this section. The IFSP may serve as the IEP of the child if using that plan as the IEP is:
1. consistent with *MDE* policy; and
 2. agreed to by the agency and the child's parents.

Reference citation: IDEA 2004 §614(d)(2)(B)

- D. By the third birthday of such a child, an individualized education program or, an individualized family service plan, has been developed and is being implemented for the child. The LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10).
- E. Periodic Review - The individualized family service plan (*IFSP*) *must* be evaluated once a year and the family *must* be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

- F. Promptness after assessment - The *IFSP must* be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

Reference citation: IDEA 2004 §636(b) and (c)

Parent Involvement

- A. Educational Placements. Each LEA or *MDE must* ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Reference citation: IDEA 2004 §614(e)

- B. Alternative means of meeting participation. When conducting IEP *committee* meetings and placement meetings, and carrying out administrative matters (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a LEA may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Reference citation: IDEA 2004 §614(f)

Individualized Education Program Committee Membership

The term individualized education program *committee* or IEP *Committee* means a group of individuals composed of:

- A. The parents of a child with a disability;
- B. Not less than one (1) regular education teacher of *the* child (if the child is, or may be, participating in the regular education environment);

Reference citation: IDEA 2004 §614(d)(1)(B)

1. A regular education teacher of the child, as a member of the IEP *committee, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other*

strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel.

Reference citation: IDEA 2004 §614(d)(3)(C)

2. A regular education teacher of the child, as a member of the IEP *committee*, *must* participate in the review and revision of the IEP of the child.

Reference citation: IDEA 2004 §614(d)(4)(B)

- C. Not less than one (1) special education teacher, or where appropriate, not less than one (1) special education provider of *the* child;
- D. A representative of the LEA who:
 1. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 2. is knowledgeable about the general education curriculum; and
 3. is knowledgeable about the availability of LEA resources.
- E. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described *above*;
- F. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- G. Whenever appropriate, the child with a disability for the purpose of establishing post-secondary goals.

Reference citation: IDEA 2004 §614(d)(1)(B); Federal draft regulations §300.321 (b)(1)

- H. In the case of a child who was previously served under IDEA 2004 Part C (*Infants and Toddlers with Disabilities*), an invitation to the initial IEP meeting *must*, at the request of the parent, be sent to the IDEA 2004 Part C service coordinator or other representatives of the IDEA 2004 Part C system to assist with the smooth transition of services.
- I. With the consent of parents or a child who has reached age of majority, the public agency must invite a representative of any participating

agency that is likely to be responsible for providing or paying for transition services.

Reference citation: IDEA 2004 §614(d)(1)(D); Federal draft regulations §300.321(b)(3); Age of Majority definition from MS Code Definition of Minor 1-3-27

IEP Meeting Committee Attendance

There are conditions under which a required IEP Committee member may not need to attend an IEP meeting. These conditions are:

- A. Attendance not necessary. If the parent of a child with a disability and the LEA agree that the attendance of a member is not necessary, because the member's area of the curriculum or related services is not being modified or discussed in the meeting, the IEP committee member *is not* required to attend an IEP meeting, in whole or in part,
- B. Excusal. A member of the IEP *Committee* 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:
 - 1. the parent and the LEA consent to the excusal; and
 - 2. the member submits, in writing to the parent and the IEP *Committee*, input into the development of the IEP prior to the meeting.
- C. Written agreement and consent required. A parent's agreement to paragraph A, attendance not necessary and consent to paragraph B, Excusal, *must* be in writing.

Reference citation: IDEA 2004 §614(d)(1)(C)

Development of IEPs

- A. In developing each child's IEP, the IEP *Committee must* consider:
 - 1. the strengths of the child;
 - 2. the concerns of the parents for enhancing the education of their child;
 - 3. the results of the initial evaluation or most recent evaluation of the child;
 - 4. the academic, developmental, and functional needs of the child; and

5. the child's preferences and interests for development of post-secondary goals.

Reference citation: IDEA 2004 §614(d)(3)(A); Federal draft regulations §300.321(b)(2)

B. Consideration of Special Factors. The IEP *Committee must:*

1. in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
2. in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;
3. in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille; unless the IEP *Committee* determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
4. consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language *level* and communication needs, opportunities for direct communications with peers and professional personnel in the child's *natural* language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's *natural* language and communication mode; and
5. consider whether the child needs assistive technology devices and services.

Reference citation: IDEA 2004 §614(d)(3)(B)

IEP Content

Insert Pointer: See IEP Form (*available at www.mde.k12.ms.us/special_education or by calling 601-359-3498*)

Each IEP must include:

- A. A statement of the child's present levels of academic achievement and functional performance, including:
 - 1. how the child's disability affects the child's involvement and progress in the general education curriculum;
 - 2. for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
 - 3. for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- B. A statement of measurable annual goals, including academic and functional goals, designed to:
 - 1. meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - 2. meet each of the child's other educational needs that result from the child's disability;
- C. A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- D. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practical, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
 - 1. to advance appropriately toward attaining the annual goals;
 - 2. to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

3. to be educated and participate with other children with disabilities and nondisabled children in activities described *above*;
- E. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described *above*;
 - F. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments; and
 1. if the IEP *Committee* determines that the child *must* take an alternate assessment on *such assessments*, a statement of:
 - a. why the child cannot participate in the regular assessment; and
 - b. why the particular alternate assessment selected is appropriate for the child;
 - G. The projected date for the beginning of the services and modifications described *above*, and the anticipated frequency, location, and duration of those services and modifications; and
 - H. Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter:
 1. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
 2. the transition services (including courses of study) needed to assist the child in reaching those goals; and
 3. beginning not later than one (1) year before the child reaches the age of majority (*age 21 under Mississippi law*), a statement that the child has been informed of *his or her* rights, if any, that will transfer to the child on reaching the age of majority.

Reference citation: IDEA 2004 §614(d)(1)(A)(i); Age of Majority definition from MS Code Definition of Minor 1-3-27

Rule of Construction. Nothing in this section *should* be construed to require:

- A. That additional information be included in a child's IEP beyond what is explicitly required in this section; and
- B. The IEP *Committee* to include information under *one* component of a child's IEP that is already contained under another component of *the* IEP.

Reference citation: IDEA 2004 §614(d)(1)(A)(ii)

Parental Consent for Services

An agency that is responsible for making a free appropriate public education available to a child with a disability *must* seek to obtain informed consent from the parent of *the* child before providing special education and related services to the child.

Reference citation: IDEA 2004 §614(a)(1)(D)(i)(II)

Absence of Consent for Services

If the parent of the child refuses to consent to services *as described above*, the LEA must not provide special education and related services to the child by using the policies described in Section VIII on Procedural Safeguards.

Parental Consent - Effect on Agency Obligations

If the parent refuses to consent to the receipt of special education or related services, or the parent fails to respond to a request to provide consent:

- A. The LEA *must* not be considered in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the LEA requests consent, and
- B. The LEA *must* not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the LEA requests consent.

Reference citation: IDEA 2004 §614(a)(1)(D)(ii)(III)

Review and Revision of IEP

The LEA *must* ensure that, the IEP *Committee*:

- A. Reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and
- B. Revises the IEP as appropriate to address:
 - 1. any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;
 - 2. the results of any reevaluation;
 - 3. information about the child provided to, or by, the parents;
 - 4. the child's anticipated needs; or
 - 5. other matters.

Reference citation: IDEA 2004 §614(d)(4)

Change in Eligibility

A LEA *must* reevaluate a child with a disability (refer to section on II. Evaluation, Reevaluation) before determining that the child is no longer a child with a disability.

- A. Exception to Reevaluation Requirement. The reevaluation (Refer to III. Eligibility) *must* not be required before the termination of a child's eligibility:
 - 1. due to graduation from secondary school with a regular diploma, or
 - 2. due to exceeding the age eligibility for a free appropriate public education under *Mississippi* law.
- B. Summary of Performance. Although reevaluation is not required before a child with a disability exits school due to graduation with a regular diploma or reaching the maximum age of eligibility, the LEA *must* provide *these children* a summary of their academic achievement and functional performance, *including* recommendations on how to assist the child in meeting postsecondary goals.

Reference citation: IDEA 2004 §614(c)(5)

Consolidation of IEP Meetings

In making changes to a child's IEP, after the annual IEP meeting for a school year, the parent of a child with a disability and the LEA may agree not to convene an IEP meeting for the purposes of making changes. Instead the LEA and parent may develop a written document to amend or modify the child's current IEP. To the extent possible, the LEA *must* encourage the consolidation of reevaluation meetings for the child and other IEP *Committee* meetings for the child.

- A. Amendments. Changes to the IEP may be made either by the entire IEP *Committee* or, *as provided above*, by amending the IEP rather than by redrafting the entire IEP.
- B. Upon request, a parent *must* be provided with a revised copy of the IEP with the amendments incorporated.

Reference citation: IDEA 2004 §614(d)(3)(D), §614(d)(3)(E), §614(d)(3)(F)

Agency Responsibilities for Transition Services

If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA *must* reconvene the IEP *Committee* to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

Reference citation: IDEA 2004 §614(d)(6)

IEPs for Transfer Students

- A. Transfer within Mississippi. In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in *Mississippi*, the LEA *must* provide *the* child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the LEA adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

Reference citation: IDEA 2004 §614(d)(2)(C)

- B. Transfer from outside Mississippi. In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the LEA *must* provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the LEA conducts an evaluation, if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

Reference citation: IDEA 2004 §614(d)(2)(C)

- C. Transmittal of Records. To facilitate the transition for a child who *transfers to another school:*

1. the new school, in which the child enrolls *must* take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, *pursuant to requirements under the Family Educational Rights and Privacy Act (FERPA)*, and
2. the previous school in which the child was enrolled *must* take reasonable steps to promptly respond to such request from the new school.

Reference citation: IDEA 2004 §614(d)(2)(C)

IEPs for Children with Disabilities Placed in Private Facilities by Local Education Agencies

MDE must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency –

- A. Is provided special education and related services –
1. In conformance with an IEP; and
 2. At no cost to the parents.

- B. Is provided an education that meets the standards that apply to education provided by MDE and LEAs; and
- C. Has all of the rights of a child with a disability who is served by a public agency.

Reference citation: Federal draft regulations §300.146

In implementing *this section*, MDE must:

- A. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- B. Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and
- C. Provide an opportunity for those private schools and facilities to participate in the development and revision of MDE standards that apply to them.

Reference citation: Federal draft regulations §300.147

Exceptions to IEP Requirements for Incarcerated Individuals with Disabilities

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

- A. The requirements relating to participation of children with disabilities in general assessments.
- B. The requirements relating to transition planning and transition services, do not apply with respect to *those* children whose eligibility under Part B will end, because of *their* age, before *they* will be released from prison.
- C. Additional Requirement. If a child with a disability is convicted as an adult under *Mississippi* law and incarcerated in an adult prison, the child's IEP *Committee* may modify the child's IEP or placement if the State has demonstrated a *genuine* security or *legal* interest that cannot otherwise be accommodated.

Reference citation: IDEA 2004 §614(d)(7)

VI. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

FAPE Definition

The term free appropriate public education means special education and related services that:

1. have been provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of MDE;
3. include an appropriate preschool, elementary school or secondary school education, including charter schools, [See Definition for elementary and secondary education] in Mississippi; and
4. are provided in conformity with an individualized education program.

Reference citation: IDEA 2004 §602(a)(9)

Provision of FAPE

A free appropriate public education is available to all children with disabilities residing in *Mississippi* between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

A. Exceptions to FAPE. The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

1. Aged 3 through 5 and 18 to 21 in *Mississippi* to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and
2. Aged 18 to 21 to the extent that *Mississippi* law does not require that special education and related services under Part B be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:
 - a. were not actually identified as being a child with a disability; or
 - b. did not have an individualized education program.

Reference citation: IDEA 2004 §612(a)(1)(B)

- B. State Flexibility. Early intervention services *provided* in accordance with Part C (*Infants and Toddlers with Disabilities*) to a child who is eligible for services under §619 (*Preschool Grants*), is not required to provide *the* child with a free appropriate public education.

Reference citation: IDEA 2004 §612(a)(1)(C)

Full Educational Opportunity Goal (FEOG)

Mississippi must have in effect policies and procedures to demonstrate that *it* has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

Reference citation: IDEA 2004 §612(a)(2); Federal draft regulations §300.109

Special Education and Related Services

- A. Special Education. The term special education means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including
1. instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 2. instruction in physical education.

Reference citation: IDEA 2004 §602(29); Federal draft regulations §300.38;

- B. Related Services. The term related services means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical

services *must* be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

Exception. The term does not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of that device.

Reference citation: IDEA 2004 §602(26); Federal draft regulations §300.34;

- C. Supplementary Aids and Services. The term supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

Reference citation: IDEA 2004 §602(33); Federal draft regulations §300.41

Assistive Technology and Proper Functioning of Hearing Aids

Each *local educational agency* must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services, and supplementary aids and services.

- A. On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Committee determines that the child needs access to those devices in order to receive FAPE.
- B. Each *LEA* must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

Reference citation: Federal draft regulations §300.105

Program Options

Each *local educational agency* must take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

Reference citation: Federal draft regulations §300.110

Physical Education

Local educational agencies in Mississippi must provide physical education services, specially designed if necessary, to every child with a disability receiving FAPE.

- A. Regular Physical Education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:
 - 1. The child is enrolled full time in a separate facility; or
 - 2. The child needs specially designed physical education, as prescribed in the child's IEP.
- B. Education in Separate Facilities. The public agency, responsible for the education of a child with a disability who is enrolled in a separate facility, must ensure that the child receives appropriate physical education services.
- C. Specially Designed Physical Education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

Reference citation: Federal draft regulations §300.108

Extended School Year (ESY) Services

The term extended school year services means special education and related services that:

- A. Are provided to a child with a disability:
 - 1. Beyond the normal school year of the public agency;
 - 2. In accordance with the child's IEP; and
 - 3. At no cost to the parents of the child; and
- B. Meet the standards of MDE.

Reference citation: Federal draft regulations §300.106

Each public agency must ensure that extended school year services are available as necessary to provide FAPE, *as defined in MDE ESY guidelines (available on MDE website at www.mde.k12.ms.us/special_education or by calling 601-359-3498.*

Extended school year services must be provided only if a child's IEP Committee determines, that the services are necessary for the provision of FAPE to the child. The *LEA* may not:

- A. Limit extended school year services to particular categories of disabilities; or
- B. Unilaterally limit the type, amount, or duration of those services.

Reference citation: Federal draft regulations §300.106

Special Education

Special education includes each of the following, if the services otherwise meet the requirements of *this section*:

- A. Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under *MDE* standards;
- B. Travel training; and
- C. Vocational education.

Vocational education

- A. Organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree; and

- B. Includes vocational and technical education. Vocational and technical education means organized educational activities that:
1. Offer a sequence of courses that:
 - a. Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;
 - b. May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph;
 - c. Provides, at the postsecondary level, for a 1-year certificate, an associate degree, or industry-recognized credential; and
 2. Includes competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual.

Reference citation: Federal draft regulations §300.38

Treatment of Charter Schools and their Students

Local educational agencies have responsibilities regarding treatment of charter schools and their students. (Refer to Section XVII. Local Educational Agency Eligibility, C. Permissive use of funds, 3. Treatment of Charter Schools and their Students.)

Applicability to Children in Private Schools

There are FAPE requirements for children with disabilities in private schools who are enrolled by their parents or placed by local educational agencies. (Refer to Section X. Local Administration Agency Administration, section on children with disabilities enrolled by parents in Private Schools.)

FAPE – Methods and Payments

Mississippi may use whatever State, local, Federal, and private sources of support are available in *Mississippi* to meet the requirements of IDEA 2004 Part B. For example, if it is necessary to place a child with a disability in a residential facility *by the IEP Committee*, *Mississippi* could use joint agreements between the agencies involved for sharing the cost of that placement.

- A. Nothing in IDEA 2004 Part B relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.
- B. *There must be* no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

Reference citation: Federal draft regulations §300.103

- C. Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Reference citation: Federal draft regulations §300.104

State Educational Agency Responsibility for General Supervision

MDE has responsibility to ensure that requirements for ensuring FAPE for children with disabilities are met. (Refer to Section XI. General Supervision Responsibility.)

