MISSISSIPPI Department of Education

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

State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004

State Board Policy 7219

Effective July 20, 2009

Office of Special Education

IDEAs that Work

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Foreword

The MDE relied on the IDEA regulations at 34 C.F.R. ***sections*** 300.199(a) and (b) for guidance in the formulation of these policies. Under this federal mandate, each state shall—

1. Ensure that any State rules, regulations and policies relating to IDEA conform to the requirements of the federal statute and regulations;
2. Identify in writing to local educational agencies ***(LEAs)*** located in the State and the Secretary of Education any such rule, regulation, or policy as a State-imposed requirement that is not required by the federal statute and regulations; and
3. Minimize the number of rules, regulations, and policies to which the ***LEAs*** and schools located in the State are subject under the federal statute and regulations.

This federal mandate also requires that State rules, regulations, and policies support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student achievement standards.

These policies include references to federal statutes, federal regulations, and State statutes that serve as the source of the requirements.

Notes: Any Mississippi specific deviations from Federal Regulations are denoted in ***Bold Blue Italics***. Omitted sections do not apply to LEAs. Reserved sections are reserved by the United States Department of Education, Office of Special Education Programs (USDE/OSEP).

History

In December 2004, the Individuals with Disabilities Education Act (IDEA 2004) was reauthorized. During 2005 and 2006, the Mississippi Department of Education (MDE), Office of Special Education (OSE), engaged a broadly representative stakeholder group to review IDEA 2004 and recommend revised State policies and procedures for implementation. Approximately 50 members were selected, including parents of children with disabilities, superintendents, principals, special education directors, special education teachers, regular education teachers, representatives from various disability advocacy groups, representatives from institutions of higher education programs, representatives from other State agencies, and the court appointed Mattie T. Consultants.

The charge issued to the stakeholder group was to recommend to the MDE/OSE redesigned special education policies and procedures that were clear and concise and that would assist local school districts in being compliant with IDEA 2004 and the Modified Mattie T. Consent Decree. Members met throughout the fall of 2005 and the spring of 2006 to examine the federal statute, proposed federal regulations, policy language from other States and to engage in extensive discussion in the process of crafting their recommendations.

A draft document was presented to the State Board of Education (SBE) in April 2006, and proposed policies were released to begin the public comment period under the Administrative Procedures Act (APA) process as required by IDEA and State law. Public hearings were conducted on a regional basis to offer maximum opportunities for local stakeholders to provide input. Action on the draft policies was postponed awaiting final federal regulations from the United States Department of Education, Office of Special Education Programs (USDE/OSEP). Consequently, on July 21, 2006, the SBE adopted Policy Number 7219, which states that school districts are required to follow IDEA 2004.

In August 2006, OSEP released the final IDEA 2004 regulations, which became effective on October 13, 2006. The OSE was directed to begin reordering and renumbering the proposed policies to closely follow the federal regulations, and the SBE approved a contract for a technical writer to assist in this process. During October and November 2006, additional meetings were scheduled with a stakeholder group.

In March 2007, OSE staff began an internal vetting process to review all stakeholder input and revise the State policies to closely mirror the content of the federal regulations. During 2007 and 2008, significant time was spent on the internal review and editing process, which included continuous legal review and consultation with OSEP.
In August 2008, OSEP issued additional final regulations, which became effective on December 31, 2008. The revised policy document was finalized in February 2009, and three separate stakeholder user groups, including special education directors, local

superintendents, parents of children with disabilities and parent advocate representatives, reviewed the final draft of the proposed document.

The draft policies were submitted to the SBE on March 19, 2009, for review and discussion. A request to begin the APA process for 60 days of public review and comment was approved at the April 2009 board meeting. During the 60-day public comment period, four regional public hearings were held across the State as required by IDEA 2004 and public comment was obtained. In addition, public comments were accepted during the two Special Education Advisory Panel meetings held during the public comment period. All comments, written and oral, were considered. The policies were approved by the State Board of Education on June 19, 2009. The final APA process was followed and the State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004 are effective as of July 20, 2009.

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SUBPART A – GENERAL

Purposes and Applicability

Section

300.1 Purposes

The purposes of ***these policies*** are—

(a) To ensure that all children with disabilities have available to them a free appropriate public education ***(FAPE)*** that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist localities ***and*** educational service agencies ***in providing*** for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

300.2 Applicability to State and local agencies

(a) *States.* ***These policies apply to the State of Mississippi and all public agencies*** as recipient***s*** of payments under Part B of ***IDEA***.

(b) *Public agencies within* the ***State of Mississippi***. The provisions of ***these policies***—

(1) Apply to all political subdivisions of the State ***of Mississippi*** that are involved in the education of children with disabilities, including***—***

(i) ***The Mississippi Department of Education (MDE)***.

(ii) ***Local educational agencies (***LEAs***)***, educational ***state*** agencies, and public charter schools that are not otherwise included as LEAs or ***educational state agencies*** and are not a school of an LEA or ***educational state agency***.

(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).

(iv) State and local juvenile and adult correctional facilities ***and regional juvenile detention centers***; and

(2) Are binding on each public agency in ***Mississippi*** that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of ***IDEA***.

(c) *Private schools and facilities.* Each public agency in ***Mississippi*** is responsible for ensuring that the rights and protections under Part B of ***IDEA*** are given to children with disabilities—

(1) Referred to or placed in private schools and facilities by that public agency; or

(2) Placed in private schools by their parents under the provisions of §300.148 ***(Placement of Children by Parents when FAPE is at Issue)***.

Definitions

Section

300.4 Act

Act means the *Individuals with Disabilities Education Act* ***(IDEA)***, as amended.

300.5 Assistive technology device

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

300.6 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.

300.7 Charter school

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

300.8 Child with a disability

(a) *General.*

(1) *Child with a disability* means a child evaluated as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (***also referred to as an emotional disability***), 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) (i) If it is determined, through an appropriate evaluation, that a child has one of the disabilities identified ***above***, but only needs a related service and not special education, the child is not a child with a disability ***as defined in §300.8***.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards ***(see §300.39(a)(1)&(2))***, the child would be determined to be a child with a disability ***as defined in §300.8***.

Note: Miss. Code Ann. §37-23-1 mandates free appropriate public educational services and equipment for exceptional children in the age range of three (3) through twenty (20) for whom the regular school programs are not adequate.

(b) *Children aged* ***birth*** *through* ***nine (9)*** *experiencing developmental delays. Child with a disability* for children aged ***birth*** through ***nine (9)*** include***s*** a child—

(1) Who is experiencing developmental delays, as defined ***herein*** and as measured by appropriate diagnostic instruments and procedures, in ***two (2)*** or more of the following areas: ***p***hysical development, cognitive development, communication development, social***/***emotional***/behavioral*** development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(3) Children included in the definition of Developmentally Delayed either have—

(i) Established delays in two (2) or more of the following areas—

(A) Cognitive – The ability to think, which includes processes such as reasoning, problem solving, inferring, conceptualizing, classifying, symbolizing, imagery and memory; and/or

(B) 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; and/or

(C) Language – The ability to acquire, use and comprehend symbols utilized in communication; and/or

(D) Social behavior – The ability to build or maintain age-appropriate interpersonal relationships; and/or

(E) Adaptive behavior – the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his age; or

(ii) 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.

(4) Mississippi has determined that DD applies to the age range birth through nine (9) years. A new determination must occur before the child's tenth (10th) birthday.

(c) *Definitions of disability terms.* The terms used in this definition of a child with a disability are defined as follows—

(1) (i) *Autism* ***(AU)*** ***(also commonly referred to as Autism Spectrum Disorder)*** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three ***(3)***, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual response to sensory experiences. ***Included in the Autism category are the Pervasive Developmental Disorders, including Autistic Disorder, Asperger Disorder, Pervasive Developmental Disorder-Not Otherwise Specified, Rett's Disorder, and Childhood Disintegrative Disorder.***

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional ***disability*** as defined in §300.8(c)(4).

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

(2) *Deaf-blindness* ***(DB)*** 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 (**HI**)* 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) (i) *Emotional **disability (EmD) (also referred to as serious 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 ***disability*** includes schizophrenia. The term does not refer to children who are socially maladjusted, unless it is determined that they have an emotional disability under ***§300.8(c)(4)(i)***.

(5) *Hearing impairment (**HI**)* 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 ***as set forth above***.

(6) *Mental retardation (**MR**)* ***(also referred to as Intellectual Disability by some entities)*** 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 (**MD**)* means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that ***the student*** cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include ***D***eaf-***B***lindness, ***Specific Learning Disability, Developmental Delay, or Language or Speech Impairment***.

(8) *Orthopedic impairment (**OI**)* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments 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, amputations, and fractures or burns ***causing*** contractures).

(9) *Other health impairment (**OHI**)* 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 (***ADD***) or attention deficit hyperactivity disorder (***ADHD***), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette ***S***yndrome; and

(ii) Adversely affects a child's educational performance.

(10) *Specific learning disability (**SLD**)*

(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 ***disability*** or of environmental or cultural ***differences***, or economic disadvantage.

(11) *Speech or language impairment (**LS**)* 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 (**TBI**)* 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 to brain injuries induced by birth trauma.

(13) *Visual impairment (**VI**) 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.

300.9 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).

(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

300.10 Core academic subjects

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

300.11 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 ***f***ederal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(d)(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.

300.12 Educational service agency

Educational service agency means—

(a) A regional public multiservice agency—

(1) Authorized by ***Mississippi*** 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 ***Mississippi***;

(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*** as in effect prior to June 4, 1997.

300.13 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 ***Mississippi*** law.

300.14 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.

300.15 Evaluation

Evaluation means procedures used in accordance with ***federal or State regulations*** to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. ***(See definition of evaluation in §§300.304 through 300.311)***

300.16 Excess costs

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

(2) Under Part A of ***T***itle I of the ESEA; and

(3) Under Parts A and B of ***T***itle 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) ***above***, but excluding any amounts for capital outlay or debt service. (See Appendix A to part ***34 CFR*** for an example of how excess costs must be calculated.)

300.17 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 the ***MDE and*** the requirements of ***the IDEA 2004 regulations;***

(c) Include an appropriate preschool, elementary school, or secondary school education in ***Mississippi***; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

300.18 Highly qualified special education teachers

(a) *Requirements for special education teachers teaching core academic subjects.* For any public elementary or secondary school special education teacher teaching core academic subjects, the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR ***§***200.56, except that the requirements for highly qualified also—

(1) Include the requirements described in paragraph (b) ***below***; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of ***paragraphs*** (c) and (d) ***below***;

(b) *Requirements for special education teachers in general.*

(1) When used with respect to any public elementary school or secondary school special education teacher teaching in ***Mississippi***, highly qualified requires 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 ***Mississippi*** 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 ***Mississippi***'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) ***above*** if that teacher is participating in an alternative route to special education 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 ***(3)*** years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the ***State Board of Education (SBE)***; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) ***above*** are met.

(3) 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 in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) ***above***.

(c) *Requirements for 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 section 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR ***section*** 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 section 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 paragraph (B) or (C) of section 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 and needed to effectively teach to those standards, as determined by the ***SBE***.

(d) *Requirements for special education teachers teaching multiple subjects*. When used with respect to a special education teacher who teaches two ***(2)*** or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR ***section*** 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 ***section*** 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 ***(2)*** years after the date of employment, demonstrate 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).

(e) **(*Omitted*)**

(f) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain, nothing in this 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 ***public agency*** employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the ***MDE***.

(g) *Applicability of definition to ESEA; and clarification of new special education teacher.*

(1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) ***A new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language, arts, or science, must demonstrate, not later than two (2) 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. A*** fully certified ***general*** education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) *Private school teachers not covered.* The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children

with disabilities under §300.138.

300.19 Homeless children

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

300.20 Include

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

300.21 Indian and Indian tribe

(a) *Indian* means an individual who is a member of an Indian tribe.

(b) *Indian tribe* means any ***f***ederal 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.*).

(c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the **Federal Register** list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a–1.

300.22 Individualized education program *(IEP)*

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

300.23 Individualized education program *committee*

*Individualized education program **committee** or IEP **committee*** 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.

300.24 Individualized family service plan *(IFSP)*

Individualized family service plan or *IFSP* has the meaning given the term in section 636 of ***IDEA***.

300.25 Infant or toddler with a disability

The term *infant or toddler with a disability—*

(a) Means ***a child*** under three ***(3)*** years of age who needs early intervention services because the ***child***—

(1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one ***(1)*** or more of the areas of cognitive development, physical development, communication

development, social or emotional development, and adaptive development; or

(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

300.26 Institution of higher education

Institution of higher education ***means an educational institution in any State that***—

(a) Has the meaning given the term in section 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.*

300.27 Limited English proficient *(LEP)*

Limited English proficient has the meaning given the term in section 9101(25) of the ESEA. ***See Reference Guide.***

300.28 Local educational agency *(LEA)*

(a) *General. Local educational agency or LEA* means a public board of education or other public authority legally constituted within ***Mississippi*** 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 ***the*** State, or for a

combination of school districts or counties as are recognized in ***the*** 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 nonprofit 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 ***BIA***, and not subject to the jurisdiction of any SEA other than the ***BIA***, 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 ***IDEA*** with the smallest student population.

300.29 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) ***below***.

(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).

300.30 Parent

(a) *Parent* means—

(1) A biological 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 generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological 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.

(b) (1) Except as provided in paragraph (b)(2) ***below***, the biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified under paragraph (a) ***above*** to act as a parent, must be presumed to be the parent unless the biological 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 under paragraphs (a)(1) through (4) ***above*** 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".

300.31 Parent training and information center

Parent training and information center means a center assisted under sections 671 or 672 of ***IDEA***.

300.32 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.

300.33 Public agency

Public agency includes the ***Mississippi Department of Education*** (***MDE***), LEAs, E***ducational*** S***ervice*** A***gencies***, nonprofit public charter schools that are not ***a school of an*** LEA or E***ducational*** S***ervice*** A***gency***, and any other political subdivisions of ***Mississippi*** that are responsible for providing education to children with disabilities.

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

(b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*

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

(2) Nothing in paragraph (b)(1) ***above***—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP ***committee*** to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

(c) *Individual related services terms defined.* The terms used in this definition are defined as follows**—**

(1) *Audiology* ***means services provided by a qualified audiologist and*** 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.

(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* includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access

real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(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) *Occupational therapy*—

(i) Means 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 children 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 teaching children 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 children 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

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

(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.

(15) *Speech-language pathology services* ***means services provided by a qualified speech-language pathologist and*** 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 habilitation 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.

300.35 Scientifically based research

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA. ***See Reference Guide.***

300.36 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 ***twelve (***12***)***.

300.37 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.

300.38 Secretary

Secretary means the Secretary of ***the U.S. Department of*** Education.

300.39 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.

(2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) ***above***—

(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 ***general*** education program.

(2) *Physical education* means—

(i) 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.

(3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child, 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 the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(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 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.

300.40 State

State means each of the ***fifty (***50***)*** States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

300.41 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.

300.42 Supplementary aids and services

Supplementary aids and services means aids, services, and other supports that are provided in ***general*** education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

300.43 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 provision of a 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.

300.44 Universal design

Universal design ***means –***

A concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

300.45 Ward of the State

(a) *General.* Subject to paragraph (b) ***below***, *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 who has a foster parent who meets the definition of a *parent* ***as defined in*** §300.30.

SUBPART B – STATE ELIGIBILITY

General

Free Appropriate Public Education - FAPE Requirements

Section

300.101 Free appropriate public education (FAPE)

(a) *General.* ***FAPE*** must be available to all children ***with disabilities*** residing in ***Mississippi*** between the ages of ***three (***3***)*** and ***twenty (20)***, inclusive, including children with disabilities who have been suspended or expelled from school as provided for in §300.530(d).

Note: See Miss. Code Ann. §§37-23-1 through 37-23-150.

FAPE is available to all children with disabilities residing in the state between the ages of three (3) and twenty (20), inclusive.

(b) *FAPE for children beginning at age three* ***(3)****.*

(1) Each ***public agency*** must ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date in accordance with §300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP ***committee*** shall determine the date when services under the IEP or IFSP will begin.

(c) *Children advancing from grade to grade.*

(1) Each ***public agency*** must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) ***The eligibility determination*** must be made on an individual basis by the ***team*** responsible for making eligibility determination***s***.

300.102 Limitation - exception to FAPE for certain ages

(a) *General.* The obligation to make FAPE available to all children with disabilities does not apply with respect to the following***—***

(1) Children aged ***twenty-one (***21***)*** in ***Mississippi*** to the extent that its application to those children would be inconsistent with ***Mississippi*** law or practice, or the order of any court, respecting the provision of public education to children of those ages.

Note: See Miss. Code Ann. §37-23-1.

(2) (i) Children aged ***eighteen (***18***)*** through ***twenty-one (***21***)*** to the extent that ***Mississippi*** law does not require that special education and related services under Part B of ***IDEA*** be provided to students with disabilities

who, in the last educational placement prior to their incarceration in an adult correctional facility—

(A) Were not actually identified as being a child with a disability ***as defined in*** §300.8; and

(B) Did not have an IEP under Part B of ***IDEA***.

(ii) The exception in paragraph (a)(2)(i) ***above*** does not apply to children with disabilities, aged ***eighteen (***18***)*** through ***twenty-one (***21***)***, who—

(A) Had been identified as a child with a disability ***as defined in*** §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability ***as defined in*** §300.8.

(3) (i) Children with disabilities who have graduated from high school with a ***standard*** high school diploma.

(ii) The exception ***specified*** in paragraph (a)(3)(i) ***above,*** does not apply to children who have graduated from high school but have not been awarded a ***standard*** high school diploma.

(iii) Graduation from high school with a ***standard*** high school diploma constitutes a change in placement requiring written prior notice in accordance with §300.503.

(iv) ***T***he term ***standard*** *high school diploma* does not include an alternative degree that is not fully aligned with the ***State Board of Education (SBE)*** academic standards, such as a certificate, ***the Mississippi Occupational Diploma (MOD)***, or a general educational development (GED) credential.

(4) Children with disabilities who are eligible under subpart H ***(Preschool Grants for Children with Disabilities)***, but who receive early intervention services under Part C of ***IDEA***.

Other FAPE Requirements

Section

300.103 FAPE methods and payments

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

(b) Nothing in ***the IDEA 2004 regulations or herein*** 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.

(c) Consistent with §300.323(c), ***each public agency*** must ensure that there is 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.

300.104 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.

300.105 Assistive technology

(a) Each public 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—

(1) Special education ***as defined in*** §300.36;

(2) Related services ***as defined in*** §300.34; or

(3) Supplementary aids and services ***as defined in*** §§300.38 and 300.114(a)(2)(ii).

(b) 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.

300.106 Extended school year services *(ESY)*

(a) *General.*

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) ***below*** and ***in State Board of Education Policy 7212 (available on the MDE website at http://www.mde.k12.ms.us/special_education/pdfs/ESY_Handbook_2003.pdf).***

(2) ***ESY*** services must be provided only if a child's IEP ***committee*** determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

Students with disabilities who turn age twenty-one (21) during the school year and who are eligible for ESY services may be served in an ESY program as determined by the IEP committee.