VII. LEAST RESTRICTIVE ENVIRONMENT (LRE)

LRE Definition

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, *must be* educated with children who are not disabled. *Placement by an IEP Committee in* special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Reference citation: IDEA 2004 §612(a)(5)(A)

LRE Determination

An educational service agency *must* provide for the education of children with disabilities in the least restrictive environment. In determining the educational placement of a child with a disability, including a preschool child with a disability, each LEA must ensure that:

- A. The placement decision:
 - 1. Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - 2. Is made in conformity with the LRE provisions *in this section*;
- B. The child's placement:
 - 1. Is determined at least annually;
 - 2. Is based on the child's IEP; and
 - 3. Is as close as possible to the child's home, unless the parent agrees otherwise.
- C. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend is nondisabled.

Reference citation: Federal draft regulations §300.114 and §300.116

LRE Continuum

Local educational agencies must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must:

- A. Include alternative placements listed in the definition of special education (instruction in regular classes, special classes, special schools (*such as treatment facilities*), home instruction, and instruction in hospitals and institutions); and
- B. Make provisions for supplementary services (resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Reference citation: Federal draft regulations §300.115

Nonacademic Settings

A child with a disability must have equal opportunities for participation, to the maximum extent to meet the needs of the child, in a variety of non-academic and extracurricular services and activities available to children who are not disabled. These services and activities include: counseling services, meals, recess periods, *homeroom, activity periods*, athletics, recreational activities, transportation, health services, and special interest groups and clubs sponsored by the public agency. *Services and activities also include:* referrals to agencies that provide assistance to individuals with disabilities, and employment of children, including employment by the public agency and assistance in making outside employment available. Each public agency must also ensure that children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the public agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

Reference citation: Federal draft regulations §300.107, §300.117 and §300.110

Justification for Least Restrictive Environment (LRE)

An explanation of nonparticipation in regular education services, including nonacademic and extracurricular activities must be included in the child's IEP.

Insert pointer: See IEP form (See MDE website at www.mde.k12.ms.us/special_education or call 601-359-3498.)

Private Schools

A child with a disability will not be placed for educational purposes in a private school by a public agency unless that private school can provide a FAPE for that child in the least restrictive environment. (For more information refer to Section X. Local Educational Agency Administration section on Children with Disabilities enrolled by Parents in Private Schools and Children placed in or referred to Private Schools by Public Agencies.

Reference citation: MDE Policy

VIII. PROCEDURAL SAFEGUARDS

Records

To ensure the protection of the confidentiality of any personally identifiable data, information and records collected or maintained by the State or local education agencies, the following procedures must be followed:

Reference citation: IDEA 2004 §617(c); Federal draft regulations §300.610-627

A. Access to Records by Parents and Their Representatives.

1. Parents may inspect and review any educational records relating to their child's identification, evaluation, educational placement, and provision of FAPE that are collected, maintained, or used by the education agency.
2. Parents must be given the opportunity to review their child's educational records without unnecessary delay (within forty-five (45) days) and before any meeting regarding an IEP or before an impartial due process hearing or resolution session is conducted.
3. Upon request, parents must be provided copies of their child's records, when failure to do so would effectively prevent the parents from exercising their right to inspect and review records.

4. Upon request, parents must be given explanations and interpretations regarding their child's records.
5. *After providing written authorization to the education agency,* parents may have a representative inspect and review their child's records *under the same access rights afforded to them.*
6. The education agency may presume that the parents have authority to review the records of their child unless the agency has been properly advised that authority has been removed under applicable state laws governing such matters as guardianship, separation, and divorce.
7. The education agency must keep a record of all persons, other than parents and authorized employees of the education agency itself, who are given access to the educational records. Documentation must include the name of the person given access, date of access, and purpose for access.
8. When a record contains information on more than one child, the parents may review only the data regarding their child. If the data on their child cannot be isolated for review, the agency may inform the parent regarding that portion of the data that pertains to their child.
9. Upon request, the parents must be provided with a list of the types and locations of educational records collected, maintained, or used by the agency pertaining to their child.
10. The education agency may charge parents a reasonable fee for copies of the educational records, but not in an amount that would prevent parents from exercising their right to access the records. The fee may not include a charge for the search or retrieval of the records.

Reference citation: Types of records listed in Federal draft regulations §300.501(a)(1-2); #7 is from §300.614; rest is from §300.613

B. Disclosure Procedures Pertaining to Special Education Records.

1. Each education agency must maintain for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

Reference citation: Federal draft regulations §300.623(d)

2. Except as stated in Mississippi Discipline Policy Section VI and Mississippi Procedural Safeguards Policy Section VIII, parental consent must be obtained before personally identifiable information is disclosed. Parental consent must be signed and dated, specify the records that may be disclosed, state the purpose of the disclosure, and identify to what parties the disclosure maybe made.

Reference citation: FERPA 34 CFR 99.30 (a) and (b)

3. Parental consent is not required for disclosure of education records under certain conditions specified in *The Family Educational Rights and Privacy Act* (34 CFR 99.31(a)). These conditions include disclosure to:
 - a. Other education agencies where the student seeks or intends to enroll, to other school officials, including teachers, within the education agency who have legitimate education interests;
 - b. Education officials of other schools, school systems, or other state agencies to which the child has enrolled or intends to enroll;
 - c. Authorized state or federal officials in conjunction with monitoring or enforcement of legal requirements that relate to the special education program;
 - d. Authorities in response to a judicial order or pursuant to a legal subpoena after parents have been given notice of such order or subpoena; and
 - e. Appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the child or other individuals.

Reference citation: the above are based on Federal draft regulations §300.622(b) and FERPA 99.31(a) (1),(2),(9),(10)

4. An agency reporting a crime committed by a child with a disability must ensure that copies of special education and disciplinary records of the child are transmitted for consideration by the appropriate law enforcement and judicial authorities, consistent with FERPA 34 CFR 99.31 and 99.38. (See Section IX. Discipline Policies, Referral to and Action by Law Enforcement and Judicial Authorities.)

Reference citation: this last one is consistent with Federal draft regulations §300.535(b) re: an agency reporting a crime.

C. Transfer of Records of Special Education Children.

1. To facilitate the transition for a child who has transferred from one education agency to another, the education agency in which the child enrolls, must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, and the previous school, in which the child was enrolled, must take reasonable steps to promptly respond to such request from the new school. *The Family Educational Rights and Privacy Act* (34 CFR 99.34(b)) provides for transfer of records from one educational agency or institution to another in which the student is enrolled or which is providing services to that student.
2. Parental consent is not required as a condition for a transfer of special education records from one education agency to another, pursuant to the *Family Educational Rights and Privacy Act* (34 CFR 99.31(a)(2)). However, the child's parents must be given prior notice of the transfer, receive a copy of the records (if requested), and have the opportunity for a hearing to challenge the content of the records prior to the transfer.
3. Except when the transfer of records has been initiated by the parents, the education agency transferring records must make a reasonable attempt to notify the parents prior to the transfer, i.e. written notice

to the last known address or by other notice procedures normally utilized by the education agency.

Reference citation: FERPA Regulations 34 CFR 99.34(a)

D. Amendment of Records at Parent's Request.

1. A parent who believes that the information in the special education records is inaccurate or misleading or violates the privacy or other rights of the child may request that the education agency amend the information. The agency must decide on the matter within a reasonable period of time of receipt of request.

Reference citation: Federal draft regulations §300.618(b)

2. If the education agency decides not to amend the information in accordance with the request, written notice must be provided to the parent. The notice must advise the parent of their right to a local hearing before the education agency to ensure that the information in educational records is not inaccurate, misleading, or a violation of the privacy or other rights of the child.

3. If the education agency agrees to amend the information in accordance with the request, it must notify the parent when the amendment has been completed.

E. Hearing to Request Amendment of Child's Educational Record.

1. If, as a result of the hearing, the education agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and inform the parent in writing.
2. If, as a result of the hearing, the education agency decides that the information should not be amended, the education agency must inform the parent of the right to place in the records a statement commenting on the information or setting forth reasons for disagreeing with the decision. Any such explanation will become

part of the record as long as the record or contested part of the record is maintained by the education agency.

3. If the records on the contested portion are disclosed by the education agency to any party, the explanation must also be disclosed to the party.
4. The hearing must be conducted according to the procedures at 34 CFR §99.22 of the Family Educational Rights Privacy Act.

F. Retention and Destruction of the Records of Children with Disabilities.

1. ***The education agency must retain a copy of the special education records for a child containing personally identifiable information for a period of five (5) years after the termination of special education and related services.***
2. A permanent education record that contains the child's name, address, telephone number, his/her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without a time limitation.

Reference citation: (2) is consistent with Federal draft regulations §300.624b

3. ***At the end of the five-year retention period, the education agency must provide written notice to parents that informs them that the special education records are no longer needed. To meet the written notice requirement, education agencies may provide public notice in the newspaper which includes the years of the records that will be destroyed and the date of destruction. Individual written notice to parents in the form of a letter will also meet this requirement. The letter must also include the years of the records to be destroyed as well as the date of destruction. There must be at least ten (10) days between the written notice and the date of destruction. The parents may choose to receive the information or have it destroyed by the education agency. When the education agency is unable to locate the parents, the information no longer needed by the agency may be destroyed. The education agency is***

not prohibited from retaining special education records indefinitely as long as confidentiality is ensured.

- 4. Confidentiality of the information to be destroyed must be maintained.**

Disciplinary Information

- A. The *education* agency **must** include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.
- B. The statement **must** include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
- C. If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child to the same extent that disciplinary information is transmitted with the records of nondisabled children.

Reference citation: Federal draft regulations §300.229 (a) & (c).

Rights for Children

Education agencies must afford to the child with a disability, rights of privacy similar to those afforded to parents regarding records, taking into consideration the age of the child and type and severity of the disability. The rights of parents regarding educational records under the *Family Educational Rights and Privacy Act* at 34 CFR §99.5(a) transfer to the student at age eighteen.

Parental Consent for Evaluation

(Refer to Parental Consent in Section II. Evaluation)

Independent Educational Evaluation

A. Right to an independent educational evaluation.

1. A parent of a child with a disability may obtain an independent educational evaluation of the child. An independent educational evaluation means an evaluation by a qualified examiner who is not employed by the *education* agency.

Reference citation: Federal draft regulations §300.502 (a)(1) , (a)(3)(i) & (b)(1)

2. A parent of a child with a disability has a right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the *education* agency, subject to the conditions in paragraph C. Independent Educational Evaluation at Public Expense below. Public expense means that the *education* agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

Reference citation: Federal draft regulations §300.502(b)(1) & (a)(3)(ii)

B. Education Agency Responsibility.

1. Each education agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation can be obtained, and the agency criteria for evaluations set out in the section below, paragraph (C)(5).

Reference citation: Federal draft regulations §300.502(a)(2)

C. Independent Educational Evaluations at Public Expense

1. If a parent requests an independent educational evaluation at public expense, the *education* agency must, without unnecessary or unreasonable delay:
 - a. File a due process complaint to show that its evaluation is appropriate; or

- b. Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a due process hearing that the evaluation obtained by the parent did not meet agency criteria.

Reference citation: Federal draft regulations §300.502(b)(2)

2. While the parent cannot be required to provide it, the *education* agency may ask for the parent's reason for his/her objection to the agency's evaluation.

Reference citation: Federal draft regulations §300.502(b)(4)

3. If the *education* agency files a due process complaint, consistent with VIII. Procedural Safeguards Policy Due Process, B. Impartial Due Process Complaint/Request for Hearing, to request a hearing and the final hearing decision is that the agency's evaluation is appropriate, the parent still has a right to an independent educational evaluation, but not at public expense.

Reference citation: Federal draft regulations §300.502(b)(3)

4. Requests for evaluations by hearing officers: If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the public agency is responsible for the cost of the evaluation.

Reference citation: Federal draft regulations §300.502(d)

5. Agency Criteria. The criteria under which an independent educational evaluation at public expense is conducted, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the *education* agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.. Beyond these criteria, an *educational* agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Reference citation: Federal draft regulations §300.502(e)(1)&(2)

D. Parent-initiated Evaluations.

The results of an independent educational evaluation obtained by the parent, if it meets the agency criteria, must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child. The evaluation may be presented as evidence by any party at an impartial due process hearing.

Reference citation: Federal draft regulations §300.502(c)(1) & (2)

Surrogate Parents

When no parent or guardian can be identified, a child with a disability must be represented by a surrogate parent on any occasion when a parent would normally be involved in special education matters.

Reference citation: IDEA 2004 §615 (b)(2); Federal draft regulations §300.519

A. Definition of Parent and Guardian. The term parent means a natural, adoptive or foster parent, a guardian (but not the state if the child is a ward of the state), a person acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare, or a surrogate parent who has been appointed by in accordance with next section C. Surrogate Parent Selection Procedures

Reference citation: definition of parent from IDEA 2004 §602(23)

B. Determination of the Need for a Surrogate Parent. A surrogate parent must be assigned when no parent or guardian can be identified; or the education agency, after reasonable efforts, cannot locate a parent; or the child is a ward of the state; or is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11434a(6)]. In the case of a child who is a ward of the State, a surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of Section D. Criteria for Selection of a Surrogate Parent.

A guardian ad litem as defined by § 43-21-121 of MS Code of 1972 and appointed by a youth court may serve as a surrogate parent and fulfill the requirements of this section.

C. Surrogate Parent Selection Procedures. The following procedures must be utilized to ensure the right of a child with a disability to a surrogate parent:

1. **Utilizing MDE procedures**, the education agency will identify those children with disabilities who are in need of a surrogate parent and for assignment of a surrogate parent.
2. If the education agency determines that a surrogate parent is required, it must make reasonable efforts to ensure the assignment of a surrogate parent from the education agency's pool of trained surrogate parents within thirty (30) days from the date the need for a surrogate parent was determined.
3. Once the surrogate parent has been appointed and the individual agrees to serve as surrogate, the education agency enters this information in the child's file.

D. Criteria for Selection of a Surrogate Parent.

1. **Education** agencies must ensure that the person selected as a surrogate parent:
 - a. Is not an employee of MDE, the education agency, or any other agency that is involved in the education or care of the child;
 - b. Has no personal or professional interest that conflicts with the interests of the child he/she represents; and
 - c. Has knowledge and skills that ensure adequate representation of the child.
2. A person who otherwise qualifies to be a surrogate parent is not an employee because he/she is paid by the agency to serve as a surrogate parent.

3. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates, even if they do not meet the criteria in (D)(1), until a surrogate who does meet the criteria in (D)(1) can be appointed.

Reference citation: new language, Federal draft regulations §300.519(f)

E. *Surrogate Parent Training.*

Education agencies must inform surrogate parents about any training opportunities available to other parents of children with disabilities.

Parental Notice

Special education and related services may not be provided to children with disabilities without the parent's knowledge and informed written consent.

- A. Written notice must be given to parents in a reasonable time before the ***education*** agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education to a child.

Reference citation: Federal draft regulations §300.503.

- B. The parental notice must include a description of the action proposed or refused, an explanation why the action was proposed or refused, a description of each evaluation procedure, assessment, record, or report the education agency uses as a basis for the proposal or refusal, and a description of any other factors that are relevant to the proposal or refusal. The notice must include a description of other options the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the proposal or refusal. The notice must also include a statement that the parents of a child with a disability have protection under procedural safeguards: special education rights.
- C. To ensure that parents understand the content of each notice, the ***education*** agency must provide written notice in language

understandable to the general public, provide notice 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.

- D. If the native language or other mode of communication of the parent is not a written language, the *education* agency must take steps to ensure the notice is translated orally or by other means to the parent in his/her native language or other mode of communication and that the parents understand the content of the notice. The *education* agency must maintain written evidence that these steps have been taken.

Reference citation: Federal draft regulations §300.503(b)

- E. Format of notice. If the *education* agency makes the option available, a parent of a child with a disability may choose to receive the notice by electronic mail.

Reference citation: Federal draft regulations §300.504(d) & §300.505

Parent Participation in Meetings

Parents must be provided with an opportunity to participate in meetings regarding identification, evaluation, educational placement, and the provision of a free appropriate public education to their child.