(3) In implementing the ***ESY*** requirements, a public agency may not—

(i) Limit ***ESY*** services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) *Definition.* The term ***ESY*** services means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year ***(180 days)*** of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of ***the SBE (See ESY Handbook 2003 available on the MDE website at http://www.mde.k12.ms.us/special_education/pdfs/ESY_Handbook_2003.pdf).***

300.107 Nonacademic services

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP ***committee***, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, ***meals, recess periods, homeroom, activity periods, field trips***, athletics, recreational activities, transportation, health services, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

300.108 Physical education

Each public agenc***y*** in ***Mississippi must*** comply with the following***—***

(a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(b) *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.

(c) *Special 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.

(d) *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.

300.109 Full educational opportunity goal (FEOG)

Mississippi has in effect a goal of providing full educational opportunity to all children with disabilities residing in the State age birth through twenty-one (21).

State law assigns to the Mississippi State Department of Health the responsibility for children with disabilities from birth through age two (2). State law mandates FAPE to all children residing in the State from age three (3) through age twenty (20). It is the policy of the MDE that the provision of FAPE will continue for a student with a disability through the school year in which the student reaches age twenty-one (21), if the student was enrolled in a public agency and was age twenty (20) on or before September 1.

300.110 Program options

Each public 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.

300.111 Child *F*ind

(a) *General.* ***Each public agency*** must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in ***Mississippi***, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) *Use of term developmental delay.* The following provisions apply with respect to implementing the ***C***hild ***F***ind requirements***—***

(1) ***Mississippi has determined that Developmental Delay (DD) applies to the age range birth through nine (9) years. A new eligibility determination must occur before the child's tenth (10th) birthday.***

(2) ***The MDE does*** not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(3) If an LEA uses the term *developmental delay* for children described in §300.8(b), the LEA must conform to both ***Mississippi***'s definition of that term and to the age range that has been adopted by ***Mississippi***.

(4) ***(Omitted)***

(c) *Other children in **Child Find**.* Child ***F***ind also must include—

(1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) *Construction.* Nothing ***herein*** requires that children be classified by their disability so long as each child who has a disability that is listed in §300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of ***IDEA***.

300.112 Individualized education programs (IEP)

Each public agency must ensure that an IEP, or an IFSP that meets the requirements of ***§***636(d) of ***IDEA***, is developed, reviewed and revised for each child with a disability in accordance with §§300.320 through 300.324 except as provided in §300.300(b)(4)(ii).

300.113 Routine checking of hearing aids and external components of surgically implanted medical devices

(a) *Hearing aids.* Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) *External components of surgically implanted medical devices.*

(1) ***E***ach public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

Least Restrictive Environment (LRE)

Section

300.114 LRE requirements

(a) *General*.

(1) ***Each*** public agenc***y in Mississippi*** must have in effect policies and procedures to ensure the LRE requirements ***as stated below are being met***.

(2) Each public agency must ensure that—

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the ***general*** educational environment occurs only if the nature or severity of the disability is such that education in ***general education*** classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) ***Omitted***

300.115 Continuum of alternative placements

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum ***of alternative placements available to meet the needs of children with disabilities for special education and related services*** must—

(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with ***general education*** class placement.

300.116 Placements

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency 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 of ***these regulations***;

(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;

(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 if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate ***general education*** classrooms solely because of needed modifications in the general education curriculum. ***If the IEP committee determines that "full-time" education in the general education classroom cannot be achieved satisfactorily, the student with disabilities must be included in the general education classroom to the maximum extent appropriate.***

300.117 Nonacademic settings

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107 each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP ***committee*** to be appropriate and necessary for the child to participate in nonacademic settings.

300.118 Children in public or private institutions

Except as provided in §300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), ***the public agencies*** must ensure that ***the LRE requirements are*** effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

300.119 Technical assistance and training activities

The ***MDE implements*** activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing ***the LRE requirements***; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

300.120 Monitoring activities

(a) The ***MDE implements*** activities to ensure that ***the LRE requirements are*** implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with ***the LRE requirements***, the ***MDE***—

(1) Review***s*** the public agency's justification for its actions; and

(2) Assist***s*** in planning and implementing any necessary corrective action.

Additional Eligibility Requirements

Section

300.121 Procedural safeguards

(a) *General.* The ***MDE and each public agency in Mississippi*** have procedural safeguards in effect to ensure that the requirements of §§300.500 through 300.536 ***are met***.

(b) *Procedural safeguards identified.* Children with disabilities and their parents must be afforded procedural safeguards.

300.122 Evaluation

Children with disabilities must be evaluated in accordance with ***Part B of IDEA and MDE policies***.

300.123 Confidentiality of personally identifiable information

Each public agency must have policies and procedures in effect to ensure that public agencies in the State comply with §§300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of ***IDEA and under MDE's policies and procedures***.

300.124 Transition of children from the *IDEA* Part C Program to *Part B* preschool programs

Each public agency must have in effect policies and procedures to ensure that—

(a) Children participating in early intervention programs assisted under Part C of ***IDEA***, and who will participate in preschool programs assisted under Part B of ***IDEA***, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of ***IDEA***;

(b) By the third birthday of a child, an IEP, or an IFSP, has been developed and is being implemented for the child consistent with ***FAPE***.

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency ***for Part C***.

300.125 - 300.128 (Reserved)

Children in Private Schools

Section

300.129 State responsibility regarding children in private schools

It is the policy of the MDE to ensure that LEAs meet the private school requirements in §§300.130 through 300.148 ***(Children with Disabilities Enrolled by Their Parents in Private Schools)***.

Children with Disabilities Enrolled by Their Parents in Private Schools

Section

300.130 Definition of parentally-placed private school children with disabilities

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school.

300.131 Child *F*ind for parentally-placed private school children with disabilities

(a) *General.* Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) ***below*** and §§300.311 and 300.201.

(b) *Child **F**ind design.* The ***C***hild ***F***ind process must be designed to ensure—

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) *Activities.* In carrying out the requirements of ***Child Find for parentally placed private school children with disabilities***, the LEA or, if applicable

the ***MDE***, must undertake activities similar to the activities undertaken for the agency's public school ***system***.

(d) *Cost.* The cost of carrying out the ***C***hild ***F***ind requirements, including individual evaluations, may not be considered in determining if an LEA has met its obligations under §300.133 ***(Regarding Expenditures)***.

(e) *Completion period.* The ***C***hild ***F***ind process must be completed in a time period comparable to that for students attending public schools in the LEA.

(f) *Out-of-State children.* Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the ***C***hild ***F***ind requirements, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

300.132 Provision of services for parentally-placed private school children with disabilities – basic requirement

(a) *General.* To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of ***IDEA*** by providing them with special education and related services, including direct services, unless the Secretary ***of the U.S. Department of Education*** has

arranged for services to those children ***as stated in*** the by-pass provisions of ***34 CFR*** §§300.190 through 300.198.

(b) *Services plan for parentally-placed private school children with disabilities.* ***A*** services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services.

(c) *Record keeping*. Each LEA must maintain in its records, and provide to the ***MDE***, the following information related to parentally-placed private school children covered under §§300.130 through 300.144—

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

300.133 Expenditures

(a) *Formula.* ***E***ach LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities—

(1) For children aged ***three (***3***)*** through ***twenty-one (***21***)***, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of ***IDEA*** as the number of private school children with disabilities aged ***three (***3***)*** through ***twenty-one (***21***)*** who are enrolled by their parents in private, including religious, elementary schools and

secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged ***three (***3***)*** through ***twenty-one (***21***)***.

(2) (i) For children aged three ***(3)*** through five ***(5)***, an amount that is the same proportion of the LEA's total subgrant under ***§***619(g) of ***IDEA*** as the number of parentally-placed private school children with disabilities aged three ***(3)*** through five ***(5)*** who are enrolled by their parents in a private, including religious elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three ***(3)*** through five ***(5)***.

(ii) ***C***hildren aged three ***(3)*** through five ***(5)*** are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school.

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

(b) *Calculating proportionate amount.* In calculating the proportionate amount of ***f***ederal funds to be provided for parentally-placed private school children

with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools, must conduct a thorough and complete ***C***hild ***F***ind process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).

(c) *Annual count of the number of parentally-placed private school children with disabilities.*

(1) Each LEA must—

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) *Supplement, not supplant.* State and local funds may supplement and in no case supplant the proportionate amount of ***f***ederal funds required to be expended for parentally-placed private school children with disabilities.

300.134 Consultation

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

(a) *Child Find.* The ***C***hild ***F***ind process, including—

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) *Proportionate share of funds.* The determination of the proportionate share of ***f***ederal funds available to serve parentally-placed private school children with disabilities under §300.133(b) ***(Expenditures)***, including the determination of how the proportionate share of those funds was calculated.

(c) *Consultation process.* The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the ***C***hild ***F***ind process can meaningfully participate in special education and related services.

(d) *Provision of special education and related services.* How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made.

(e) *Written explanation by LEA regarding services.* How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

300.135 Written affirmation

(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the ***MDE***.

300.136 Compliance

(a) *General.* A private school official has the right to submit a complaint to the ***MDE*** that the LEA—

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) *Procedure.*

(1) If the private school official wishes to submit a complaint, the official must provide to the ***MDE*** the basis of the noncompliance by the LEA with the applicable private school provisions in ***the IDEA 2004 regulations***; and

(2) The LEA must forward the appropriate documentation to the ***MDE***.