Reference citation: Federal draft regulations §300.501(b)

- A. Each *education* agency must provide notice consistent with VIII. Procedural Safeguards, Procedural Safeguards: Special Education Rights Notice to ensure parents have the opportunity to participate in these meetings.
- B. A meeting does not include informal or unscheduled conversations involving *education* agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that *education*

agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

- C. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the *education* agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
- D. An educational placement decision may be made by a group without the involvement of the parents, if the *education* agency is unable to obtain the parents' participation in the decision. In this case, the education agency must have a record of its attempt to ensure their involvement.

Procedural Safeguards: Special Education Rights Notice

Frequency of Notice. A copy of the procedural safeguards notice must be given to the parents only one time per year except that a copy must also be given to the parent upon:

- A. Initial referral or parental request for an initial evaluation,
- B. The first occurrence in that school year of filing a due process complaint,
- C. The receipt of the first State complaint to MDE filed under Section XII. State Complaint Procedures, and
- D. Request by a parent.

Reference citation: Federal draft regulations §300.504(a)

Format of notice: If the *education* agency makes the option available, a parent of a child with a disability may choose to receive the procedural safeguards notice by electronic mail.

Reference citation: Federal draft regulations §300.505

Content of Procedural Safeguards: Special Education Rights Notice

The procedural safeguards notice must be written in understandable language, consistent with Mississippi Procedural Safeguards Section on Parental Notice.

It must also include a full explanation of all rights relating to:

- A. Independent educational evaluation;
- B. Prior written notice;
- C. Parental consent;
- D. Access to educational records;
- E. Opportunity to request and resolve complaints through due process procedures or State complaint procedures, including the time period in which to file the complaint, the opportunity for the agency to resolve the complaint, and the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- F. The availability of mediation;
- G. The child's placement during pendency of due process proceedings;
- H. Procedures for children who are subject to placement in an interim alternative educational setting;
- I. Requirements for unilateral placement by parents of children in private schools at public expense;
- J. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- K. Civil actions including the time period in which to file such action;
- L. State Complaint Procedures; and
- M. Attorneys' fees.

Reference citation: Federal draft regulations §300.504(c) & (d)

Due Process

Parents of children with disabilities must be provided with the opportunity to utilize appropriate administrative remedies such as mediation, resolution sessions, impartial due process hearings, and civil action when they believe

that their rights or the rights of their children have been violated or when they disagree with their child's special education services.

- A. Mediation Procedures. When the *education* agency and the parents disagree on matters pertaining to identification, evaluation, educational placement, and/or the provision of a free appropriate public education, either party may request a mediation.

Reference citation: Federal draft regulations §300.506

1. Mediation may be used to resolve disputes, either before or after the filing of a due process complaint.
2. The procedures for mediation must ensure that the mediation process is voluntary on the part of the parties, is not used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part B of the IDEA 2004, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
3. MDE will maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. Mediators will be selected on a rotational basis from the list.
4. MDE will bear the cost of the mediation process.
5. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
6. If an agreement is reached by the parties to the dispute in the mediation process, it must be set forth in a legally binding written mediation agreement. The mediation agreement must state that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil procedures; and is signed by both the parent and a representative of the agency who has the authority to bind such agency. The written, signed mediation agreement is enforceable in

any State court of competent jurisdiction or in a district court of the United States.

7. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings that result from the dispute. The parties to the mediation process are required to sign a confidentiality pledge prior to the commencement of the process to ensure that all discussions during mediation remain confidential.

Reference citation: Federal draft regulations §300.506(b)(9)

8. An individual who serves as a mediator may not be an employee of MDE or the LEA that is involved in the education or care of the child who is the subject of the mediation process. The mediator must not have a personal or professional interest that conflicts with the person's objectivity.. A person who otherwise qualifies as a mediator is not an employee of a LEA or State agency solely because he/she is paid by the agency to serve as a mediator.
9. An **education** agency may establish procedures to offer to parents and schools who elect not to use the mediation process the opportunity to meet, at a time and location convenient to the parents and school, with a disinterested party who is under contract with a parent training and information center or community parent resource center established under §671 or 672 of IDEA 2004, or an appropriate alternative dispute resolution entity, and who would explain the benefits of the mediation process and encourage the parents to use the process. MDE will pay the costs associated with this meeting with the disinterested party.
10. If a due process hearing has been requested, the parties may agree to use mediation to resolve the need for a due process hearing, either at the Resolution Session prior to the start of the due process timelines or after that.

Reference citation: New #10 stems from Federal draft regulations §300.510

(a)(3) re: resolution process.

- B. Impartial Due Process Complaint/Request for Hearing. When parents or the *education* agency disagree on matters pertaining to the identification, evaluation, educational placement of their child, and/or the provision of a free appropriate public education, either party may file a due process complaint.

Reference citation: Federal draft regulations §300.507

Whenever a due process complaint is filed, the parents or the *education* agency involved in the dispute must have the opportunity for an impartial due process hearing.

Reference citation: Federal draft regulations §300.511 (a)

The complaint must set forth an alleged violation that occurred not more than two years before the date the parent or *education* agency knew or should have known about the alleged action that forms the basis of the request for a hearing. However, this timeline will not apply to a parent if they were prevented from requesting the hearing due to specific misrepresentations by the education agency that it had resolved the problem forming the basis of the hearing request; or if the *education* agency withheld information from the parent that was required to be provided. The *education* agency must provide to the parent information on the any free or low-cost legal and other relevant services in the area if the parent requests it or if the parent or *education* agency requests a due process hearing.

Reference citation: Federal draft regulations §300.507

1. Procedures for Requesting an Impartial Due Process Hearing.
 - a. The parent(s), the attorney or a designated person representing the parent, or an official from the *education* agency may request an impartial due process hearing by submitting the due process complaint in writing to the Mississippi Department of Education, 359 North West Street, Suite 335, Jackson, MS 39205. A copy of

the due process complaint (which must remain confidential) must also be sent to the other party.

- b. When the parent, the attorney representing the parent, or an official from the *education* agency files a written complaint, the complaint must include the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the party at the time. In the case of a homeless child or youth [within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))], available contact information for the child and the name of the school the child is attending must be provided in the request.

Reference citation: Federal draft regulations §300. 508(b)

- c. A party may not have a hearing on the due process complaint or engage in a resolution session until the party, or the attorney representing the party, files written notice that meets the requirements in Section VIII. Procedural Safeguards, section on Due Process, B. Impartial Due Process Complaint/Request for Hearing.

Reference citation: Federal draft regulations §300.508 (c)

- d. The complaint for a due process hearing shall be deemed to be sufficient unless the party receiving the written due process complaint notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Section VIII. Procedural Safeguards, section on Due Process, B. Impartial Due Process Complaint/Request for Hearing within fifteen (15) **calendar** days of receiving the written due process complaint. Within five (5) **calendar** days of

receipt of the notification, the hearing officer must make a determination on the face of the written due process complaint of whether it meets the requirements of Section VIII. Procedural Safeguards, section on Due Process, B. Impartial Due Process Complaint/Request for Hearing_ and immediately notify the parties in writing of such determination.

Reference citation: Federal draft regulations §300.508(d)(1 & 2)

- e. A party may amend its due process complaint only if the other party consents in writing to such amendment and is given the opportunity to resolve the issue(s) through a resolution session, or the hearing officer grants permission. The hearing officer may only grant permission to amend at any time not later than five calendar days before a hearing begins. The applicable timeline for a resolution meeting shall begin again at the time the party files an amended notice.

Reference citation: Federal draft regulations §300.508(d)(3 & 4)

- f. MDE, has a model form to assist parents in filing a request for due process. Contact: Mississippi Department of Education, Office of Special Education, 601-359-3498, www.mde.k12.ms.us.

Reference citation: Federal draft regulations §300.509

2. Response by a Local Educational Agency to a Due Process Complaint.

- a. If the LEA has not sent prior written notice, as specified in Mississippi VIII. Procedural Safeguards, Procedural Safeguards: Special Education Rights Notice to the parent regarding the issues contained in the parent's due process complaint, the LEA must, within ten (10) **calendar** days of receiving the request, send the parent a response that must include an explanation of why they proposed or refused to take the action raised in the due process complaint; a description of other options that the IEP Team

considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report they used as the basis for the proposed or refused action; and a description of the factors that are relevant to their proposal or refusal.

- b. A response filed by a LEA shall not be construed to preclude the education agency from asserting that the parent's hearing request was insufficient, where appropriate.

Reference citation: Federal draft regulations §300.508 (e)

3. Timeline for Response to a Due Process Complaint. Except as outlined in Section VIII. Procedural Safeguards, Response by a Local Educational Agency to a Due Process Complaint, the party receiving the due process complaint must within ten (10) **calendar** days of receiving the complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Reference citation: Federal draft regulations §300.508(f)

4. Format of Notice of Due Process Complaint. If the *education* agency makes the option available, a parent of a child with a disability may choose to receive or submit the due process complaint and *education* agency response by electronic mail.

Reference citation: Federal draft regulations §300.504(d).

C. Resolution Session.

1. Timeframe for Resolution Session.

Within fifteen (15) **calendar** days of receiving notice of the parents' due process complaint and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint.

2. Participants in the Resolution Session.

The resolution session meeting must include a representative of the LEA who has decision-making authority and may not include an attorney *or other legal representative* of the LEA unless the parent is accompanied by an attorney *or other legal representative*. The parents of the child and the LEA will determine the relevant members of the IEP Team to attend the resolution session meeting.

3. Content of the Resolution Session.

The parents of the child will discuss their impartial due process complaint and the facts that form the basis of the complaint. The LEA is then provided the opportunity to resolve the dispute. This resolution session must occur unless the parents and the LEA agree in writing to waive such meeting, or agree to use the mediation process described in Section VIII. Procedural Safeguards, Due Process, A. Mediation Procedures.

Reference citation: Federal draft regulations §300.510(a)(1-4)

4. Resolution Period.

If the LEA has not resolved the issues to the satisfaction of the parents within thirty **(30) calendar** days of the receipt of the impartial due process complaint, the due process hearing may occur, and all of the applicable timelines for an impartial due process hearing under Section VIII. Procedural Safeguards, Due Process, D. Impartial Due Process Hearing shall begin at the end of the thirty **(30) calendar** days.

Reference citation: Federal draft regulations §300.510(b)

5. Written Settlement Agreement.

In the case that a resolution is reached to resolve the due process complaint at the resolution session meeting described above in paragraph 3, the parties must execute a legally binding written settlement agreement that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA. The agreement is enforceable in any State court of competent

jurisdiction or in a district court of the United States. If the parties execute a written settlement agreement, a party may void such agreement within three business days of the agreement's execution.

Reference citation: Federal draft regulations §300.510 (c) and (d)

D. Impartial Due Process Hearing. Whenever a due process complaint is filed as specified in Section VIII. Procedural Safeguards, Due Process B. Impartial Due Process Complaint/Request for Hearing that parents or the LEA involved must have an opportunity for an impartial due process hearing, consistent with Section VIII. Procedural Safeguards, Due Process, B. Impartial Due Process Complaint/Request for Hearing and C. Resolution Session.

Reference citation: Federal draft regulations §300.511(a)

1. Agency Responsible for Conducting the Hearing.

MDE is directly responsible for conducting the impartial due process hearing.

Reference citation: Federal draft regulations §300.511(b)

2. The Appointment of an Impartial Due Process Hearing Officer. The appointment of the hearing officer must be made by MDE, Office of Special Education on a rotational basis.

3. Qualifications of Impartial Due Process Hearing Officers.

a. An impartial due process hearing may not be conducted by a person who is an employee of the LEA that is directly involved in the education or care of the child, or by any person having a personal or professional interest that would conflict with his/her objectivity in a hearing.

b. The impartial due process hearing officer must at a minimum, possess knowledge of, and the ability to understand the provisions of IDEA 2004, Federal and State regulations pertaining to the IDEA 2004, and legal interpretations of the IDEA 2004 by Federal and State courts; the knowledge and ability to conduct hearings in accordance with appropriate,

standard legal practice; and the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

- c. A person who otherwise qualifies to conduct a hearing is not an employee of the *education* agency solely because he/she is paid by the *education* agency to serve as an impartial due process hearing officer.
- d. MDE must maintain a list of persons who serve as hearing officers, which specifies the qualifications of each person.

Reference citation: Federal draft regulations §300.511(c)

- 4. Subject Matter of an Impartial Due Process Hearing. The party requesting the impartial due process hearing shall not be allowed to raise issues at the impartial due process hearing that were not raised in the written notice filed under Section VIII. Procedural Safeguards, Due Process, B. Impartial Due Process Complaint/Request for Hearing unless the other party agrees otherwise.

Reference citation: Federal draft regulations §300.511(d)

- 5. Impartial Due Process Hearing Rights for Parents and *Education* Agencies.

- a. Any party to a hearing has the right to:
 - (i) Be accompanied and advised by counsel and/or individuals who have special knowledge or training with respect to the problems of children with disabilities.
 - (ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses,
 - (iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days prior to the hearing.
 - (iv) Obtain written or, at the option of the parents, electronic verbatim record of the hearing at no cost, and

- (v) Obtain written, or, at the option of the parents, electronic findings of fact and decisions at no cost.

Reference citation: Federal draft regulations §500.512(a)(1-5) and (c)(3)

- b. Parents involved in hearings must be given the right to:
 - (i) Have the child who is the subject of the hearing present, and
 - (ii) Open the hearing to the public.

Reference citation: Federal draft regulations §500.512(c)(1-2)

c. Additional Disclosure of Information.

At least five (5) business days prior to a hearing, each party must provide 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, and ***a list of potential witnesses that the parties intend to use at the hearing.*** A hearing officer may bar any party that fails to comply from introducing the relevant evaluation or recommendation ***or witnesses*** at the hearing without the consent of the other party.

Reference citation: Federal draft regulations §500.512(b)(1 -2)

E. Hearing Decisions.

- 1. Decision of the hearing officer. The hearing officer must make a decision on substantive grounds based on a determination of whether the child received a free appropriate public education. In matters alleging a procedural violation, the hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:
 - a. impeded the child's right to a free appropriate public education;
 - b. significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
 - c. caused a deprivation of educational benefits.

Nothing in this section shall be construed to preclude the hearing officer from ordering an *education* agency to comply with procedural requirements.

2. Nothing in this section shall be construed to prevent a parent from filing a separate due process complaint on a different issue from the one already filed.
3. Availability of Findings. The education agency, after deleting personally identifiable information must provide copies of the written findings of fact and decisions to the Special Education Advisory Panel and make the findings and decisions available to the public.

Reference citation: Federal draft regulations §300.513(a, c-d)

4. Timelines.
 - a. Timeline for Final Hearing Decision. MDE must ensure that no later than forty-five (45) days after the 30-day resolution period specified in Section VIII. Procedural Safeguards, Due Process, C. Resolution Session, a final decision is reached in the hearing and that a written copy of the decision is mailed to each of the parties
 - b. Extensions of Time.: At the request of either party, the hearing officer may grant extensions for specific amounts of time beyond the periods set for impartial due process hearings. Documentation of extensions must be submitted to the Mississippi Department of Education, Office of Special Education, 359 North West Street, Suite 335, Jackson, MS 39205.
 - c. Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Reference citation: Federal draft regulations §300.515(a) and (c-d)

5. Finality of Hearing Decision. A decision made in a hearing decision, conducted pursuant to Section VIII. Procedural Safeguards, Due Process, B. Impartial Due Process Complaint/Request for Hearing, C. Resolution Session, and D. Impartial Due Process Hearing, is final.

Reference citation: Federal draft regulations §300.514(a)

6. Child's Status During Hearing Proceedings. Unless the *education* agency and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceedings regarding a filing of a due process complaint/request for an impartial due process hearing under Section VIII. Procedural Safeguards, Due Process B. Impartial Due Process Complaint/Request for Hearing, the child involved must remain in his or her educational placement. This provision does not apply to appeals of disciplinary changes of placement described in Section IX on Discipline, Appeals. If the issue 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 decision of the hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between education agency and the parents during the proceedings.***

Reference citation: Federal draft regulations §300.518 (a-c).