(3) (i) If the private school official is dissatisfied with the decision of the ***MDE***, the official may submit a complaint to the Secretary ***of the U.S. Department of Education*** by providing the information on noncompliance; and

(ii) The ***MDE shall*** forward the appropriate documentation to the Secretary ***of the U.S. Department of Education***.

300.137 Equitable services determined

(a) *No individual right to special education and related services.* No parentally-placed private school child with a disability has an individual right to

receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) *Decisions.*

(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities must be made in accordance with paragraph (c) ***below (Equitable Services Determined)*** and §300.134(c) ***(Consultation)***.

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

(c) *Services plan for each child served* ***with disabilities enrolled by their parents in private schools***. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

300.138 Equitable services provided

(a) *General.*

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

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

(b) *Services provided in accordance with a services plan.*

(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate—

(i) Meet the requirements of §300.320, or for a child ages three ***(3)*** through five ***(5)***, meet the requirements of §300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) *Provision of equitable services.*

(1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided—

(i) By employees of a public agency; or

(ii) Through ***a*** contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and non-ideological.

300.139 Location of services and transportation

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

(b) *Transportation—*

(1) *General.*

(i) If necessary for the child to benefit from or participate in the services provided under ***the IDEA 2004 regulations***, a parentally-

placed private school child with a disability must be provided transportation—

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) *Cost of transportation.* The cost of the transportation may be included in calculating whether the LEA has met the requirement of §300.133 ***(Expenditures)***.

300.140 Due process complaints and State complaints

(a) *Due process not applicable, except for **C**hild **F**ind.*

(1) Except as provided in paragraph (b) ***below***, the ***procedural safeguard provisions*** do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139 ***(Providing FAPE to Children in Private Schools)***, including the provision of services indicated on the child's services plan.

(b) *Child **F**ind complaints – to be filed with the LEA in which the private school is located.*

(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the ***C***hild ***F***ind requirements in §300.131, including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the ***C***hild ***F***ind requirements (as described in paragraph (b)(1) ***(above)*** must be filed with the LEA in which the private school is located and a copy must be forwarded to the ***MDE***.

(c) *State complaints.*

(1) Any complaint that ***the MDE*** or ***an*** LEA has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through 300.153 ***(State Complaint Procedures)***.

(2) A complaint filed by a private school official ***stating that the LEA did not engage in consultation that was meaningful and timely; or did not give due consideration to the view of the private school official*** must be filed with the ***MDE*** in accordance with the procedures in §300.136(b).

300.141 Requirement that funds not benefit a private school

(a) An LEA may not use funds provided under section 611 or 619 of ***IDEA*** to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use the funds provided under Part B of ***IDEA*** to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

300.142 Use of personnel

(a) *Use of public school personnel.* An LEA may use funds available under §§611 and 619 of ***IDEA*** to make public school personnel available in other than public facilities—

(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) *Use of private school personnel.* An LEA may use funds available under sections 611 and 619 of ***IDEA*** to pay for the services of an employee of a private school to provide services ***to children with disabilities enrolled by their parents in private schools*** if—

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

300.143 Separate classes prohibited

An LEA may not use funds available under sections 611 or 619 of ***IDEA*** for classes that are organized separately on the basis of school enrollment or religion of the children if—

(a) The classes are at the same site; and

(b) The classes include children enrolled in public schools and children enrolled in private schools.

300.144 Property, equipment, and supplies

(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in ***Part B of IDEA***.

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

(c) The public agency must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes;

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

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

Children with Disabilities in Private Schools Placed or Referred by Public Agencies

Section

300.145 Applicability of §§300.146 through 300.147

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

300.146 Responsibility of *Public Agencies*

Each ***public agency*** must ensure that a child with a disability who is placed in or referred to a private school or facility—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the ***MDE*** and LEAs including the requirements of ***the IDEA 2004 regulations***, except for §300.18 and §300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency.

300.147 Implementation by *MDE*

In implementing section 300.146, the ***MDE shall***—

(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 State standards that apply to them.

Children with Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue

Section

300.148 Placement of children by parents when FAPE is at issue

(a) *General.* ***A***n LEA ***is not required*** to pay for the cost of education, including special education and related services, of a child with a disability at a private

school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144 ***(Children with Disabilities Enrolled by their Parents in Private Schools)***.

(b) *Disagreements about FAPE.* Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.

(c) *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 preschool, 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 FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet ***Mississippi's*** standards that apply to education provided by the ***MDE*** and LEAs.

(d) *Limitation on reimbursement.* The cost of reimbursement described in paragraph (c) ***above*** may be reduced or denied—

(1) If —

(i) At the most recent IEP ***committee*** meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP ***committee*** that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) ***above***; ***or***

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

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

(e) *Exception.* Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—

(1) Must not be reduced or denied for failure to provide ***such*** notice if—

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to §300.504 of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide ***such*** notice if—

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

SEA Responsibility for General Supervision and Implementation of Procedural Safeguards

Section

300.149 SEA responsibility for general supervision

(a) The ***MDE*** is responsible for ensuring—

(1) That the requirements of ***Part B of IDEA*** are carried out; and

(2) That each educational program for children with disabilities administered within ***Mississippi***, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—

(i) Is under the general supervision of the persons ***and agencies*** responsible for educational programs for children with disabilities in ***Mississippi***; and

(ii) Meets the educational ***accountability*** standards of the ***State Board of Education*** (including the requirements of ***Part B of IDEA***); and

(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*) are met.

(b) ***MDE*** ensure***s*** that it complies with the monitoring and enforcement requirements in §§300.600 through 300.602 and §§300.606 through 300.608.

(c) Part B of ***IDEA*** does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in ***Mississippi***.

(d) ***Omitted***

300.150 SEA implementation of procedural safeguards

The ***MDE has*** procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for children with disabilities ***in Mississippi***.

State Complaint Procedures

Section

300.151 Adoption of State complaint procedures

(a) *General.* The ***MDE has*** written procedures for—

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

(2) 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 procedures under §§300.151 through 300.153.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the ***MDE*** has found a failure to provide appropriate services, ***the MDE***, pursuant to its general supervisory authority under Part B of ***IDEA***, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

300.152 Minimum State complaint procedures

(a) *Time limit; minimum procedures.* ***Within*** a time limit of ***sixty (***60***)*** days after a ***formal State*** complaint is filed under §300.153, ***the MDE shall***—

(1) Carry out an independent on-site investigation, if the ***MDE*** determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of ***IDEA*** or ***the IDEA 2004 regulations***; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the ***MDE's*** final decision.

(b) *Time extension; final decision; implementation.*

(1) ***The MDE may also*** permit an extension of the time limit described above only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under the ***MDE*** procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available; and

(2) Include procedures for effective implementation of the ***MDE's*** final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) *Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.*

(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the ***MDE*** must set aside any part of that complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the

due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue is raised in a complaint has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The ***MDE*** must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the ***MDE***.

300.153 Filing a complaint

(a) An organization or individual may file a signed written ***formal State*** complaint under the procedures described in §§300.151 through 300.152.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of ***IDEA*** or ***its implementing regulations***;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child—

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42

U.S.C. 11434(a)(2)), available contact information for the child, and the name of the school the child is attending;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one ***(1)*** year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the ***MDE***.

Methods of Ensuring Services

Section

300.154 Methods of ensuring services

(a) *Establishing responsibility for services.* The Chief Executive Officer of ***Mississippi*** or designee of the officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in paragraph (b) of this section and the ***MDE***, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are

provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following—

(1) ***Agency financial responsibility.*** An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each non-educational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) ***Conditions, terms, and procedures of reimbursement.*** The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) ***Procedures for resolution of interagency disputes.*** Procedures for resolving interagency disputes (including procedures under which LEAs 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 described in paragraph (b)(1) of this section.

(b) *Obligation of non-educational public agencies.*

(1) (i) ***In general.*** If any public agency other than an educational agency is otherwise obligated under ***f***ederal or ***Mississippi*** law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, 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 §300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.34 relating to related services, §300.41 relating to supplementary aids and services, and §300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within ***Mississippi***, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (c) of this section.

(ii) A non-educational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(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 paragraph (b)(1) ***above***, the LEA (or State agency responsible for developing the child's IEP) must

provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) ***above***.

(c) *Special rule.* The requirements for ***establishing responsibility for services*** may be met through—

(1) ***Mississippi*** statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by the Chief Executive Officer of ***Mississippi*** or designee of that officer and approved by the Secretary ***of the U.S. Department of Education***.

(d) *Children with disabilities who are covered by public benefits or insurance.*

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services, as permitted under the public benefits or insurance program***s***, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child, the public agency—

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of ***IDEA***;

(ii) 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 pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) (A) Must obtain parental consent consistent with §300.9, each time that access to public benefits or insurance is sought; and

(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of

its responsibility to ensure that all required services are provided at no cost to the parents.

(e) *Children with disabilities who are covered by private insurance.*

(1) With regard to the services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with §300.9.

(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must—

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) 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.

(f) *Use of Part B funds.*

(1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under ***the IDEA 2004 regulations***, to ensure FAPE the public agency may use its 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 benefits or insurance if the parents would

incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

(g) *Proceeds from public benefits or insurance or private insurance.*

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR ***section*** 80.25.

(2) If a public agency spends reimbursements from ***f***ederal funds (e.g., Medicaid) for services under ***the IDEA 2004 regulations***, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 ***(Maintenance of State Financial Support)*** and 300.203 ***(Maintenance of Effort)***.

(h) *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 benefits or insurance program by ***f***ederal 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 benefits or insurance program.

Additional Eligibility Requirements

Section

300.155 Hearings relating to LEA eligibility

The ***MDE does*** not make ***any*** final determination that an LEA is not eligible for assistance under Part B of ***IDEA*** without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

300.156 Personnel qualifications

(a) *General.* The ***SBE*** establish***es*** and maintain***s*** qualifications to ensure that personnel necessary to carry out the purposes of ***the IDEA 2004 regulations*** are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) *Related services personnel and paraprofessionals.* The ***personnel*** qualifications must include qualifications for related services personnel and paraprofessionals that—

(1) Are consistent with any ***SBE***-approved or 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

(2) Ensure that related services personnel who deliver services in their discipline or profession—

(i) Meet the requirements of paragraph (b)(1) ***above***; 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 requirements of ***IDEA 2004 regulations*** to be used to assist in the provision of special education and related services under ***IDEA 2004 regulations*** to children with disabilities.

(c) *Qualifications for special education teachers.* The ***personnel*** qualifications described in paragraph (a) 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***, section 1119(a)(2) of the ESEA.

(d) *Policy.* LEAs in ***Mississippi are required to*** take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under ***IDEA 2004 regulations*** to children with disabilities.

(e) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under ***IDEA and its implementing regulations***, nothing ***herein*** shall be construed to create a right of action on

behalf of an individual student or a class of students for the failure of a particular ***public agency*** employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the ***MDE*** as provided for under ***the IDEA 2004 regulations***.

300.157 Performance goals and indicators

The MDE—

(a) ***Has*** established goals for the performance of children with disabilities in ***Mississippi*** that—

(1) Promote the purposes of ***IDEA Part B***;

(2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311*;*

(3) Address 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 academic standards for children established by the State;

(b) ***Has*** established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) ***above***, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA; and

(c) Annually report***s*** 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 goals established under paragraph (a) ***above***, which may include elements of the reports required under section 1111(h) of the ESEA.

300.158 (Reserved)

300.159 (Reserved)

300.160 (Reserved)

300.161 (Reserved)

300.162 Supplementation of State, local, and other *f*ederal funds

(a) *Expenditures.* Funds paid to ***the*** State under ***the IDEA regulations are*** expended in accordance with all the provisions of ***Part B of IDEA***.

(b) *Prohibition against commingling.*

(1) Funds paid to ***the*** State under ***the IDEA 2004 regulations are*** not commingled with State funds.

(2) The requirement ***regarding the prohibition against the commingling of funds*** is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to ***the*** State

under ***Part B of IDEA***. ***As provided in 34 CFR §76.702, s***eparate bank accounts are not required.

(c) *State-level nonsupplanting.*

(1) Except as provided in §300.202 ***(Use of Amounts)***, funds paid to ***Mississippi*** under Part B ***of IDEA*** must be used to supplement the level of ***f***ederal, State, and local funds (including funds that are not under the direct control of the ***MDE*** or LEAs) expended for special education and related services provided to children with disabilities under Part B ***of IDEA***, and in no case to supplant those ***f***ederal, State, and local funds.

(2) If ***Mississippi*** provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary ***of the U.S. Department of Education*** may waive, in whole or in part, the requirements of paragraph (c)(1) ***above*** if the Secretary concurs with the evidence provided by the State under §300.164 ***(Waiver of requirement regarding supplementing and not supplanting with Part B of IDEA funds)***.

300.163 Maintenance of State financial support

(a) *General.* ***Mississippi does*** not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) *Reduction of funds for failure to maintain support.* The Secretary ***of the U.S. Department of Education*** reduces the allocation of funds under section 611 of ***IDEA*** for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) ***above*** by the same amount by which the State fails to meet the requirement.

(c) *Waivers for exceptional or uncontrollable circumstances.* The Secretary ***of the U.S. Department of Education*** may waive the requirement of paragraph (a) ***above*** for ***Mississippi,*** for one fiscal year at a time, if the Secretary determines that—

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) ***As required*** in §300.164, the State meets the standard for a waiver to supplement, not to supplant, funds received under Part B of ***IDEA***.

(d) *Subsequent years.* ***As mentioned in paragraph (a) above,*** if, for any fiscal year, ***Mississippi*** fails to meet the requirement of paragraph (a) ***above***, including any year for which the State is granted a waiver under paragraph (c) ***above***, the financial support required of the State in future years under paragraph (a) ***above*** shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds

(a) Except as provided under §§300.202 through 300.205 ***(Use of amounts; Maintenance of Effort; Exception to the Maintenance of Effort; and Adjustment to Local Fiscal Efforts in Certain Fiscal Years)***, funds paid to ***Mississippi*** under Part B of ***IDEA are*** used to supplement and increase the level of ***f***ederal, State, and local funds (including funds that are not under the direct control of ***the MDE*** and LEAs) expended for special education and related services provided to children with disabilities under Part B of ***IDEA*** and in no case to supplant those ***f***ederal, State, and local funds. ***The*** State may use funds it retains under §300.704(a) and (b) ***(State Administration and other State-level Activities)*** without regard to the prohibition on supplanting other funds.

(b) If ***Mississippi*** provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary ***of the U.S. Department of Education*** may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary ***of the U.S. Department of Education*** concurs with the evidence provided by the State.

(c) If ***Mississippi*** wishes to request a waiver, it must submit to the Secretary ***of the U.S. Department of Education*** a written request that includes—

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all

eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary ***of the U.S. Department of Education*** to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail—

(i) The basis on which ***the State*** has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that ***Mississippi*** will implement to ensure that FAPE remains available to all eligible children in the State, which must include—

(A) The State's ***Child Find*** procedures for ensuring that all eligible children are identified, located and evaluated;

(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of ***Part B of IDEA***;

(C) The State's ***formal*** complaint procedures; and

(D) The State's ***due process*** hearing procedures;

(3) A summary of all State and ***f***ederal monitoring reports, and ***formal*** State complaint decisions and ***due process*** hearing decisions issued within three ***(3)*** years prior to the date of the State's request for a

waiver under ***Part B of IDEA***, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the ***MDE***, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel.

(d) If the Secretary ***of the U.S. Department of Education*** determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary ***of the U.S. Department of Education***, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues—

(1) Whether FAPE is currently available to all eligible children with disabilities in the State.

(2) Whether the ***MDE*** will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary ***of the U.S. Department of Education*** provides the requested waiver.

(e) Following the hearing, the Secretary ***of the U.S. Department of Education***, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary ***of the U.S. Department of Education*** finds that the ***MDE*** has provided clear and convincing evidence

that FAPE is currently available to all eligible children with disabilities in the State, and the ***MDE*** will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary ***of the U.S. Department of Education*** provides the requested waiver.

(f) ***Mississippi*** may receive a waiver of the requirement of section 612(a)(18)(A) of ***IDEA*** and §300.164 ***(Waiver of Requirement regarding Supplementing and not Supplanting with Part B Funds)*** if it satisfies the requirements of paragraphs (b) through (e) ***above***.

(g) The Secretary ***of the U.S. Department of Education*** may grant subsequent waivers for a period of one year each, if the Secretary determines that the ***MDE*** has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

300.165 Public participation

(a) Prior to the adoption of any policies and procedures needed to comply with ***Part B of IDEA*** (including any amendments to those policies and procedures), the ***MDE*** ensure***s*** that there are public hearings ***and provides*** 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.

(b) Before submitting a State Plan under ***the IDEA 2004 regulations to the U.S. Department of Education***, the ***MDE will*** comply with the public

participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).

300.166 Rule of construction

In complying with §§300.162 ***(Supplementation of State, local, and other federal funds)*** and 300.163 ***(Maintenance of State Financial Support)***, ***Mississippi does*** not use funds paid to it under ***Part B of IDEA*** to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

State Advisory Panel

Section

300. 167 State Advisory Panel

The ***Mississippi State Board of Education*** establish***es*** and maintain***s*** 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.

300.168 Membership

(a) *General.* The advisory panel consist***s*** of members appointed by the ***State Superintendent of Education***, representative of ***Mississippi's*** population and composed of individuals involved in, or concerned with the education of children with disabilities, including—

(1) Parents of children with disabilities (ages birth through ***twenty-six (***26***)***);

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

(5) 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.*);

(6) Administrators of programs for children with disabilities;

(7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(10) A representative from the State child welfare agency responsible for foster care;

(11) Representatives from the State juvenile and adult correction agencies.

(b) *Special rule.* A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through ***twenty-six (***26***)***).

300.169 Duties

The advisory panel—

(a) Advise***s*** the ***State Board of Education (SBE)*** of unmet needs within the State in the education of children with disabilities;

(b) Comment***s*** publicly on any rules or regulations proposed by the ***SBE*** regarding the education of children with disabilities;

(c) Advise***s*** the ***MDE*** in developing evaluations and reporting on data to the Secretary ***of the U.S. Department of Education*** under section 618 of ***IDEA***;

(d) Advise***s*** the ***MDE*** in developing corrective action plans to address findings identified in ***f***ederal monitoring reports under Part B of ***IDEA***; and

(e) Advise***s*** the ***MDE*** in developing and implementing policies relating to the coordination of services for children with disabilities.

Other Provisions Required for State Eligibility

Section

300.170 Suspension and expulsion rates

(a) *General.* The ***MDE*** examine***s*** 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—

(1) Among LEAs in the State; or

(2) Compared to the rates for nondisabled children within those agencies.

(b) *Review and revision of policies.* If the discrepancies described in paragraph (a) ***above*** are occurring, the ***MDE*** review***s*** and, if appropriate, revise***s*** (or require the affected State agency 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 these policies, procedures, and practices comply with ***IDEA***.

300.171 Annual description of use of IDEA Part B funds

(a) In order to receive a grant in any fiscal year ***Mississippi*** annually describe***s***—

(1) How amounts retained for State administration and State-level activities under §300.704 ***(State-level activities)*** will be used to meet the requirements; and

(2) How those amounts will be allocated among the activities described in §300.704 ***(State-level activities)*** to meet State priorities based on input from LEAs.