F. Civil Action.

1. Right to civil action. Any party aggrieved by the findings and decisions made under Sections on Filing a Due Process Complaint, Due Process Complaints, Resolution Process, Impartial Due Process Hearing. Section IX. Discipline Policy has the right to bring a civil action with respect to the due process complaint under Section VIII Procedural Safeguards (B) or the disciplinary policies under Discipline Policy Section IX (A) through (C). The civil action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy, within forty-five (45) days of the date of the decision of the hearing officer.

Reference citation: Federal draft regulations §300.516(a) & (b)

2. Requirements of the Court. In any action brought under the above Section VIII(F) Civil Action, the court shall receive the records of the administrative proceedings; shall hear additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, shall grant the relief that the court deems to be appropriate. Nothing in Part B of the IDEA 2004 shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under IDEA 2004 Part B, the policies under VIII. Procedural Safeguards (B) must be exhausted to the same extent as would be required had the action been brought under Procedural Safeguards (§615 of IDEA 2004).

Reference citation: IDEA 2004 §615(l); Federal draft regulations §300.516(e)

- G. Attorney's Fees. In any action or proceeding brought under Procedural Safeguards (§615 of IDEA 2004), courts may award reasonable attorney's fees as part of the costs to a prevailing party who is the parent of a child with a disability; to a prevailing party who is a MDE or LEA 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 to a prevailing MDE or LEA against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Reference citation: Federal draft regulations §300.517(a)(1)

1. Limitations on Source of Funds. IDEA 2004 Part B funds may not be used to pay attorney fees or costs of a party related to an action or

proceeding under Procedural Safeguards (§615 of IDEA 2004) or Section VIII. Procedural Safeguards. This does not preclude an *education* agency from using IDEA 2004 Part B funds for conducting an action or proceeding under Procedural Safeguards (§615 of IDEA 2004) or i Section VIII, Procedural Safeguards.

Reference citation: Federal draft regulations §300.517 (b)

2. Award of Fees.

- a. A court may award reasonable attorneys' fees that are 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.
- b. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Procedural Safeguards (§615 of IDEA 2004) 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 impartial due process hearing, at any time more than ten calendar days before the proceeding begins, the offer is not accepted within ten calendar days; and the court or hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Reference citation: Federal draft regulations §300.517(c)(1) through (2)(i)(C)

However, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

Reference citation: Federal draft regulations §300.517(c)(3)

- c. 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. *Attorney's fees may*

not be awarded for mediation that is conducted prior to the request for a due process hearing.

- d. For the purposes of this section, a meeting conducted as part of the resolution session described in Section VIII. Procedural Safeguard, C. Resolution Session, shall not be considered to be a meeting convened as a result of an administrative hearing or judicial action; or as an administrative hearing or judicial action.

Reference citation: IDEA 2004 statute §615(i)(D)(iii); Federal draft regulations §300.517(c)(2)(iii)

- e. The court may reduce the amount of attorneys' fees awarded if the court finds that:
 - (i) The parent or parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
 - (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
 - (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
 - (iv) The attorney representing the parent did not provide to the education agency the appropriate information in the due process complaint/request for hearing in accordance with Section VIII. Procedural Safeguards, Due Process B. Impartial Due Process Complaint/Request for Hearing.

Reference citation: Federal draft regulations §300.517(c)(4)

- f. The provisions of this section do not apply in any action or proceeding if the court finds that the State or *education* agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of §615 of IDEA 2004.

Reference citation: Federal draft regulations §300.517(c)(5)

Transfer of Parental Rights at Age of Majority (21)

When a child with a disability reaches the age of majority under Mississippi State law (except for a child with a disability who has been determined to be incompetent under State law), the *education* agency shall provide all notices, including all those required under Section VIII. Procedural Safeguards: Special Education Rights Notice to both the individual and the parents. All other rights accorded to parents transfer to the child, including the rights regarding educational records under Section VIII. Procedural Safeguards Records and Transfer of Parental Rights at the Age of Majority (21). The *education* agency shall notify the individual and the parents of the transfer of rights. All rights accorded to parents transfer to students who are incarcerated in an adult or juvenile federal, state, or local correctional institution.

If a child with a disability has reached the age of majority under Mississippi State law, and who has not been determined to be incompetent under state law, but who is determined not to have the ability to provide informed consent with respect to his or her educational program, the State shall establish procedures for appointing the parent of their child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child.

Reference citation: Federal draft regulations §300.520 and §300.625(c); Age of Majority definition from MS Code Definition of Minor 1-3-27

IX. DISCIPLINE POLICIES.

Authority of School Personnel

- A. Case-by-Case Determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct.

Reference citation: IDEA 2004 §615(k)(1); Federal draft regulations §300.530(a)

B. Removals from Current Placement.

1. School personnel may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days to the extent such alternatives are applied to children without disabilities. School personnel may also make additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under Section IX. Discipline Policies, Change of Placement Because of Disciplinary Removals.
2. After a child with a disability has been removed from his or her current placement for ten (10) school days in the school year, the *education* agency must provide services to the extent required in Section IX Discipline Policies, D. Continuation of Educational Services during any subsequent days of removal. The *education* agency does not need to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

Reference citation: Federal draft regulations §300.530(b) and (d)(3)

C. Additional Authority if Behavior is Not a Manifestation. For disciplinary changes in placement that would exceed ten (10) consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Section IX Discipline Policies, E. Manifestation Determination , school personnel may use the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. However, children must continue to receive educational services, consistent with Section IX. Discipline Policies, D. Continuation of Educational Services, although the services may be provided in an interim alternative educational setting.

Reference citation: Federal draft regulations §300.530(c)

D. Continuation of Educational Services

1. A child with a disability who is removed from the child's current placement *exceeding ten (10) cumulative school days in the same school year* for *disciplinary reasons* under Section IX. Discipline Policies, B. Removals from Current Placement, C. Additional Authority if Behavior is not a Manifestation and G. Special Circumstances, (irrespective of whether the behavior is determined to be a manifestation of the child's disability) must continue to receive educational services so the child can continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and to receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. These education services may be provided in an interim alternative educational setting.

Reference citation: Federal draft regulations §500.530(d) (1 & 2)

2. *Party Responsible for Determining Services.*

- a. After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if the current removal is not for more than ten (10) consecutive school days, and is not considered a change of placement under Section IX. Discipline Policies Section on Change of Placements Because of Disciplinary Removals, school personnel, in consultation with at least one of the child's teachers to determine the extent to which services are needed under Section IX Disciplinary Policies, D. Continuation of Educational Services, if any, and the location in which they will be provided.

Reference citation: Federal draft regulations §500.530(d)(4)

- b. If the removal is for more than ten (10) consecutive school days or is a change of placement under Section IX. Discipline Policies, Change of Placements Because of Disciplinary Removals, the IEP Team determines appropriate services under Section IX. Discipline Policies, D. Continuation of Educational Services, and the location in which the services will be provided.

Reference citation: Federal draft regulations §500.530(d)(5)

- E. Manifestation Determination. Except for removals that will be not more than ten (10) consecutive school days and will not constitute a change of placement under Section IX. Discipline Policies, Change of Placements Because of Disciplinary Removals, within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the *education* agency, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

2. If the conduct in question was the direct result of the education agency's failure to implement the IEP.

If the *education* agency, the parent, and relevant members of the IEP Team determine that either Section IX. Discipline Policies, E. Manifestation Determination (1 or 2), is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

Reference citation: Federal draft regulations §300.530(e)

F. Determination That Behavior Was a Manifestation. If the *education* agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must:

1. Conduct a functional behavioral assessment and implement a behavioral intervention plan for the child, unless the LEA had conducted such assessment before the behavior that resulted in a change in placement occurred;
2. If a behavioral intervention plan already has been developed, review the plan, and modify it, as necessary, to address the behavior; and
3. Except as provided in under Section IX. Discipline Policies, G. Special Circumstances, return the child to the placement from which the child was removed unless the parent and the *education* agency agree to a change of placement as part of the modification of the behavioral intervention plan.

Reference citation: Federal draft regulations §500.530(f)

G. Special Circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or LEA;

2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or LEA; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or LEA.

Reference citation: Federal draft regulations §500.530(g)

H. Notification.

Not later than the date on which the decision to take disciplinary action is made, the *education* agency shall notify the parents of that decision, and provide the parents a copy of the Procedural Safeguards: Special Education Rights notice described in Policies Section VIII. Procedural Safeguards.

Reference citation: Federal draft regulations §500.530(h)

Determination of Setting

The interim alternative educational setting described in Section IV. Discipline Policies, C. Additional Authority if Behavior is not a Manifestation and G, Special Circumstances, shall be determined by the IEP Team.

Reference citation: Federal draft regulations §300.531

Appeal

- A. **Right to a Hearing.** The parent of a child with a disability who disagrees with any disciplinary decision regarding placement or the manifestation determination described in Section IX. Discipline Policies, E, Manifestation Determination, or an *education* agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

Reference citation: Federal draft regulations §300.532(a)

- B. **Authority of the Hearing Officer.** When a hearing to appeal a disciplinary decision is requested, an impartial due process hearing officer, as defined in Section VIII. Procedural Safeguards, D. Impartial

Due Process Hearing, shall hear and make a determination. In making the determination, the impartial due process hearing officer may:

1. Return a child with a disability to the placement from which the child was removed if the Hearing Officer determining that the removal was a violation of Section 300.530 or that the child's behavior was a manifestation of the child's disability or

Reference citation: Federal draft regulations §300.532(b)(2)(i)

2. Order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

Reference citation: Federal draft regulations §300.532(b)(2)(ii)

Placement During Appeals

When an appeal under Section IX. Discipline Policies has been requested by either the parent or the *education* agency:

- A. The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Section IX. Discipline Policies, C. Additional Authority if behavior is not a Manifestation, whichever occurs first, unless the parent and the State or LEA agree otherwise; and
- B. MDE must arrange for an expedited hearing. The expedited hearing must occur within twenty (20) school days of the date the expedited hearing is requested and must result in a determination within ten (10) school days after the hearing.

Reference citation: IDEA 2004 §615(k)(4); Federal draft regulations §300.533.

Protections For Children Not Yet Eligible For Special Education and Related Services

- A. **Protection for Children Not Yet Eligible.** A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in Section IX. Discipline Policies if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

Reference citation: Federal draft regulations §300.534(a)

- B. **Basis of Knowledge.** An *education* agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:
1. The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate *education* agency, or a teacher of the child, that the child is in need of special education and related services;
 2. The parent of the child has requested an evaluation of the child in accordance with Section II. Evaluation Policy (reference Federal regulations §300.300 - 300.311); or
 3. The teacher of the child, or other personnel of the *education* agency, has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the *education* agency or to other supervisory personnel of the *education* agency in accordance with the agency's established child find or special education referral system.

Reference citation: Federal draft regulations §300.534(b)

- C. **Exception.** An *education* agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to with Section II. Evaluation Policy (reference Federal regulations §300.300 - 300.311) or has refused services or the child has been evaluated and it was determined that the child was not a child with a disability.

Reference citation: Federal draft regulations §300.534(c)

D. Conditions That Apply if No Basis of Knowledge.

1. If an *education* agency does not have knowledge that a child is a child with a disability in accordance with Section IX. Discipline Policies, B. Removal from Current Placement and C. Additional Authorization if Behavior is not a Manifestation, prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (2) below.
2. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Section IX. Discipline Policies the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the education placement determined by school authorities, *which can include suspension or expulsion without educational services*. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the *education* agency shall provide special education and related services in accordance with IDEA 2004.

Reference citation: Federal draft regulations §300.534(d)

Referral To And Action By Law Enforcement And Judicial Authorities

Nothing in Section IX. Discipline Policies shall prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. An *education* agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for

consideration by the appropriate authorities to whom the *education* agency reports the crime, consistent with Section VIII. Procedural Safeguards, Records (B)(4).

Reference citation: Federal draft regulations §300.535

Definitions for Discipline Policies

A. For the purposes of Section IX. Discipline Policies, the following definitions apply:

1. The term *controlled substance* means a drug or other substance identified under schedule I, II, III, IV, or V in §202(c) of the Controlled Substances Act [21 U.S.C. 812(c)].
2. The term *illegal drug* means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal law.
3. The term *serious bodily injury* has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of §1365 of title 18, United States Code.
4. The term *weapon* has the meaning given the term dangerous weapon under paragraph (2) of the first subsection (g) of §930 of title 18, United States Code.

Reference citation: Federal draft regulations §300.530(1)

Change of Placement Because of Disciplinary Removals

A. For purposes of removals of a child with a disability from current placement for disciplinary reasons, under Section IX. Discipline Policies (references Federal draft regulations §300.530 – 300.535), a change in placement occurs if:

1. The removal is for more than ten (10) consecutive school days; or

2. The child has been subjected to a series of removals that constitute a pattern:
 - a. Because the series of removals total more than ten (10) school days in a year;
 - b. Because the child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively, is determined, under Section IX. Discipline Policies, E. Manifestation Determination, to have been a manifestation of the child's disability; and
 - c. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to each other.

Reference citation: Federal draft regulations §300.536

X. LOCAL EDUCATIONAL AGENCY ADMINISTRATION
Children with Disabilities Enrolled by Parents in Private Schools Within the Local Educational Agency's Geographic Jurisdiction

To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private elementary schools and secondary schools *in its service area, the local educational agency must provide special education and related services for such children* according to the following requirements:

- A. Expenditures, Premises, and Records
 1. Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the LEA *must* be equal to a proportionate amount of federal funds made available under *IDEA 2004 Part B*.
 2. In calculating the proportionate amount of federal funds, the LEA, after timely and meaningful consultation with representatives of private schools, *must* conduct a thorough and complete child find process (as set forth in Section I. Child Identification Policies) to

determine the number of parentally placed children with disabilities attending private schools located in *its service area*.

3. State and local funds *must* supplement *but not* supplant the proportionate amount of federal funds required to be expended under this subparagraph.
 4. Such services to parentally placed private school children with disabilities may be provided on the premises of private schools, including religious, schools, to the extent consistent with law.
 5. Each LEA *must* maintain in its records and provide to MDE the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.
- B. Consultation. To ensure timely and meaningful consultation, a LEA *must* consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children. *Consultation includes:*
1. The child find process, *including documented intensive, scientific, research-based interventions* and how parentally placed private school children suspected of having a disability can participate equitably, *and* how parents, teachers, and private school officials will be informed of the process;
 2. The determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;
 3. *Clarification of* the consultation process among the LEA, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how *this* process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through

Child Find can meaningfully participate in special education and related services;

4. How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, *as well as* direct services and alternate service delivery mechanisms; how such services will be apportioned if funds are insufficient to serve all children; and how and when these decisions will be made; and
 5. If the LEA disagrees with private school officials on the provision of services or the types of services, whether provided directly or through a contract, *how* the LEA shall provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.
- C. Written Affirmation. When timely and meaningful consultation has occurred, the LEA *must* obtain a written affirmation signed by the representatives of participating private schools. If such representatives do not provide affirmation within a reasonable period of time, the local educational agency *must* forward the documentation of the consultation process to MDE.
- D. Compliance.
1. A private school official *has* the right to submit a complaint to MDE that the LEA did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official. (See Section XII. State Complaint Procedures.)
 2. If the private school official wishes to submit a complaint, the official *must* provide the basis of the noncompliance by the LEA to MDE, and the LEA *must* forward the appropriate documentation to MDE. If the private school official is dissatisfied with the decision of MDE, *the* official may submit a complaint to the *U.S. Department of Education* by providing the basis of the noncompliance by the LEA

to the Secretary of the U.S. *Department of Education*, and MDE *must* forward the appropriate documentation to the Secretary.

E. Provision of Equitable Services. Directly or through contracts, the services, *materials, and equipment* must be provided in accordance with this section:

1. By employees of a public agency; or
2. Through contract by the public agency with an individual, association, agency, organization, or other entity; *and*
3. *In a manner that is secular, neutral, and non-ideological.*

F. Control of Funds. The control of funds used to provide special education and related services *for children with disabilities in private schools*, and title to materials, equipment, and property purchased with those funds, *must* be in a public agency for the uses and purposes provided in this section, and a public agency *must* administer the funds and property.

Reference citation: IDEA 2004 §612(a)(10)(A); Federal draft regulations §300.130 through §300.144

Children Placed In, or Referred to, Private Schools by Public Agencies

- A. Children with disabilities in private schools and facilities *must be* provided special education and related services, according to an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by MDE or a LEA to carry out the requirements of IDEA 2004 Part B or any other applicable law requiring the provision of special education and related services to all children with disabilities within *the State of Mississippi*.
- B. In all cases described above, MDE *must* determine whether such schools and facilities meet standards that apply to State educational agencies and LEA and that children so served have all the rights the children would have if served by such agencies.

Reference citation: IDEA 2004 §612(a)(10)(B); Federal draft regulations §300.145 through §300.147

Payment for Education of Children Enrolled in Private Schools Without Consent of or Referral by the Public Agency (When FAPE Is At Issue)

- A. Non-Reimbursement for Private School Placement. Subject to the previous section on “Children with Disabilities Enrolled by Parents in Private Schools Within the LEA’s Geographic Jurisdiction,” IDEA 2004 Part B does not require a LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.
- B. Reimbursement for Private School Placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school 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 a free appropriate public education available to the child in a timely manner prior to that enrollment.
- C. Limitations on Reimbursement. The cost of reimbursement may be reduced or denied if:
 - 1. At the most recent IEP meeting that the parents attended - - prior to removal of the child from the public school - - the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

2. Ten (10) business days (including any Federal or state holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in above paragraph; or
3. Prior to the parents' removal of the child from the public school, the public agency informed the parents, through the Parental notice requirements in Section VIII. Procedural Safeguards, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
4. *There is a* judicial finding of unreasonableness with respect to actions taken by the parents.

D. Exception. The cost of reimbursement:

1. *Must* not be reduced or denied for failure to provide such notice if:
 - a. The school prevented the parent from providing such notice;
 - b. The parents had not received notice (see Section VIII. Procedural Safeguards); or
 - c. Compliance would likely result in physical harm to the child; and
2. May, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if:
 - a. The parent is illiterate or cannot write in English; or
 - b. Compliance would likely result in serious emotional harm to the child.

Reference citation: IDEA 2004 §612(10)(C); Federal draft regulations §300.148 and §300.149.

Early Intervening Services

Purpose. The purpose of comprehensive, coordinated early intervening services is to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.

Reference citation: IDEA 2004, Congressional Findings(c)(5)(F)

Allocation of Funds. A LEA may not use more than 15 percent (15%) of *IDEA 2004 Part B funds* to develop and implement coordinated early intervening services *aligned with activities funded by and carried out under the Elementary and Secondary Education Act (ESEA)*. Such funds must be used to supplement and not supplant funds made available under the ESEA for these activities and services. This may include interagency financing structures. *Early intervening services are for* students in grades K-12 (with a particular emphasis on students in K-3) who have not been identified as needing special education *and* related services but who need additional academic and/or behavioral support to succeed in a general education environment. (Refer to Section XVI. Local Educational Agency Eligibility, C. Permissive Use of Funds.)

Reference citation: §613(f); Federal draft regulations §300.646

Required Use of IDEA 2004 Part B Funds: Any LEA that is *identified* by MDE *as having* significant disproportionality in identification of children with disabilities, or *in their placement* in particular education settings, *must* use the maximum funds (15 percent) to provide comprehensive, coordinated early intervening services, particularly for children in those groups that were significantly overidentified.

(For adjustment to local fiscal effort in certain fiscal years, see Section C. Early Intervening Services: Permissive Use of Funds in Section XVI. Local Educational Agency Eligibility.)

Reference citation: IDEA 2004 §618.(d)(1)(B); Federal draft regulations §300.646

Implementation. In implementing coordinated early intervening services, a LEA may carry out activities that include:

- A. Providing educational and behavioral *assessments* to determine needs for early intervening services, and providing educational and behavioral services *and supports*, including scientific, research-based literacy instruction and *assessments*; and
- B. Professional development (which may be provided by other entities) for teachers and other school staff to enable such personnel to deliver scientific, research-based academic instruction and behavioral interventions, including scientific, research-based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software.

Reporting. Each LEA that develops and maintains coordinated early intervening services must report annually (*June 30th of every fiscal year*) to MDE on:

- A. The number of students served through early intervening services; and
- B. The number of students served who subsequently receive special education and related services during the preceding two-year period.

Reference citation: IDEA 2004 §613(f); Federal draft regulations §300.646

Disproportionality

- A. Data Collection. Each LEA must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring with respect to:
 - 1. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in Section II. Definitions and Evaluation Criteria;
 - 2. The placement in particular educational settings of such children;
 - 3. The incidence, duration, and types of disciplinary actions, including suspension and expulsions.

- B. Formula for Determining Disproportionality. The racial/ethnic composition of the LEA's enrollment must be determined according to the *Modified Mattie T. Consent Decree*.
- C. Corrective Action. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities *or their placement* in particular educational settings, MDE must:
1. Provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of law; and
 2. Require the LEA to publicly report on the revision of policies, practices, and procedures described in subparagraph A above.
 3. Require any LEA *so* identified under paragraph (C)(1) to reserve the maximum amount of IDEA 2004 Part B funds to provide comprehensive, coordinated early intervening services as described in earlier Section X. LEA Administration, Early Intervening Services.

Reference citation: IDEA 2004 §618(d); Federal draft regulations §300.646(a)

XI. GENERAL SUPERVISORY RESPONSIBILITY

Reference citation: IDEA 2004 §612(a) (11); Federal draft regulations §300.149

In General. MDE is responsible for ensuring that:

- A. The requirements of Part B of IDEA are met;
- B. all educational programs for children with disabilities in the State including all programs administered by other State or local agencies (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior):
 1. are under the general supervision of individuals *and agencies* in the State; and
 2. meet the *accountability* standards of MDE; and
- C. for homeless children with disabilities, meet the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).
- D. the State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in IDEA 2004 (Federal draft regulations §300.600 through 300.602 and §300.606 through 300.608).
- E. Part B of the IDEA 2004 does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of Free Appropriate Public Education (FAPE) to children with disabilities in the State.
- F. Notwithstanding the above paragraphs of this section, the Governor (or another individual pursuant to State law), consistent with state law, may assign to any public agency in the State the responsibility of ensuring that the IDEA 2004 Part B requirements are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

Limitation. The above paragraphs must not limit the responsibilities of agencies in the State other than MDE to provide, or pay for some or all of the

costs of a free appropriate public education for any child with a disability in the State.

XII. STATE COMPLAINT PROCEDURES

Reference Citation: IDEA 2004 §615, Procedural Safeguards; Federal draft regulations §300.150 through §300.153

MDE, any State agency, or LEA that receives IDEA 2004 Part B assistance must establish and maintain procedures in accordance with Section VIII. Procedural Safeguards, to ensure that children with disabilities and their parents are guaranteed procedural safeguards regarding the provision of a free appropriate public education by such agencies. This includes an opportunity for any party to present a complaint:

- A. With respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education.
- B. Which sets forth an alleged violation that occurred not more than two (2) years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or if the State has an explicit time limitation for presenting such a complaint, in such time as the State law allows, except that the exceptions to the timeline described in subsection Minimum State Complaint Procedures A. Time limit and B. Time Extension, shall apply to the timeline described in this paragraph.

MDE and any agency assigned responsibility under general supervision (§300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring the effective implementation of procedural safeguards for the children with disabilities served by that public agency.

General. MDE has adopted written procedures for:

- A. Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of Filing a Complaint (§300.153) by:

1. Providing for the filing of a complaint with MDE; and
 2. At MDE's discretion, providing for the filing of a complaint with a public agency and the right to have MDE review the public agency's decision on the complaint; and
- B. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under State Complaint Procedures.

Remedies for Denial of Appropriate Services

In resolving a complaint in which MDE has found a failure to provide appropriate services, MDE, pursuant to its general supervisory authority under IDEA 2004 Part B, must address:

- A. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
- B. Appropriate future provision of services for all children with disabilities.

Minimum State Complaint Procedures

A. Time Limit; Minimum Procedures

MDE must include in its complaint procedures a time limit of sixty (60) days after a complaint is filed under Filing a Complaint to:

1. Carry out an independent on-site investigation, if MDE determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegation in the complaint;
3. Provide the public agency with the opportunity to respond to the complaint, including at a minimum:
 - a. At the discretion of the public agency, a proposal to resolve the complaint; and
 - b. With the consent of the parent, an opportunity to engage the parent in mediation, or alternative means of dispute resolution

4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of IDEA 2004 Part B; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
 - a. Findings of fact and conclusions; and
 - b. The reasons for MDE's final decision

B. Time Extension; Final Decision; Implementation.

MDE's procedures must also:

1. Permit an extension of the time limit described above in this section only if:
 - a. Exceptional circumstances exist with respect to a particular complaint; or
 - b. The parent and the public agency involved agree to extend the time to conduct the activities described above in this section; and
2. Include procedures for effective implementation of MDE's final decision, if needed, including:
 - a. Technical assistance activities;
 - b. Negotiations; and
 - c. Corrective actions to achieve compliance.

Complaints Filed Under This Section and Due Process Hearings

- A. If a written complaint is received that is also the subject of a due process hearing under Due Process or Discipline Policies (refer to Section VIII. Procedural Safeguards and IV. Discipline Policies), MDE must set aside the complaint until the conclusion of the procedures described in these Sections.
- B. If an issue is raised in a filed complaint that was previously decided in a due process hearing involving the same parties:
 1. The due process hearing decision is binding on that issue; and
 2. MDE must inform the complainant to that effect.

Filing a Complaint

- A. An organization or individual may file a signed written complaint under the procedures described above.
- B. The complaint must include:
 - 1. A statement that a public agency has violated a requirement of IDEA 2004 Part B;
 - 2. The facts on which the statement is based;
 - 3. The signature and contact information for the complainant; and
 - 4. If alleging violations against a specific child:
 - a. The name and address of the residence of the child;
 - b. The name of the school the child is attending;
 - c. In the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act), available contact information for the child and the name of the school the child is attending;
 - d. A description of the nature of the problem of the child, including facts relating to the problem; and
 - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
 - 5. Except for complaints covered under Filing a Due Process Complaint (§300.507(a)(2)), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with Adoption of State Complaint Procedures, (§300.1512).
 - 6. The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with MDE.

XIII. FOCUSED MONITORING

Reference citation: IDEA 2004 §616(a) (2); Federal draft regulations §300.600

State Responsibilities. MDE must monitor the implementation of IDEA 2004 Part B, enforce IDEA 2004 in accordance with (§616(e)), and annually report on performance.

All education agencies that serve children under the IDEA 2004 and the Mississippi State Law will have their programs reviewed by MDE using a focused monitoring process and the Mississippi Program Improvement Monitoring System to determine compliance with federal and state laws regarding special education programs and services and related services.

Primary Focus of Monitoring. The primary focus of the State's monitoring activities must be on –

- A. Improving educational results and functional outcomes for all children with disabilities; and
- B. Ensuring that public agencies meet the program requirements of IDEA 2004 Part B, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

Indicators. As part of the requirements, MDE must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the monitoring priority areas identified in IDEA 2004 (§616(a)(3)) and the indicators established by the Secretary of the U.S. Department of Education for State Performance Plans.

XIV. LOCAL EDUCATIONAL AGENCY COMPLIANCE

Reference citation: IDEA 2004 §613(d), 616(f); Federal draft regulations §300.222.

In General. If MDE, after reasonable notice and an opportunity for a hearing, finds that a LEA or State agency fails to comply with any Federal and State requirement, MDE must reduce or must not provide any further payments to the LEA or State Agency until MDE is satisfied that the agency is in compliance with the requirements.

Additional Requirement. If MDE determines that a LEA is not meeting the IDEA 2004 requirements, including the targets in the State's performance plan, MDE must prohibit the LEA from reducing the LEA's maintenance of effort under Section 613 (a)(2)(C) for any fiscal year. (See later Section XVII. LEA Eligibility, Maintenance of Effort.)

Notice Requirement. Any State agency or LEA in receipt of a notice described in the above paragraph, In General, must, by means of public notice, take the measures necessary to bring the pendency of an action to the attention of the public within the jurisdiction of the agency.

Consideration. In carrying out its responsibilities under this section, MDE must consider any decision made in a hearing resulting from a hearing held under Sections 300.511 through 300.533 that is adverse to the LEA or State agency involved in that decision.

XV. STATE-FUNDING MECHANISMS

Reference citation: IDEA 2004 §612(a)(5)(B); Federal draft regulations §300.114

Mississippi's funding mechanism must not result in placements that violate the requirements of Section VII. Least Restrictive Environment. Mississippi must not use a funding mechanism by which the State distributes IDEA 2004 funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a Free Appropriate Public Education

(FAPE) according to the unique needs of the child, as described in the child's Individualized Education Program (IEP).

XVI. SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES

Reference citation: IDEA 2004 §611(f); Federal draft regulations §300.705

Subgrants Required. MDE must distribute any IDEA 2004 funds that the State does not reserve under State Level Activities to LEAs, including charter schools that operate as LEAs, in the State that have established their eligibility (Section XVII. Local Educational Agency Eligibility).

Procedures for Allocations to Local Educational Agencies. For each fiscal year that IDEA 2004 funds are allocated to MDE, MDE must allocate the funds as follows:

- A. **Base Payments.** MDE must first award each LEA described above, the amount the IDEA would have received under this section for fiscal year 1999, if MDE had distributed 75% of its funds for that year (under IDEA 2004 §611(d) was then in effect.
- B. **Base Payment Adjustments.** For any fiscal year after 1999—
 1. If a new LEA is created, MDE must divide the base allocation determined under the above paragraph of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new local educational agency and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if MDE has had its payment reduced (under Federal draft regulations §300.703(b)) currently provided special education by each of the LEAs;
 2. If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and
 3. If, for two or more LEAs, the geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected

LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if MDE has had its payment reduced under Allocations to States (in Federal draft regulations §300.703(b)) currently provided special education by each affected LEA.

- C. Allocations of Remaining Funds.** After making allocations for base payments as adjusted MDE must: (1) allocate 85% of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the local educational agency's jurisdiction; and (2) allocate 15% of those remaining funds to LEAs in accordance with their relative numbers of children living in poverty, as determined by MDE.
- D. Reallocation of Funds.** If MDE determines that a LEA is adequately providing a free appropriate public education to all children with disabilities residing in the area served by the LEA with State and local funds, MDE may reallocate any portion of the IDEA 2004 Part B funds under this part that are not needed by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those LEAs.

XVII. LOCAL EDUCATIONAL AGENCY ELIGIBILITY

Reference citation: IDEA 2004 §613(a); Federal draft regulations §300.200

In General. A LEA is eligible for IDEA assistance for a fiscal year if the LEA submits a plan that provides assurances to MDE that the LEA meets each of the following conditions:

- A. Consistency with State Policies.** The LEA, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with Mississippi policies and procedures.

B. Use of Amounts

1. **In General.** Part B IDEA 2004 amounts provided to the LEA must be expended in accordance with the applicable Part B provisions and:
 - a. must be used only to pay the excess costs of providing special education and related services to children with disabilities;
 - b. must be used to supplement State, local, and other Federal funds and not to supplant such funds; and
 - c. must not be used, except as described below, to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.
2. **Definition of Excess Costs.** Excess costs means those costs that are in excess of the average annual per-student expenditure in a LEA during the preceding school year for an elementary or secondary school student, as may be appropriate, and that must be computed after deducting: (a) amounts received under IDEA 2004 Part B; under Part A of Title I of the Elementary and Secondary Education Act (ESEA); and under Parts A and B of Title III of ESEA; and (b) any State or local funds expended for programs that would qualify for assistance under any of the parts described in this section.
3. **General Requirements on Excess Costs.**
 - a. The excess cost requirements prevents a LEA from using IDEA 2004 Part B funds to pay for all of the costs directly attributable to the education of a child with a disability, subject to the paragraph below.
 - b. The excess cost requirement does not prevent a local educational agency from using IDEA 2004 Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for students without disabilities of

these ages. However, the LEA must comply with the nonsupplanting and other requirements of IDEA 2004 Part B in providing the education and services for these children.