(b) If ***Mississippi*** plans for use of its funds under §300.704 ***(State-level activities)*** for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) ***above***.

(c) **(*Omitted*)**

300.172 Access to instructional materials

(a) *General.* ***Mississippi***—

(1) Adopt***s*** the National Instructional Materials Accessibility Standard (NIMAS), published as ***34 CFR*** Appendix C to ***P***art 300, for the purposes of providing 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 MDE or any public agency)*** to blind persons or other persons with print disabilities, in a timely manner after the publication of the NIMAS in the **Federal Register** on July 19, 2006 (71 FR 41084) ***(see***

Federal Regulations, Appendix C for the National Instructional Materials Accessibility Standards)**;** and

(2) Establish***es*** a State definition of a "timely manner" for purposes of ***Rights and Responsibilities under*** paragraphs (b)(2) and (b)(3) ***below*** if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) ***below*** if the State is coordinating with the NIMAC.

(i) Mississippi defines "timely manner" for this purpose as "at the same time students without disabilities receive their instructional materials."

(b) *Rights and Responsibilities of the* ***MDE***.

(1) The ***MDE*** has elected to coordinate with the NIMAC.

(2) The ***MDE*** provide***s*** an assurance to the Secretary of the U.S. Department of Education that the ***MDE*** will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in ***§300.172 (Access to Instructional Materials)*** relieves ***the MDE*** of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) ***(blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats***

in accordance with Part B of IDEA) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(4) In order to meet its responsibility under §300.172(b)(2), (b)(3), and (c) to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the ***MDE*** ensure***s*** that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(c) *Preparation and delivery of files.* The ***MDE*** —

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter***s*** into a written contract with a publisher of the print instructional materials to—

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide***s*** instructional materials to blind persons or other persons with print disabilities in a timely manner.

(d) *Assistive technology.* ***T***he ***MDE***, to the maximum extent possible work***s*** collaboratively with the State agency responsible for assistive technology programs.

(e) *Definitions.*

(1) In this section and §300.120 ***(Monitoring Activities)***—

(i) *Blind persons or other persons with print disabilities* means children served under ***Part B of IDEA*** 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;

(ii) *National Instructional Materials Access Center* or *NIMAC* means the center established pursuant to section 674(e) of ***IDEA***;

(iii) *National Instructional Materials Accessibility Standard* or *NIMAS* has the meaning given the term in section 674(e)(3)(B) of ***IDEA***;

(iv) *Specialized formats* has the meaning given the term in section 674(e)(3)(D) of ***IDEA***.

(2) The definitions in paragraph (e)(1) ***above*** apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

300.173 Overidentification and disproportionality

The ***MDE has*** policies and procedures designed 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 described in §300.8 (***Child with a Disability***).

300.174 Prohibition on mandatory medication

(a) *General.* The ***MDE*** prohibit***s*** State and ***public agency*** personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311 ***(Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements)***, or receiving services.

(b) *Rule of construction.* Nothing in paragraph (a) ***above*** shall be construed to create a ***f***ederal 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 under §300.111 (related to ***C***hild ***F***ind).

300.175 *The MDE* as provider of FAPE or direct services

When the ***MDE*** provides FAPE to children with disabilities, or provides direct services to these children, the ***MDE***—

(a) Compl***ies*** with any additional requirements of §§300.201 and 300.202 and §§300.206 through 300.226 as if the ***MDE*** were an LEA; and

(b) May use amounts that are otherwise available to the agency under Part B of ***IDEA*** to serve those children without regard to §300.202(b) (relating to excess costs).

300.176 Exception for prior State plans

(a) *General.* If ***Mississippi*** has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of §300.100 ***(Eligibility for Assistance)***, including any policies and procedures filed under Part B of ***IDEA*** as in effect before, December 3, 2004, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of ***IDEA***.

(b) *Modifications made by* ***Mississippi****.*

(1) Subject to paragraph (b)(2) ***below***, policies and procedures submitted by the State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary.

(2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan.

(c) *Modifications required by the Secretary.* The Secretary may require ***Mississippi*** to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance, if—

(1) After December 3, 2004, the provisions of ***IDEA*** or the regulations in ***these policies*** are amended;

(2) There is a new interpretation of ***IDEA*** by a ***f***ederal court or ***Mississippi's*** highest court; or

(3) There is an official finding of noncompliance with ***f***ederal law or regulations.

300.177 State's sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities

(a) *State's sovereign immunity.*

(1) A State that accepts funds under ***IDEA Part B*** waives its immunity under the 11th amendment of the Constitution of the United States from suit to Federal court for a violation of this part.

(2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than a State.

(3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or in part after the date of enactment of the Education of the Handicapped Amendments of 1990.

(b) *Positive efforts to employ and advance qualified individuals with disabilities.* Each recipient of assistance under Part B of ***IDEA*** must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of ***IDEA***.

300.178 – 300.185 (*Omitted*)

300.186 Assistance under other *f*ederal programs

Part B of ***IDEA*** may not be construed to permit ***Mississippi*** 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 ***FAPE*** for children with disabilities in the State.

State Administration

Section

300.199 State administration

(a) *Rulemaking.* By receiving funds under Part B of ***IDEA, Mississippi***—

(1) Ensure***s*** that any State rules, regulations, and policies relating to ***Part B of IDEA*** conform to the purposes of ***Part B of IDEA***;

(2) Identif***ies*** in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of ***IDEA*** and ***f***ederal regulations; and

(3) Minimize***s*** the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of ***IDEA***.

(b) *Support and facilitation.* State rules, regulations, and policies under Part B of ***IDEA*** support and facilitate LEA and school-level system improvement

designed to enable children with disabilities to meet the challenging State student academic achievement standards.

SUBPART C – LOCAL EDUCATIONAL AGENCY ELIGIBILITY

Section

300.200 Condition of assistance

An LEA is eligible for assistance under ***Part B of IDEA*** for a fiscal year if the agency submits a plan that provides assurances to the ***MDE*** that the LEA meets each of the conditions in §§300.201 through 300.213 ***(LEA Eligibility)***.

300.201 Consistency with State policies

The LEA, in providing for the education of children with disabilities within its jurisdiction, ***has*** policies, procedures, and programs that are consistent with the ***MDE*** policies and procedures established under §§300.101 through 300.163 ***(FAPE Requirements; Other FAPE Requirements; LRE; Children in Private Schools; Children with Disabilities Enrolled by their Parents in Private Schools; Children with Disabilities in Private Schools Placed or Referred by Public Agencies; Children with Disabilities Enrolled by their Parents in Private Schools when FAPE is at Issue; SEA Responsibility for General Supervision and Implementation of Procedural Safeguards; State Complaint Procedures; Methods of Ensuring Services; and Additional Eligibility)*** and §§300.165 through 300.174 ***(Public Participation; State Advisory Panel; Other Provisions Required for State Eligibility)***.

300.202 Use of amounts

(a) *General.* Amounts provided to the LEA under Part B of ***IDEA***—

(1) ***Will*** be expended in accordance with the applicable provisions;

(2) ***Will*** be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) ***below*** (Excess Cost Requirement); and

(3) ***Will*** be used to supplement State, local, and other ***f***ederal funds and not to supplant those funds.

(b) *Excess cost requirement—*

(1) *General.*

(i) The excess cost requirement prevents an LEA from using ***Part B of IDEA*** funds to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) ***below***.

(ii) The excess cost requirement does not prevent an LEA from using ***Part B of IDEA*** 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 nondisabled children of these ages. However, the LEA must comply with the non-supplanting and other requirements of ***the IDEA 2004 regulations*** in providing the education and services for these children.

(2) (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before ***Part B of IDEA*** funds are used.

(ii) The amount described in paragraph (b)(2)(i) ***above*** is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.

(3) If two ***(2)*** or more LEAs jointly establish eligibility, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be.

300.203 Maintenance of effort

(a) *General.* Except as provided in §§300.204 (Exception to Maintenance of Effort) and 300.205 (Adjustment to Local Efforts in Certain Fiscal Years), ***Part B of IDEA*** funds provided to an 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.*

(1) Except as provided in paragraph (b)(2) ***below*** (Maintenance of Effort, Standard), the ***MDE*** determine***s*** that an LEA complies with the paragraph (a) ***above*** (Use of Amounts, General) 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 LEA 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.

(2) An LEA that relies on paragraph (b)(1)(i) ***above*** 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 in paragraph (b)(1)(i) ***above*** was used to establish its compliance.

(3) The ***MDE*** may not consider any expenditures made from funds provided by the Federal Government for which the ***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 the ***MDE*** in determining an LEA's compliance with the requirement in paragraph (a) ***above***.

300.204 Exception to maintenance of effort

Notwithstanding the restriction in §300.203(a) ***(Maintenance of Effort)***, an LEA may reduce the level of expenditures by the LEA under ***Part B of IDEA*** 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 ***IDEA*** regulations, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the ***MDE***, because the child—

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

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

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

300.205 Adjustment to local fiscal efforts in certain fiscal years

(a) *Amounts in excess.* Notwithstanding §300.202(a)(2) ***(Use of Amounts, General)*** and (b) ***(Excess Cost Requirements)*** and §300.203(a) ***(Maintenance of Effort, General)***, and except as provided in paragraph (d) ***below (Special Rule)*** and §300.230(e)(2) ***(MDE Flexibility)***, for any fiscal year for which the allocation received by an LEA under §300.705 ***(Subgrants to LEAs)*** exceeds the amount the LEA received for the previous

fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) ***(Maintenance of Effort)*** by not more than ***fifty (***50***)*** percent of the amount of that excess.

(b) *Uses of amounts to carry out activities under ESEA.* If an LEA exercises the authority under paragraph (a) ***above (Amounts in Excess)***, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) *State prohibition.* Notwithstanding paragraph (a) ***above (Amounts in Excess)***, if the ***MDE*** determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of ***IDEA (LEA Eligibility)*** and this part or the ***MDE*** has taken action against the LEA under section 616 of ***IDEA (Monitoring and Enforcement)*** and subpart F of these regulations, the ***MDE*** must prohibit the LEA from reducing the level of expenditures under paragraph (a) ***above (Amounts in Excess)*** for that fiscal year.

(d) *Special rule.* The amount of funds expended by an LEA for early intervening services under §300.226 must count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) ***above***.

300.206 Schoolwide programs under Title I of ESEA

(a) *General.* Notwithstanding the provisions of §§300.202 ***(Use of Amounts)*** and 300.203 ***(Maintenance of Effort)*** or any other provision of Part B of ***IDEA***, an LEA may use funds received under Part B of ***IDEA*** for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed—

(1) (i) The amount received by the LEA under Part B of ***IDEA*** for that fiscal year; divided by

(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

(b) *Funding conditions.* The funds described in paragraph (a) ***above*** are subject to the following conditions—

(1) The funds must be considered as ***f***ederal Part B ***of IDEA*** funds for purposes of the calculations required by §300.202(a)(2) and (a)(3) ***(Use of Amounts)***.

(2) The funds may be used without regard to the requirements of §300.202(a)(1) ***(Use of Amounts)***.

(c) *Meeting other Part B requirements.* Except as provided in paragraph (b) ***above (Funding Conditions)***, all other requirements of Part B of ***IDEA*** must be met by an LEA using Part B ***of IDEA*** funds in accordance with

paragraph (a) ***above***, including ensuring that children with disabilities in schoolwide program schools—

(1) Receive services in accordance with a properly developed Individualized Education Program (IEP); and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under ***IDEA***.

300.207 Personnel development

The LEA ensure***s*** that all personnel necessary to carry out ***Part B of IDEA*** are appropriately and adequately prepared, subject to the requirements of §300.156 (related to Personnel Qualifications) and section 2122 of the ESEA.

300.208 Permissive use of funds

(a) *Uses.* Notwithstanding §§300.202 ***(Use of Amounts)*** and 300.203(a) (Maintenance of Effort), and §300.162(b) ***(Supplementation of State, local, and other federal funds)***, funds provided to an LEA under Part B of ***IDEA*** may be used for the following activities—

(1) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services, and supplementary aids and services, provided in a ***general education*** class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

(2) *Early intervening services.* To develop and implement coordinated, early intervening educational services in accordance with §300.226 ***(Early Intervening Services)***.

(3) *High cost special education and related services.* To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) *Administrative case management.* An LEA may use funds received under Part B of ***IDEA*** to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities that is needed for the implementation of such case management activities.

300.209 Treatment of charter schools and their students

(a) *Rights of children with disabilities.* Children with disabilities who attend public charter schools and their parents retain all rights under ***the IDEA 2004 regulations***.

(b) *Charter schools that are public schools of the LEA.*

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

(i) 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

(ii) Provide funds under Part B of ***IDEA*** to those charter schools—

(A) 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

(B) At the same time as the LEA distributes other ***f***ederal funds to the LEA's other public schools, consistent with ***Mississippi***'s charter school law.

(2) If the public charter school is a school of an LEA, that receives funding under §300.705 (Subgrants to LEAs) and includes other public schools—

(i) The LEA is responsible for ensuring that the Part B of IDEA requirements are met; and

(ii) The LEA must meet the requirements of paragraph (b)(1) ***above***.

(c) *Public charter schools that are LEAs.* If the public charter school is an LEA, consistent with §300.28 ***(Local Educational Agency***), that receives funding under §300.705 ***(Subgrants to LEAs)***, that charter school is responsible for ensuring that the requirements of ***the IDEA 2004 regulations*** are met, unless ***S***tate law assigns that responsibility to some other entity.

(d) *Public charter schools that are not an LEA or a school that is part of an LEA.*

(1) If the public charter school is not an LEA receiving funding under §300.705 ***(Subgrants to LEAs)***, or a school that is part of an LEA receiving funding under §300.705 ***(Subgrants to LEAs)***, the ***MDE*** is responsible for ensuring that the requirements of ***the IDEA 2004 regulations*** are met.

(2) Paragraph (d)(1) ***above*** does not preclude the ***MDE*** from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the ***MDE*** shall maintain the ultimate responsibility for ensuring compliance with ***the IDEA 2004 regulations***, consistent with §300.149 ***(MDE responsibility for General Supervision)***.

300.210 Purchase of instructional materials

(a) *General.* Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner and subject to the same conditions as the ***MDE*** under §300.172 ***(Access to Instructional Materials)***.

(b) *Rights of LEA.*

(1) Nothing in this section ***(Purchase of Instructional Materials)*** shall be construed to require an LEA to coordinate with the NIMAC.

(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the ***MDE*** that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but who are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced by NIMAS files, receive those instructional materials in a timely manner.

300.211 Information for the *MDE*

The LEA must provide the ***MDE*** with information necessary to enable the ***MDE*** to carry out its duties under ***Part B of IDEA***, including, with respect to §§300.157 ***(Performance Goals and Indicators)*** and 300.160, information relating to the performance of children with disabilities participating in programs carried out under ***Part B of IDEA***.

300.212 Public information

The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under ***Part B of IDEA***.

300.213 Records regarding migratory children with disabilities

The LEA must cooperate in the Secretary of the U.S. Department of Education's efforts under section 1308 ***(the Coordination of Migrant Education Activities)*** of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging health and educational information regarding those children.

300.214 - 300.219 (Reserved)

300.220 Exception for prior local plans

(a) *General.* If an LEA or a State agency has on file with the ***MDE*** policies and procedures that demonstrate that the LEA or State agency meets any requirement of LEA Eligibility, including any policies and procedures filed under ***Part B of IDEA*** as in effect before December 3, 2004, the ***MDE*** must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under ***Part B of IDEA***.

(b) *Modification made by an LEA or State agency.* Subject to paragraph (c) ***below*** (Modifications required by the ***MDE***), policies and procedures submitted by an LEA or a State agency in accordance with this subpart ***(Subpart C - LEA Eligibility of the federal regulations)*** remain in effect until the LEA or State agency submits to the ***MDE*** the modifications that the LEA or the State agency determines are necessary.

(c) *Modifications required by the **MDE***. The ***MDE*** may require an 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 ***Part B of IDEA*** or State law if—

(1) After December 3, 2004, the effective date of ***IDEA*** of 2004, the applicable provisions of ***IDEA*** (or the regulations developed to carry out ***IDEA***) are amended;

(2) There is a new interpretation of an applicable provision of ***IDEA*** by ***f***ederal or State courts; or

(3) There is an official finding of noncompliance with ***f***ederal or State law or regulations.

300.221 Notification of LEA or State agency in case of ineligibility

If the ***MDE,*** determines that an LEA or State agency is not eligible under Part B of ***IDEA***, then the ***MDE will***—

(a) Notify the LEA or State agency of the determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

300.222 LEA and State agency compliance

(a) *General.* If the ***MDE***, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible is failing to comply with any requirement described in §§300.201

through 300.213 (LEA Eligibility), the ***MDE will*** reduce or ***will*** not provide any further payments to the LEA or State agency until the ***MDE*** is satisfied that the LEA or State agency is complying with that requirement.

(b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) ***above will***, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) *Consideration.* In carrying out its responsibilities, the ***MDE*** consider***s*** any decision resulting from a hearing held under §§300.511 through 300.533 (Impartial Due Process Hearing through Discipline Requirements) that is adverse to the LEA or State agency involved in the decision.

300.223 Joint establishment of eligibility

(a) *General.* The ***MDE*** require***s*** an LEA to establish its eligibility jointly with another LEA if the ***MDE*** determines that the LEA will be ineligible hereunder because the agency 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.* The ***MDE will*** not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) ***above*** unless the charter school is explicitly permitted to do so under ***Mississippi'***s charter school statute.

(c) *Amount of payments.* If the ***MDE*** requires the joint establishment of eligibility under paragraph (a) ***above***, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each such LEA would have received under §300.705 (Subgrants to LEAs), if the agencies were eligible for those payments.

300.224 Requirements for establishing eligibility

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under ***these policies*** must—

(1) Adopt policies and procedures that are consistent with ***Mississippi***'s policies and procedures; and

(2) Be jointly responsible for implementing programs that receive assistance under ***Part B of IDEA***.

(b) *Requirements for educational service agencies in general.*

If an educational service agency is required by State law to carry out programs under ***Part B of IDEA***, the joint responsibilities given to ***LEAs*** under Part B of ***IDEA—***

(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and

(2) Must be carried out only by that educational service agency.

(c) *Additional requirement.* Notwithstanding any other provision of §§300.223 through 300.224 (Joint Establishment of Eligibility and Requirements for Establishing Eligibility), an educational service agency must provide for the

education of children with disabilities in the least restrictive environment, as required by §300.112 ***(Individualized Education Programs (IEPs)***.

300.225 (Reserved)

300.226 Early intervening services

Purpose. The purpose of coordinated, early intervening services (CEIS) 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)

(a) *General.* An LEA may not use more than ***fifteen (***15***)*** percent of the amount the LEA receives under Part B of ***IDEA*** for any fiscal year, less any amount reduced by the LEA pursuant to ***34 CFR*** §300.205 ***(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, which may include interagency financing structures, for students in kindergarten through grade ***twelve (***12***) [***with a particular emphasis on students in kindergarten through grade three ***(3)]*** who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D ***of 34 CFR §300*** for examples of how

§300.205(d), regarding local maintenance of effort, and §300.226(a) affect one another.)