4. **Meeting Excess Cost Requirements.**

- a. A LEA meets the excess cost requirements if it has spent at least a minimum average amount for the education of children with disabilities before IDEA 2004 Part B funds are used.
- b. The amount described in the above paragraph is determined in accordance with the definition of excess costs. That amount may not include capital outlay or debt service.

5. **Maintenance of Effort**

Reference citation: Federal draft regulations §300.203

- a. General. Except as provided in Exception to Maintenance of Effort and Adjustment to Local Fiscal Efforts in Certain Fiscal years (§300.204 and §300.205), IDEA 2004 Part B funds provided to a LEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
- b. Standard. Except as provided in paragraph (c) of this section, MDE must determine that a LEA complies with the paragraph, Use of Amounts, General, of this section for purposes of establishing the LEA 's eligibility for an award for a fiscal year, if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the local educational agency spent for that purpose from the same source for the most recent prior year for which information is available:
 - (i) Local funds only,
 - (ii) The combination of State and local funds

- c. A LEA that relies on the Standard of this section for any fiscal year, must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard of this section was used to establish its compliance with this section.
- d. MDE may not consider any expenditures made from funds provided by the Federal Government for which MDE is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through MDE in determining a LEA's compliance with the requirement in the paragraph General of this section.

6. Exception to Maintenance of Effort.

Reference citation: Federal draft regulations §300.204

Notwithstanding the restriction in Maintenance of Effort (§300.203(a)), a LEA may reduce the level of expenditures under IDEA 2004 Part B below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

- a. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- b. A decrease in the enrollment of children with disabilities.
- c. 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 MDE, because the child—
 - (i) Has left the jurisdiction of the agency;
 - (ii) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (iii) No longer needs the program of special education; or

(iv). The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

d. The assumption of cost by the high cost fund operated by MDE under State level activities, LEA high cost fund (§300.704(c)).

7. **Adjustment to Local Fiscal Effort in Certain Fiscal Years**

Reference Citation: IDEA 2004 §613(2)(C); Federal draft regulations §300.205

a. Amounts in Excess. Notwithstanding the subparagraphs in the Section on Use of Amounts In General, clauses (b) and (c) for any fiscal year, the LEA allocation received under IDEA 2004 (§611(f)) -- Authorization, Allotment, Use of Funds, Authorization of Appropriations -- exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of required expenditures by not more than 50 percent of the amount of such excess.

b. Uses of Amounts to Carry Out Activities Under Elementary and Secondary Education Act (ESEA). If a LEA exercises the authority under Amounts in Excess, clause (a), the agency must use an amount of local funds equal to the reduction in expenditures under clause (a) to carry out activities authorized under the Elementary and Secondary Education Act (ESEA) of 1965.

c. State Prohibition. Notwithstanding Amounts in Excess, clause (a), if MDE determines that a LEA is unable to establish and maintain programs of free appropriate public education that meet the requirements of Local Educational Agency Eligibility, or MDE has taken action against the local educational agency under Monitoring and Enforcement (IDEA 2004 §616), MDE must prohibit the local educational agency from reducing the level of

expenditures under Amounts in Excess, clause (a) for that fiscal year.

- d. Special Rule. The amount of funds expended by a under Early Intervening Services (IDEA 2004 §613) must count toward the maximum amount of expenditures such LEA may reduce under clause (a).

8. Schoolwide Programs under Title I of the Elementary and Secondary Education Act (ESEA).

Reference citation: IDEA 2004 §613(a)(2)(D); Federal draft regulations §300.206

- a. In General. Notwithstanding the paragraph on the Use of Amounts and the subparagraph under In General, or any other provision of IDEA 2004 Part B, a LEA may use IDEA 2004 Part B funds received for any fiscal year to carry out a schoolwide program under Schoolwide Programs, §1114 of the Elementary and Secondary Education Act of 1965 (also known as *The No Child Left Behind Act of 2001*), except that the Part B amount used in the schoolwide program must not exceed--(1) the number of children with disabilities participating in the schoolwide program; multiplied by: (2) (A) the amount received by the LEA under this part for that fiscal year; divided by (B) the number of children with disabilities in the jurisdiction of that agency.
- b. Funding Conditions. The IDEA 2004 Part B funds described in paragraph above are subject to the following conditions:
 - (i). The funds must be considered Federal IDEA 2004 Part B funds for purpose of the calculations.
 - (ii). The funds may be used without regard to the requirements of Use of Amounts (Federal draft regulations §300.202(a)(1)).
- c. Meeting other IDEA 2004 Part B Requirements. Except as provided in the paragraph on Funding Conditions, all other

requirements of IDEA 2004 Part B must be met by a LEA using Part B funds in accordance with the paragraph, In General. The LEA must ensure that children with disabilities in schoolwide program schools: receive services according to a properly developed Individualized Education Program (IEP); and are afforded all of the rights and services guaranteed to children with disabilities under IDEA 2004.

9. Personnel Development

Reference citation: IDEA 2004 §613(a)(3); Federal draft regulations §300.156

The LEA must ensure that all personnel necessary to carry out IDEA 2004 Part B are *highly qualified*, according to the IDEA 2004 requirements on Personnel Qualifications, (§612(a)(14)), and §2122 of the Elementary and Secondary Education Act of 1965 (also known as *The No Child Left Behind Act of 2001*).

General. MDE must establish and maintain qualifications to ensure that the necessary personnel for implementation of IDEA 2004 Part B are *highly qualified* and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

Related Services Personnel and Paraprofessionals. The qualifications under the General paragraph of this section must include qualifications for related services personnel and paraprofessionals that:

- a. Are consistent with any Mississippi-approved or Mississippi-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
- b. Ensure that related services personnel who deliver services in their discipline or profession--

- (i) Meet the requirements of the first paragraph of this Section;
and
- (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- (iii) Allow paraprofessionals and assistants -- who are appropriately trained and supervised, in accordance with Mississippi law, regulation, or written policy, in meeting the IDEA 2004 Part B requirements -- to be used to assist in the provision of IDEA 2004 Part B special education and related services to children with disabilities.

Qualifications for Special Education Teachers. The qualifications described in General of this section must ensure that each person employed as a public school special education teacher in Mississippi who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in Qualifications for Teachers and Paraprofessionals, §1119(a)(2) of the ESEA.

Policy. *MDE will ensure that* local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in Part B must be construed to--

- a. Create a right of action on behalf of an individual student for the failure of a particular MDE or LEA staff person to be highly qualified; or
- b. Prevent a parent from filing a complaint under Section XIII. State Complaint Procedures, about staff qualifications with MDE as provided for under Part B of IDEA 2004.

C. **Permissive Use of Funds**

1. **Uses.** Notwithstanding the paragraph, In General, in Use of Amounts, or the Supplementation of State, Local and Other Federal Funds (IDEA 2004 §612(a)(17)(B)) (relating to commingled funds), IDEA 2004 Part B funds provided to a LEA may be used for the following activities:

a. **Services and Aids That Also Benefit Children without**

Disabilities. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one (1) or more children without disabilities benefit from such services.

b. **Early Intervening Services: Use of Funds**

Reference citation: IDEA 2004 §613(a)(3); Federal draft regulations §300.226.

In General. A LEA may not use more than 15 percent of the IDEA 2004 Part B amount the agency receives for any fiscal year -- less any amount reduced by the agency according to subsection under Adjustment to Local Fiscal Effort in Certain Fiscal Years, if any, in combination with other amounts (which may include amounts other than education funds) -- to develop and implement coordinated, early intervening services, including interagency financing structures. (See also Early Intervening Services in Section X. Policies on LEA Administration.)

c. **High Cost Education and Related Services.** To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for local educational agencies working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

2. **Administrative Case Management.** A LEA may use IDEA 2004 Part B funds to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

3. **Treatment of Charter Schools and Their Students**

Reference citation: IDEA 2004 §613(a)(5); Federal draft regulations §300.209

a. **Rights of Children with Disabilities.** Children with disabilities who attend public charter schools and their parents retain all rights under IDEA 2004 Part B.

b. **Charter Schools That Are Public Schools of the Local Educational Agency.**

(i) In carrying out IDEA 2004 Part B and these regulations with respect to charter schools that are public schools of the LEA, the LEA must--

(a) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(b) Provides IDEA 2004 Part B funds to those charter schools. on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and at the same time as the LEA distributes other Federal funds to the local educational agency's

other public schools, consistent with the State's charter school law.

(ii) If the public charter school is a school of a LEA that receives funding under Subgrants to Local Educational Agencies, and includes other public schools, the LEA is responsible for ensuring that the IDEA 2004 Part B requirements are met, unless Mississippi State law assigns that responsibility to some other entity; and the LEA must meet the requirements of this section.

(iii) This section does not preclude MDE from assigning initial responsibility for ensuring the IDEA 2004 Part B requirements are met to another entity. However, MDE must maintain the ultimate responsibility for ensuring compliance with IDEA 2004 Part B, consistent with MDE's Section XI. General Supervisory Responsibility.

c. **Public Charter Schools That Are Local Educational Agencies.**

If the public charter school is a LEA, consistent with LEA that receives funding under Section XV. Subgrants to Local Educational Agencies that charter school is responsible for ensuring that the IDEA 2004 Part B requirements are met, unless Mississippi State law assigns that responsibility to some other entity.

d. **Public Charter Schools That Are Not a LEA or a School That**

is Part of a LEA. If the public charter school is not a LEA receiving funding under Section XV. Local Educational Agency Subgrants or a school that is part of a LEA receiving funding under §300.705, MDE is responsible for ensuring that the IDEA 2004 Part B requirements are met.

4. Purchase of Instructional Materials.

Reference citation: Federal draft regulations §300.210

- a. **In General.** Not later than two years after the date of enactment of IDEA 2004, a LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire the print instructional materials in the same manner and subject to the same conditions as MDE acquires print instructional materials under IDEA 2004 (§612(a)(23)).
- b. **Rights of Local Educational Agency.** Nothing in this paragraph must be construed to require a LEA to coordinate with the NIMAC. If a LEA chooses not to coordinate with the National Instructional Materials Access Center, the LEA must provide an assurance to MDE that the LEA will provide instructional materials to persons with visual impairments or other persons with print disabilities in a timely manner applicable to the specific disability and/or student.
- c. Nothing in this section relieves a LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but for whom the NIMAC may not provide assistance, receive those instructional materials in a timely manner.

5. Information for Mississippi Department of Education.

Reference Citation: Federal draft regulations §300.211

A LEA must provide MDE with necessary information so MDE can carry out its duties under IDEA 2004 Part B, including, Section XXI. State Performance Goals and Indicators and Section XXII. Participation in Assessments and information relating to the performance of children with disabilities participating in programs implemented under IDEA 2004 Part B.

6. Public Information.

Reference citation: Federal draft regulations §300.212

A LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the local educational agency under IDEA 2004 Part B. The notice of eligibility shall be made in accordance with procedures and *may include notices to newspapers, parent organizations, and/or disability organizations.*

7. Records Regarding Migratory Children with Disabilities.

Reference citation: Federal draft regulations §300.212

A LEA must cooperate in the Secretary of the U.S. Department of Education's efforts under the Coordination of Migrant Education Activities (§1308 of the Elementary and Secondary Education Act of 1965) (also known as *The No Child Left Behind Act of 2001*) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

Exception for Prior Local Plans.

Reference citation: IDEA 2004 §613(b); Federal draft regulations §300.220

A. In General. If a LEA or State agency described in 300.228 has on file with MDE policies and procedures that demonstrate that the LEA or State agency, as the case may be, meets any requirement of LEA Eligibility, including any policies and procedures filed under IDEA 2004 Part B as in effect before December 3, 2004, MDE must consider such LEA or State agency, to have met the requirements for receiving assistance under IDEA 2004 Part B.

B. Modifications Made By Local Educational Agency or State Agency.

Subject to the paragraph below of this section, an application submitted by a LEA or State agency must remain in effect until the LEA or State

Agency submits to MDE such modifications as the LEA or the State agency determines necessary.

C. Modifications Required By Mississippi Department of Education.

MDE may require a LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State Agency's compliance with IDEA 2004 Part B or State law if:

1. After December 3, 2004, the applicable provisions of IDEA 2004 or the regulations developed to carry out the Act are amended;
2. There is a new interpretation of an applicable provision of IDEA 2004 by Federal or State Courts;
3. There is an official finding of noncompliance with Federal or State law or regulations.

Notification of Local Educational Agency or State Agency In Case of Ineligibility.

Reference citation: IDEA 2004 §613(c); Federal draft regulations §300.221

If MDE determines that a LEA or State agency is not eligible under IDEA 2004 Part B, then MDE must notify the LEA or State agency of that determination and must provide the LEA or State agency with reasonable notice and an opportunity for a hearing within thirty days.

Procedural Requirements Relating to Local Educational Agency Eligibility.

Reference citation: IDEA 2004 §612(a)(13); Federal draft regulations §300.221

MDE will not make a final determination that a LEA or State agency is not eligible for assistance under IDEA 2004 Part B without first affording that agency reasonable notice and an opportunity for a hearing *within thirty (30) days*.

XVIII. JOINT ESTABLISHMENT OF ELIGIBILITY

Reference citation: IDEA 2004 §612(a)(12); Federal draft regulations §300.223-300.224

- A. In General. MDE may require a LEA to establish its eligibility jointly with another LEA if MDE determines that the LEA will be ineligible because the LEA will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.
- B. Charter School Exception. MDE may not require a charter school that is a LEA to jointly establish its eligibility unless the charter school is explicitly permitted to do so under the State's charter school law
- C. Amount of Payments. If MDE requires the joint establishment of eligibility, the total amount of IDEA 2004 Part B funds made available to the affected LEAs must be equal to the sum of the payments that each such LEA would have received under Subgrants to Local Education Agencies (Section XVI) if such agencies were eligible for those payments

Requirements for Local Educational Agencies in Establishing Eligibility.

LEAs that establish joint eligibility must:

- A. adopt policies and procedures that are consistent with the State's policies and procedures under State Eligibility (IDEA 2004 §612(a)); and
- B. be jointly responsible for implementing programs that receive assistance under IDEA 2004 Part B.

Requirements for Educational Service Agencies in Establishing Eligibility.

- A. In General. If an educational service agency is required by State law to carry out programs under IDEA 2004 Part B, the joint responsibilities given to local educational agencies under this subsection must:
 - 1. not apply to the administration and disbursement of any payments received by that educational service agency; and
 - 2. be carried out only by that educational service agency.

- B. Additional Requirement. Notwithstanding any other provision of this subsection, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by State Eligibility, in IDEA 2004 §612(a)(5).

XIX. PROGRAM INFORMATION AND REPORTS

Reference citation: IDEA 2004 §618(a); Federal draft regulations §300.640-300.645

- A. Each year, MDE must provide to the public and Secretary of the U.S. Department of Education the following information annually:
1. The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:
 - a. Receiving a free appropriate public education.
 - b. Participating in regular education.
 - c. In separate classes, separate schools or facilities, or public or private residential facilities.
 - d. For each year of age from ages 14 through 21, the number of children who stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services.
 - e. The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.
 - f. The number and percentage of children with disabilities who are removed to alternative educational settings (IDEA 2004 §615(k)(1)) or expelled as compared to children without

disabilities who are removed to alternative educational settings or expelled and the acts or items precipitating the removals.

- g. The number of children with disabilities who are subject to long-term suspensions or expulsions.
2. The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial delays (as defined in §632 of IDEA 2004), and who are receiving early intervention services under IDEA 2004 under Part C.
3. The number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services.
4. The number and percentage of children with disabilities, by race, gender, and ethnicity, who from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.
5. The number of due process complaints filed under IDEA 2004, (§615), Procedural Safeguards, and the number of hearings conducted.
6. The number of hearings requested under IDEA 2004, Procedural Safeguards, (§615(k)) and the number of changes in placements ordered as a result of those hearings.
7. The number of mediations held and the number of settlement agreements reached through such mediations.
8. Any other information that may be required by the Secretary of the U.S. Department of Education.

B. Disproportionality.

Reference citation: IDEA 2004 §612(a)(24), §618(d)(1)(2)

MDE shall design policies to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment identified in IDEA 2004, (definitions, §602) (Section IV. Definitions and Evaluation Criteria).

1. **In General.** MDE shall collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the State's LEAs with respect to—
 - a. the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment;
 - b. the placement in particular educational settings of such children; and
 - c. the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

2. **Review and Revision of Policies, Practices, And Procedures.**

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, the MDE shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with these requirements;

C. **Examination of Suspension and Expulsion Rates.**

Reference citation: IDEA 2004 §612(a)(22))

In General. MDE must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

- a. among LEAs in the State; or
- b. compared to such rates for children without disabilities within such agencies.

Review and Revision of Policies. If such discrepancies are occurring as described above, MDE will review and, if appropriate, revise (or requires the affected State or LEA to revise) its policies, procedures, and practices relating to the development and implementation of

Individualized Education Programs (IEPs), the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with IDEA 2004.

D. Certification of Children Served.

Reference citation: Federal draft regulations §300.643.

MDE must include in its report a certification signed by an authorized official of the agency that the information provided under the Annual Report (Federal draft regulations §300.640) is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

E. Annual Report of Children Served--Criteria for Counting Children.

Reference citation: Federal draft regulations §300.644.

MDE may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that:

1. Provides them with both special education and related services that meet State standards;
2. Provides them only with special education, if a related service is not required, that meets State standards; or
3. In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under IDEA 2004 and receive special education or related services that meet State standards (under Provisions of Services for Parentally-Placed Private School Children with Disabilities (See Section X. Local Educational Administration)).

F. Other Responsibilities of MDE.

Reference citation: Federal draft regulations §300.645.

In addition to meeting the other requirements under Section XIX.

Program Information and Reports, MDE must:

1. Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;
2. Set dates by which those agencies and institutions must report to MDE to ensure that the State complies with Federal Annual Report on Children Served (draft regulations §300.640(a));
3. Obtain certification from each agency and institution that an unduplicated and accurate count has been made;
4. Aggregate the data from the count obtained from each agency and institution, and prepare the reports required Section XVIII. Program Information and Reports; and
5. Ensure that documentation is maintained that enables the State and the Secretary of the U.S. Department of Education to audit the accuracy of the count.

XX. DATA REPORTING

Reference citation: IDEA 2004 §618(g); Federal draft regulations §300.642

Protection of Identifiable Data. MDE must publicly report the data described in Program Information in a manner that does not result in the disclosure of data identifiable to individual children.

Sampling. MDE may obtain the data described in the Program Information Section through sampling.

XXI. STATE PERFORMANCE GOALS AND INDICATORS

Reference citation: IDEA 2004 §612(a)(15)

Establishment of State Performance Goals.

- A. MDE must establish goals for the performance of children with disabilities in the State that—
 1. Promote the purposes of the IDEA 2004 (§601(d));
 2. Are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with

disabilities, under State Plans, §1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965 (*also known as The No Child Left Behind Act*);

3. address student graduation rates and dropout rates, as well as such other factors as the State may determine; and
4. are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

B. Current Mississippi Performance Goals for 2003-04 to 2007-08.

(See Mississippi State Performance Plan on MDE website.)

C. Performance Indicators.

MDE must establish and publish any performance indicators the State will use to assess progress toward achieving the above performance goals, including measurable annual objectives for progress by children with disabilities under State Plans, §1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965 (*also known as The No Child Left Behind Act of 2001*).

D. Annual Reports on Progress toward Performance Goals.

MDE must annually report to the Secretary of the U.S. Department of Education and the public on the progress of the State, and of children with disabilities in the State, toward meeting the performance goals, which may include elements of the reports required under State Plans, §1111(h) of the Elementary and Secondary Education Act of 1965 (*also known as The No Child Left Behind Act of 2001*).

XXII. STUDENT PARTICIPATION IN ASSESSMENTS

Reference citation: IDEA 2004 §612(a)(16); Federal draft regulations §300.160

- A. In General.** MDE must ensure that all children with disabilities will be included in all general State and districtwide assessment programs, including assessments described under State Plans, §1111 of the Elementary and Secondary Education Act of 1965 (*also known as The No Child Left Behind Act of 2001*), with appropriate accommodations

and alternate assessments where necessary and as indicated in their respective individualized education programs.

B. Accommodation Guidelines.

MDE, or, in the case of a districtwide assessment, the LEA, will develop accommodation guidelines for the provision of appropriate accommodations.

C. Alternate Assessments.

1. In General. MDE, or, in the case of a districtwide assessment, the LEA, must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments with accommodations as indicated in their respective individualized education programs.
2. Requirements for Alternate Assessments. The guidelines must provide for alternate assessments that:
 - a. are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and
 - b. if the State has adopted alternate academic achievement standards permitted under the regulations (State Plans, Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 (also known as *The No Child Left Behind Act of 2001*), measure the achievement of children with disabilities against those standards.

3. Conduct of Alternate Assessments.

The State shall develop statewide alternate assessments that will be implemented by local educational agencies.

4. Universal Design.

- a. Definition. IDEA 2004 defines universal design as “having the same meaning given the term in § 3 of the Assistive Technology Act of 1998.”

- b. MDE, or, in the case of a districtwide assessment, the LEA must, to the extent feasible, use universal design principles in developing and administering any State or districtwide assessments.

5. Reports on Assessments.

MDE, or, in the case of a districtwide assessment, the LEA, will make available and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

- a. The number of children with disabilities participating in regular assessments, and the number of those children who were provided assessment accommodations;
- b. The number of children with disabilities participating in alternate assessments described in Requirements for Alternate Assessments.
- c. The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

XXIII. STATE PERFORMANCE PLAN

Reference citation: IDEA 2004 §616(b); Federal draft regulations §300.601-§300.602

Plan. MDE must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of IDEA 2004 Part B and describes how the State will improve such implementation. MDE will submit the State's performance plan and any amendments to the Secretary of the U.S. Department of Education for approval.

Review of State Performance Plan. MDE will review the State Performance plan at least once every 6 years.

Targets and Priority Areas.

MDE must establish measurable and rigorous targets for the indicators under the following priority areas:

- A. Provision of a free appropriate public education in the least restrictive environment.
- B. State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services (as defined in IDEA 2004 Definitions §602(34) and State Application and Assurance §637(a)(9)).
- C. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

Data Collection.

- A. In General. MDE must collect valid and reliable information as needed to report annually to the Secretary of the U.S. Department of Education on the priority areas described above.
- B. Rule of Construction. Nothing in IDEA 2004 Part B must be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

Public Reporting and Privacy Regarding State Performance Plan.

In General. MDE must use the targets established in the State Performance Plan and priority to analyze the performance of each LEA in the State in implementing Part B of IDEA 2004.

Public Reporting and Privacy.

- A. Public Report. MDE must report annually to the public on the performance of each LEA in the State on the targets in the State's performance plan. MDE must make the State's performance plan available through public means, including the posting on MDE's website, distribution to the media, and distribution through public agencies.
- B. State Performance Report. MDE must report annually on the performance of the State under the State's performance plan.
- C. If MDE, in meeting the requirements of this part collects performance data through State monitoring or sampling, MDE must include in its report the most recently available data on each local educational agency, and the date the data were obtained.
- D. Privacy. MDE must not report to the public or the Secretary of the U.S. Department of Education any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information

Public Participation Requirements for State Performance Plan.

Reference citation: Federal draft regulations §300.165

Before submitting a State Plan to the U.S. Department of Education, MDE will comply with the Public Participation Requirements (IDEA 2004 §612(a)(19). Refer to Section XXX. Public Participation and Adoption of Policies and Procedures.

XXIV. OBLIGATIONS RELATED TO METHODS OF ENSURING SERVICES

Reference citation: IDEA 2004 §612(a)(12); Federal draft regulations §300.154

- A. **Establishing Responsibility for Services.** The Chief Executive Officer of the State or designee of the officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in the paragraph below. MDE must ensure that all services (described in the paragraph below) that are needed to ensure a FAPE are provided, including the provision of such services during the pendency of any dispute described under Interagency Disputes.
- B. **Agreement Requirements.** Such agreement or mechanism must include the following:
1. **Agency Financial Responsibility.** An identification of, or a method for defining, the financial responsibility of each agency for providing services described in the above paragraph to ensure a free appropriate public education to children with disabilities -- provided that the financial responsibility of each public agency, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the local educational agency or the State agency responsible for developing the child's Individualized Education Program (IEP).
 2. **Conditions and Terms of Reimbursement.** The conditions, terms, and procedures under which a local educational agency must be reimbursed by other agencies.
 3. **Interagency Disputes.** Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

4. Coordination of Services Procedures. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.

C. Obligation of Public Agency.

1. In General. If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy to provide for or pay for any services that are also considered special education or related services (such as, but not limited to services described in IDEA 2004 Definitions, §602(1)(2) (26)(33)(34) relating to (a) assistive technology devices and services, (b) related services, (c) supplementary aids and services, and (d) transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, -- such public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement according to the subparagraph on Establishing Responsibility for Services, or an agreement according to the subparagraph on Special Rule.
2. Reimbursement for Services by Public Agency. If a public agency, other than an educational agency, fails to provide or pay for the special education and related services described above, the local educational agency or State agency, responsible for developing the child's IEP, must provide or pay for such services to the child. Such agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services. Such public agency must reimburse the local educational agency or State agency according to the terms of the interagency agreement or other mechanism described in the paragraph on Agency Financial Responsibility according to the procedures established in the

agreement described in the paragraph on Conditions and Terms of Reimbursement.

3. Special Rule. The requirements of Establishing Responsibility for Services may be met through
 - a. State statute or regulation;
 - b. signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 - c. other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved.

D. Obligation of Noneducational Public Agency.

1. In General. If any public agency -- other than an educational agency which is otherwise obligated under Federal or State law, or assigned responsibility under State policy according to the paragraph above on Establishing Responsibility for Services, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in Definitions, §602, relating to: (a) assistive technology devices and services, (b) related services, (c) supplementary aids and services, and (d) transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, -- must fulfill that obligation or responsibility, either directly or through contract or other arrangement according to the paragraph on Establishing Responsibility for Services, or an agreement according to the subparagraph on Special Rule.
2. Reimbursement for Services by Public Agency. If a public agency, other than an educational agency, fails to provide or pay for the special education and related services described in the above clause on Agency Financial Responsibility, the local educational agency, or State agency, responsible for developing the child's IEP, must

provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services. Such public agency must reimburse the local educational agency or State agency according to the terms of the interagency agreement or other mechanism described in the paragraph on Agency Financial Responsibility and according to the procedures established in the agreement described in the paragraph on Conditions and Terms of Reimbursement.

3. Special Rule. The requirements on Establishing Responsibility for Services may be met through
 - a. State statute or regulation;
 - b. signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 - c. other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved.

E. Children with Disabilities Who Are Covered by Public Insurance.

1. A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under Part B, as permitted under the public insurance program, except as provided in the paragraph below in this section.
2. With regard to services required to provide Free Appropriate Public Education (FAPE) to an eligible child under Part B, the public agency—
 - a. May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under IDEA 2004 Part B;

- b. 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 provided pursuant to this part, but according to the second paragraph in Proceeds from public or private insurance of this section, may pay the cost that the parent otherwise would be required to pay;
- c. May not use a child's benefits under a public insurance program if that use would—
 - (i) Decrease available lifetime coverage or any other insured benefit;
 - (ii) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
 - (iii) Increase premiums or lead to the discontinuation of insurance; or
 - (iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
 - (v) Must obtain parental consent consistent with Parental Consent Procedures (§300.62)

F. Children with Disabilities Who Are Covered by Private Insurance.

- 1. Regarding required FAPE services to an eligible child, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with Parental Consent for Services Procedures under Section V. Individualized Education Programs (IEP). .
- 2. Each time the public agency proposes to access the parent's private insurance proceeds, the agency must—
 - a. Obtain parental consent in accordance with paragraph (A) of this section; and

- b. Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

G. Use of IDEA 2004 Part B Funds.

1. If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under IDEA 2004 Part B, to ensure FAPE the public agency may use its IDEA 2004 Part B funds to pay for the service.
2. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its IDEA 2004 Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

H. Proceeds From Public or Private Insurance.

1. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.B.
2. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under IDEA 2004 Part B, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in (§300.163 and 300.203.) See earlier Section XVII. Local Educational Agency Eligibility, 5. Maintenance Effort.

- I. Construction.** Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public insurance program.

XXV. ASSISTANCE UNDER OTHER FEDERAL PROGRAMS

Reference citation: IDEA 2004 §612(e); Federal draft regulations §300.186

Under the Part B IDEA 2004 requirements, MDE is not permitted to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

XXVI. STATE ADVISORY PANEL

Reference citation: IDEA 2004 §612(a)(21); Federal draft regulations §300.167-300.169 and Mississippi code 1972, annotated §37-23-145.

A. Membership and Duties.

1. The State Board of Education must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.
2. The advisory panel must consist of members appointed by the State Superintendent of Education who are representative of the state's population and who are composed of individuals involved in, or concerned with, the education of children with disabilities, including:
 - a. Parents of children with disabilities (ages birth through 26);
 - b. Individuals with disabilities;
 - c. Teachers;
 - d. Representatives of institutions of higher education that prepare special education and related services personnel;
 - e. State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et.seq.);
 - f. Administrators of programs for children with disabilities;

- g. Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
 - h. Representatives of private schools and public charter schools;
 - i. not less than one (1) representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
 - j. a representative from the State child welfare agency responsible for foster care;
 - k. Representatives from the State juvenile and adult correction agencies, and
 - l. ***Representative from Federal or State Indian Tribe.***
3. Majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).
4. The duties of the advisory panel must include:
- a. Advise MDE of unmet needs within the State in the education of children with disabilities;
 - b. Comment publicly on any rules or regulations proposed by MDE regarding the education of children with disabilities;
 - c. Advise MDE in developing evaluations and reporting on data to the Secretary of the U.S. Department of Education in accordance with the Part B requirements;
 - d. Advise MDE in developing and implementing policies relating to the coordination of services for children with disabilities; and
 - e. Advise MDE in developing corrective action plans to address findings identified in federal monitoring reports under IDEA 2004.
 - f. Advise MDE in developing and implementing policies related to the coordination of services for children with disabilities.

5. The advisory panel must be provided the opportunity to provide comments to the State Board of Education on rules or regulations proposed by the State Department of Education relating to the implementation of the IDEA 2004 Amendments.

XXVII. PERSONNEL QUALIFICATIONS.

Reference citation: IDEA 2004 §612(A)(14); Federal draft regulations §300.18

A. **In General.** MDE established and maintains qualifications to ensure that personnel necessary to carry out IDEA 2004 Part B are *highly qualified* and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

B. **Related Services Personnel and Paraprofessionals.**

The qualifications described in the above paragraph include qualifications for related services personnel and paraprofessionals that—

1. are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
2. ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (A) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
3. allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities

C. **Qualifications for Special Education Teachers.**

1. The qualifications described above in the first paragraph must ensure that each person employed as a public special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified by the deadline established in Qualifications for Teachers and Paraprofessionals, §1119(a)(2) of the Elementary and Secondary Education Act (ESEA) of 1965 (also known as *The No Child Left Behind Act of 2001*). The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools.
2. Definition for purposes of the ESEA. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
3. **Highly Qualified Special Education Teacher.**
 - a. General. For any public elementary or secondary school special education teacher, the term highly qualified has the meaning given the term in §9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also:
 - (i) Include the requirements described in paragraph below this section; and
 - (ii). Include the option for teachers to meet the requirements of §9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
 - b. **Requirements for Highly Qualified Special Education Teachers.**
 - (i). When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified means that--
 - (a)The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination,

- and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the requirements set forth in the State's public charter school law;
- (b). The teacher has not had special education certification or Licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (c). The teacher holds at least a bachelor's degree.
- (ii). A teacher will be considered to meet the standard described in this section if that teacher is participating in an alternative route to certification program under which--
- (a) The teacher--
 - (I) Receives high-quality professional development that is sustained, intensive, and classroom-focused and will have a positive and lasting impact on classroom instruction, before and while teaching;
 - (II) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
 - (III) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
 - (IV) Demonstrates satisfactory progress toward full certification as prescribed by MDE; and
 - (b) The State ensures, through its certification and licensure process, that the provisions in this section are met.
 - (c). Any public elementary school or secondary school special education teacher teaching in Mississippi, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of this section.

c. **Requirements for Highly Qualified Special Education**

Teachers Teaching To Alternate Achievement Standards.

Highly qualified for a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), means the teacher, whether new or not new to the profession, may either:

- (i). Meet the applicable requirements of §9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
- (ii). Meet the requirements of subparagraph (B) or (C) of §9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of §9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

d. **Requirements for Highly Qualified Special Education**

Teachers Teaching Multiple Subjects.

Highly qualified for a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities means that the teacher may either:

- (i). Meet the applicable requirements of §9101 of the ESEA and 34 CFR 200.56(b) or (c);
- (ii). In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which

may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii). In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single, high objective State standard of evaluation covering multiple subjects.

D. **Policy.** MDE will ensure that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

E. **Rule of Construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this paragraph must be construed to create a right of action on behalf of an individual student for the failure of a particular MDE or LEA staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with MDE as provided for under IDEA 2004 Part B.

XXIII. SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS

Reference citation: IDEA 2004 §612(a)(17); Federal draft regulations §300.162

A. **Expenditures.** IDEA 2004 Part B funds paid to a State will be expended in accordance with all the provisions of Part B.

B. **Prohibition Against Commingling.**

1. IDEA 2004 Part B funds paid to a State must not be commingled with State funds.

2. The requirement in paragraph (B)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required.

C. **Prohibition against Supplementation and Conditions for Waivers.**

Except as provided in Local Educational Agency Eligibility (§613), IDEA 2004 Part B funds paid to a State must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies expended for special education and related services provided to children with disabilities under IDEA 2004 Part B. In no case will IDEA 2004 Part B funds paid to a State be used to supplant Federal, State, and local funds. Except where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary of the U.S. Department of Education may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

- D. **Rule of Construction.** In complying with paragraphs on Supplementation of state, local, and other federal funds and Maintenance of State Financial Support, MDE may not use IDEA 2004 Part B funds to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

Reference citation: IDEA 2004 §612(a)(20)

XXIX. PUBLIC PARTICIPATION IN ADOPTION OF POLICIES AND PROCEDURES

Reference citation: IDEA 2004 §612(A)(19); Federal draft regulations §300.165

Prior to the adoption of any policies and procedures needed to comply with IDEA 2004 Part B (including any amendments to such policies and procedures), MDE will ensure that there are public hearings, adequate notice of the hearings,

and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

XXX. ACCESS TO INSTRUCTIONAL MATERIALS

Reference citation: IDEA 2004 §612(a)(23); Federal draft regulations §300.172

- A. **In General.** MDE must adopt the National Instructional Materials Accessibility Standard to provide instructional materials (printed textbooks and related printed core materials written and published primarily for use in elementary and secondary school instruction that are required by the State or any LEA) to persons with visual impairments or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Standard in the Federal Register.
- B. **Definitions.** Definition of Blind persons or other persons with print disabilities means children served under IDEA 2004 Part B who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled, “An Act to provide books for adult blind” approved March 3, 1931, 2 U.S.C. 135a.
- C. **Rights and Responsibilities of Mississippi Department of Education.**
 1. Nothing in this paragraph must be construed to require MDE to coordinate with the National Instructional Materials Access Center (NIMAC).
 2. However, if MDE chooses not to coordinate with the Center, MDE must provide an assurance to the Secretary of the U.S. Department of Education that MDE will provide instructional materials to persons with visual impairments or other persons with print disabilities in a timely manner after the publication of the National Instructional Materials Accessibility Standards in the Federal Register.
 3. Nothing in this section relieves MDE of its responsibility to ensure that children with disabilities who need instructional materials in

accessible forms, but for whom the NIMAC may not provide assistance to MDE, receive those instructional materials in a timely manner.

- D. **Preparation and Delivery of Files.** If MDE chooses to coordinate with the National Instructional Materials Access Center (NIMAC) as part of the adoption of instructional materials, procurement contract, or other practices involved in purchasing instructional materials, MDE must:
1. enter into a written contract with a publisher and require the publisher to prepare and provide electronic files using the Accessibility Standards to the NIMAC; or
 2. purchase instructional materials from the publisher that are produced in or may be rendered in specialized formats.
- E. **Assistive Technology.** In carrying out this section, MDE will work collaboratively to the maximum extent possible with the State agency responsible for assistive technology programs.

Each public agency is responsible for the provision of assistive technology if necessary to provide a free appropriate public education to a child with a disability.

XXXI. PROHIBITION AGAINST MANDATORY MEDICATION

Reference citation: IDEA 2004 §612(a)(25); Federal draft regulations §300.174 MDE must prohibit education agency personnel from requiring a child to obtain a prescription for a substance covered 21 U.S.C. 801 et.seq. as a condition of attending school, receiving an evaluation, or receiving services. However, this must not be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

GLOSSARY

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 that 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 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 services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

Charter school.

Charter school has the meaning given the term in §5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

- (1) CHARTER SCHOOL - The term charter school' means a public school that —
 - (A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;
 - (B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

- (C) operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;
- (D) provides a program of elementary or secondary education, or both;
- (E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
- (F) does not charge tuition;
- (G) complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act;
- (H) is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;
- (I) agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;
- (J) meets all applicable Federal, State, and local health and safety requirements;
- (K) operates in accordance with State law; and
- (L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Child with a disability.

(a) General.

(1) Child with a disability means a child evaluated in accordance with IDEA requirements as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2) If it is determined, through an appropriate evaluation that a child has one of the disabilities identified in IDEA , but only needs a related service and not special education, the child is not a child with a disability under Part B. If, the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under the above paragraph of this section.

(b) **Children aged three through nine experiencing developmental delays.** Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the State and the LEA, include a child--

- (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic 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
- (2) Who, by reason thereof, needs special education and related services.

Definitions of disability terms.

The terms used in this definition of a child with a disability are defined as follows:

(1) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (i) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. (ii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

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

(4) **Emotional disturbance**

(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

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

(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

Definitions of disability terms. (cont'd)

(6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness, mental retardation-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. Multiple disabilities does not include deaf-blindness.

(8) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) **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-- (i) 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, and sickle cell anemia; and (ii) Adversely affects a child's educational performance.

(10) **Specific learning disability.** (i) General. 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, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) **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 child's educational performance. Traumatic brain injury applies to 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; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

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

Consent.

Consent means that-- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Core academic subjects.

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

Day; business day; school day.

- (a) **Day** means calendar day unless otherwise indicated as business day or school day.
- (b) **Business day** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(c)(1)(ii)).
- (c) **School Day**
 - (1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes.
 - (2) School day has the same meaning for all children in school, including children with and without disabilities.

Educational service agency.

Educational service agency means--

- (a) A regional public multiservice agency: (1) Authorized by State law to develop, manage, and provide services or programs to LEAs; (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;
- (b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
- (c) Includes entities that meet the definition of intermediate educational unit in §602(23) of IDEA 2004 as in effect prior to June 4, 1997.

Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

Equipment.

Equipment means--

- (a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and
- (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

Evaluation.

Evaluation means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

Excess costs.

Excess costs means those costs that are in excess of the average annual per-student expenditure in an Local Educational 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--

- (a) Amounts received--
 - (1) Under Part B of IDEA 2004;
 - (2) Under Part A of title I of the Elementary and Secondary Education Act (ESEA); and
 - (3) Under Parts A and B of title III of the ESEA and;
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section.

Free appropriate public education.

Free appropriate public education or FAPE means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of MDE, including the requirements of IDEA Part B;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP).

Highly qualified special education teacher.

- (a) General. For any public elementary or secondary school special education teacher, the term highly qualified has the meaning given the term in §9101 of the Elementary and Secondary Education Act (ESEA) and 34 CFR 200.56, except that the requirements for highly qualified also--
 - (1) Include the requirements described in paragraph (b) of this section; and
 - (2) Include the option for teachers to meet the requirements of §9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
- (b) Requirements for highly qualified special education teachers.
 - (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified means that--
 - (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the requirements set forth in the State's public charter school law;
 - (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) The teacher holds at least a bachelor's degree.
 - (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--
 - (i) The teacher--
 - (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
 - (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
 - (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
 - (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and
 - (ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

Highly qualified special education teacher. (cont'd)

- (3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or (b)(2) of this section.
- (c) Requirements for highly qualified special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--
 - (1) Meet the applicable requirements of §9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
 - (2) Meet the requirements of subparagraph (B) or (C) of §9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of §9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.
- (d) Requirements for highly qualified special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--
 - (1) Meet the applicable requirements of §9101 of the ESEA and 34 CFR 200.56(b) or (c);
 - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or
 - (3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single, high objective State standard of evaluation covering multiple subjects.
- (e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified.

Highly qualified special education teacher. (cont'd)

- (f) Definition for purposes of the ESEA. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
- (g) The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools.

Homeless children.

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

Include.

Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

Indian and Indian tribe.

- (a) Indian means an individual who is a member of an Indian tribe.
- (b) Indian tribe means any Federal or State Indian tribe, band, Rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.).

Individualized education program.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with IDEA requirements.

Individualized education program team.

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

Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in §636 of the Act.

Infant or toddler with a disability.

Infant or toddler with a disability has the meaning given the term in §632(5) of the Act.

The term 'infant or toddler with a disability' —

- (A) means an individual under 3 years of age who needs early intervention services because the individual—
 - (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments

and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay;

- (B) may also include, at a State's discretion, at risk infants and toddlers; and
- (C) may also include, at a State's discretion, a child aged 3 through 5, who previously received services under this part and who is eligible for services under §619, if—
 - (i) services provided to this age group under this part include an educational component that promotes school readiness and incorporates scientifically based pre literacy, language, and numeracy skills; and
 - (ii) parents are provided a written notification of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs assisted under §619.

Institution of higher education.

Institution of higher education: (a) Has the meaning given the term in §101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and (b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

Limited English proficient.

Limited English proficient has the meaning given the term in §9101(25) of the ESEA.

LIMITED ENGLISH PROFICIENT- The term 'limited English proficient', when used with respect to an individual, means an individual —

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
- (C) (i) who was not born in the United States or whose native language is a language other than English;
(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas;
and
(II) 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
(iii) 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
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —

- (i) the ability to meet the State's proficient level of achievement on State assessments described in §1111(b)(3);
- (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
- (iii) the opportunity to participate fully in society.

Local educational agency (LEA), Local educational agencies (LEAs).

- (a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State 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 of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.
- (b) Educational service agencies and other public institutions or agencies. The term includes--
 - (1) An educational service agency, as defined in §300.12; and
 - (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under State law.
- (c) Bureau of Indian Affairs (BIA) funded schools. BIA funded schools include an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

Native language.

- (a) Native language, when used with respect to an individual who is limited English proficient, means the following:
 - (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
 - (2) 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.
- (b) 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.

- (a) Parent means--
 - (1) A natural or adoptive parent of a child;
 - (2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
 - (3) A guardian (but not the State if the child is a ward of the State);
 - (4) An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - (5) A surrogate parent who has been appointed in accordance with §615(b)(2) or 639(a)(5) of the Act.
- (b)
 - (1) Except as provided in paragraph (b)(2) of this section, the natural or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make educational decisions for the child.
 - (2) If a judicial decree or order identifies a specific person or persons to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section, except that a public agency that provides education or care for the child may not act as the parent.

Parent training and information center.

Parent training and information center means a center assisted under §671 or 672 of IDEA 2004.

Personally identifiable.

Personally identifiable means information that contains--

- (a) The name of the child, the child's parent, 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 that would make it possible to identify the child with reasonable certainty.

Physical education:

- (i) Means the development of--
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and

- (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
- (ii) Includes special physical education, adapted physical education, movement education, and motor development.

Public agency.

Public agency includes the State Education Agency (SEA), Local Educational Agencies (LEAs), Educational Service Agencies (ESAs), public charter schools that are not otherwise included as LEAs or ESAs and are not otherwise included as LEAs or ESAs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

Related services.

- (a) General. 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-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.
- (b) Exception. Related services do not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of that device.
- (c) Individual related services terms defined. The terms used in this definition are defined as follows:
 - (1) **Audiology** includes: (i) Identification of children with hearing loss; (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; (iv) Creation and administration of programs for prevention of hearing loss; (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
 - (2) **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

Related services. (cont'd)

- (3) **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.
- (4) **Interpreting services**, as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, and sign language interpreting services.
- (5) **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.
- (6) (i) **Occupational therapy** means--
 - (i) Services provided by a qualified occupational therapist; and
 - (ii) Includes--
 - (A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
 - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
 - (C) Preventing, through early intervention, initial or further impairment or loss of function.
- (7) **Orientation and mobility services**--(i) 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
 - (ii) Includes travel training instruction, and teaching students the following, as appropriate:
 - (A) 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);
 - (B) To use the 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;
 - (C) To understand and use remaining vision and distance low vision aids; and
 - (D) Other concepts, techniques, and tools.
- (8) **Parent counseling and training** means--
 - (i) Assisting parents in understanding the special needs of their child;
 - (ii) Providing parents with information about child development; and

Related services. (cont'd)

- (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- (9) **Physical therapy** means services provided by a qualified physical therapist.
- (10) **Psychological services** includes--
 - (i) Administering psychological and educational tests, and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
 - (iv) 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;
 - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
 - (vi) Assisting in developing positive behavioral intervention strategies.
- (11) **Recreation** includes--
 - (i) Assessment of leisure function;
 - (ii) Therapeutic recreation services;
 - (iii) Recreation programs in schools and community agencies; and
 - (iv) Leisure education.
- (12) **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 a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
- (13) **School nurse services** means services provided by a qualified school nurse, designed to enable a child with a disability to receive FAPE as described in the child's IEP.
- (14) **Social work services** in schools includes--
 - (i) Preparing a social or developmental history on a child with a disability;
 - (ii) Group and individual counseling with the child and family;
 - (iii) 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;
 - (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
 - (v) Assisting in developing positive behavioral intervention strategies.

Related services. (cont'd)

- (15) **Speech-language pathology services** includes--
 - (i) Identification of children with speech or language impairments;
 - (ii) Diagnosis and appraisal of specific speech or language impairments;
 - (iii) Referral for medical or other professional attention necessary for the rehabilitation of speech or language impairments;
 - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (16) **Transportation** includes--
 - (i) Travel to and from school and between schools;
 - (ii) Travel in and around school buildings; and
 - (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Secondary school.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

Services plan.

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

Secretary.

Secretary means the Secretary of the U.S. Department of Education.

Special education.

- (a) General.
 - (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--
 - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (ii) Instruction in physical education.

Special education. (cont'd)

- (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--
 - (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
 - (ii) Travel training; and
 - (iii) Vocational education.
- (b) Individual special education terms defined. The terms in this definition are defined as follows:
 - (1) At 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.
 - (2) **Specially designed instruction** means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--
 - (i) To address the unique needs of the child that result from the child's disability; and
 - (ii) 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.
 - (3) **Physical education:**
 - (i) Means the development of--
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
 - (ii) Includes special physical education, adapted physical education, movement education, and motor development.
 - (4) **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--
 - (i) Develop an awareness of the environment in which they live; and
 - (ii) 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).
 - (5) **Vocational education:** means
 - (i) organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree; and
 - (ii) Includes vocational and technical education.

Special education. (cont'd)

- (6) **Vocational and technical education** means organized educational activities that--
 - (i) Offer a sequence of courses that--
 - (A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;
 - (B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and
 - (C) Provides, at the postsecondary level, for a 1-year certificate, an associate degree, or industry-recognized credential; and
 - (ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual.

State.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

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, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with IDEA 2004.

Transition services.

- (a) Transition services means a coordinated set of activities for a child with a disability that--
 - (1) 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 postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes--
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.
- (b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child 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.

- (a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--
 - (1) A foster child;
 - (2) A ward of the State; or
 - (3) In the custody of a public child welfare agency.
- (b) Exception. Ward of the State does not include a foster child 105 who has a foster parent who meets the definition of a parent in IDEA 2004.

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