(b) *Activities.* In implementing coordinated, early intervening services under ***34 CFR §300.226***, an LEA may carry out activities that include—

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services and supports, including scientifically based literacy instruction.

(c) *Construction.* Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of ***IDEA*** or to delay appropriate evaluation of a child suspected of having a disability.

(d) *Reporting.* Each LEA that develops and maintains coordinated early intervening services under this section must annually report to the ***MDE (by June 30th of every fiscal year)*** on—

(1) The number of children served under this section who received early intervening services; and

(2) The number of children served under this section who received early intervening services and subsequently receive special education and

related services under Part B of ***IDEA*** during the preceding two-year period.

(e) *Coordination with ESEA.* Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

300.227 Direct services by the *MDE*

(a) *General.*

(1) The ***MDE will*** use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the ***MDE*** determines that the LEA or State agency—

(i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of ***IDEA***;

(ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

(iv) Has one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children.

(2) The ***MDE*** administrative procedures.

(i) In meeting the requirements in paragraph (a)(1) ***above***, the ***MDE*** may provide special education and related services directly, by contract, or through other arrangements.

(ii) The excess cost requirements of §300.202(b) do not apply to the ***MDE***.

(b) *Manner and location of education and services.* The ***MDE*** may provide special education and related services under paragraph (a) ***above*** in the manner and at the locations (including regional or State centers) as the ***MDE*** considers appropriate. The education and services must be provided in accordance with this part.

300.228 State agency eligibility

Any State agency that desires to receive a subgrant for any fiscal year under §300.705 (Subgrants to LEAs) must demonstrate to the satisfaction of the ***MDE*** that—

(a) All children with disabilities who are participating in programs and projects funded under Part B of ***IDEA*** receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

300.229 Disciplinary information

(a) A public 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.

300.230 *MDE* flexibility

(a) *Adjustment to State fiscal effort in certain fiscal years.* For any fiscal year for which the allotment received by ***Mississippi*** under ***34 CFR*** §300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-***f***ederal share of the costs of special education and related services, the

MDE, notwithstanding §§300.162 through 300.163 (related to State-level nonsupplanting and maintenance of effort), and §300.175 (related to direct services by the ***MDE***) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than ***fifty (***50***)*** percent of the amount of such excess.

(b) *Prohibition.* Notwithstanding paragraph (a) ***above***, if the Secretary determines that the ***MDE*** is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that ***Mississippi*** needs assistance, intervention, or substantial intervention under ***34 CFR*** §300.603, the Secretary prohibits the ***MDE*** from exercising the authority in paragraph (a) ***above***.

(c) *Education activities.* If the ***MDE*** exercises the authority under paragraph (a) ***above***, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) ***above***, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs.

(d) *Report.* For each fiscal year for which the ***MDE*** exercises the authority under paragraph (a) ***above***, the ***MDE*** must report to the Secretary—

(1) The amount of expenditures reduced pursuant to that paragraph; and

(2) The activities that were funded pursuant to paragraph (c) ***above***.

(e) *Limitation.*

(1) Notwithstanding paragraph (a) ***above***, the ***MDE*** may not reduce the level of expenditures described in paragraph (a) ***above*** if any LEA in

the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from combination of ***f***ederal funds received under Part B of ***IDEA*** and State funds received from the ***MDE***.

(2) If the ***MDE*** exercises the authority under paragraph (a) ***above***, LEAs in the State may not reduce local effort under §300.205 by more than the reduction in the State funds they receive.

SUBPART D – EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

Parental Consent

Section

300.300 Parental consent

(a) *Parental consent for initial evaluations.*

(1) (i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 504, obtain informed consent consistent with §300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

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

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) ***above***, or the parent fails to respond to a request consent, the public agency may, but is not required to, pursue the initial evaluation by utilizing the procedural safeguards in Subpart E of ***the IDEA 2004 regulations*** (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under §300.111 (***Child Find***) and §§300.301 through 300.111 (***Evaluations and Reevaluations***) if it declines to pursue the evaluation.

(b) *Parental consent for services.*

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of

the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—

(i) May not use the procedures in subpart E of ***the IDEA 2004 regulations*** (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP ***committee*** meeting or develop an IEP under §§300.320 and 300.324 for the child.

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

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of ***the IDEA 2004 regulations*** (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP ***committee*** meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services.

(c) *Parental consent for reevaluations.*

(1) Subject to paragraph (c)(2) ***below*** (***Parental Consent for Reevaluations***), each public agency—

(i) Must obtain informed parental consent, in accordance with §300.300(a)(1) ***above*** (***Parental Consent for Evaluations***), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency, may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) ***above***.

(iii) The public agency does not violate its obligation under §300.311 (***Specific Documentation for Eligibility Determination***) and §§300.301 through 300.311 (***Evaluations and Reevaluations and Additional Procedures for Identifying Children with Specific Learning Disabilities***) if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) ***above*** (***Parental Consent for Reevaluations***) need not be obtained if the public agency can demonstrate that—

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(d) Other consent requirements.

(1) Parental consent is not required before—

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for

other services and activities under this part if it ensures that each public agency in the State established and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), and (c) ***above*** to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) ***above***); and

(ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirements in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) ***above***, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

Evaluations and Reevaluations

300.301 Initial evaluations

(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 (***Additional Requirements for Evaluations and Reevaluations***) and 300.306 (***Determination of Eligibility***), before the initial provision of special education and related services to a child with a disability under ***the IDEA 2004 regulations***.

(b) *Request for initial evaluations.* Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. ***(1) When a parent, public agency or the Teacher Support Team makes a written request for an initial evaluation, a multidisciplinary evaluation team must meet within ten (10) school days to consider the request. If, after reviewing the request and other pertinent documentation, the multidisciplinary evaluation team suspects the child may have a disability, Written Prior Notice for Initial Evaluation must be given to the parent within five (5) school days of the meeting referenced within this section.***

(c) *Procedures for initial evaluations.* The initial evaluation—

(1) Must be conducted within sixty (60) ***calendar*** days of receiving parental consent for the evaluation; or

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child.

(3) LEAs must ensure requests for initial evaluation and responses to such requests are not limited by the number per year or the time of year requests are received.

(d) *Exception.* The timeframe described in paragraph (c)(1) ***above*** (***Procedures for Initial Evaluations***) does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) ***above*** has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability.

(e) The exception in paragraph (d)(2) ***above*** applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

300.302 Screening for instructional purposes is not evaluation

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

300.303 Reevaluations

(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) *Limitation.* A reevaluation conducted under paragraph (a) ***above***—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every three (3) years, unless the parent and the public agency agree that a reevaluation is unnecessary. ***When the parent and the public agency agree that a reevaluation is unnecessary, the continued eligibility ruling must be documented.***

300.304 Evaluation Procedures

(a) *Notice.* The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under §300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) *Other evaluation procedures.* Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do

academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social, and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are

coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e) (***Initial Evaluations, Exception***), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

300.305 Additional requirements for evaluations and reevaluations

(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP ***committee*** and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) (A) Whether the child is a child with a disability as defined in §300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii) (A) Whether the child needs special education and related services, or

(B) In the case of the reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modification 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 education curriculum.

(b) *Conduct of review.* The ***IEP committee*** described in paragraph (a) ***above*** may conduct its review without a meeting.

(c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) (***Review of Existing Evaluation Data Under Additional Requirements for Evaluations and Reevaluations***) of this section.

(d) *Requirements if additional data are not needed.*

(1) If the IEP ***committee*** and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) ***above*** unless requested to do so by the child's parents.

(e) *Evaluations before change in eligibility.*

(1) Except as provided in paragraph (e)(2) (***Additional Requirements for Evaluations and Reevaluations***) ***above***, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) ***above*** is not required before the termination of a child's eligibility under ***Part B of IDEA*** due to graduation from secondary school with a ***standard high school*** diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) ***above***, a public agency must provide the child a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting postsecondary goals.

300.306 Determination of eligibility

(a) *General.* Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined by §300.8 in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under ***Part B of IDEA***—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in §1208[3] of the ESEA ***[See Reference Guide]***);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) *Procedures for determining eligibility and educational need.*

(1) In interpreting evaluation data for the purposes of determining if a child is a child with a disability under §300.8 and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP (***Individualized Education Program***) must be developed for the child in accordance with §§300.320 through 300.324.

Additional Procedures for Identifying Children with Specific Learning Disabilities

Section

300.307 Specific learning disabilities

(a) *General.* The ***MDE hereby*** adopt***s***, consistent with §300.309, ***the following*** criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). ***Public agencies***—

(1) ***May*** use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);

(2) ***May*** use a process based on the child's response to scientific, research-based intervention; and***/or***

(3) May use other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section ***and the eligibility criteria set forth in the Special Education Eligibility Criteria Guidelines (pages 301-306)*** in determining whether a child has a specific learning disability.

300.308 Additional group members

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include—

(a) (1) The child's ***general education*** teacher; or

(2) If the child does not have a ***general education*** teacher, a ***general education*** classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual ***licensed by the SBE*** to teach a child of his or her age; and

(b) A special education teacher; and

(***c***) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, ***psychometrist,*** speech-language pathologist, or remedial reading teacher.

300.309 Determining the existence of a specific learning disabilities *(SLD)*

(a) The ***multidisciplinary evaluation team*** (group described in §300.306 ***including qualified professionals and the parent of a child***) may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—

(1) The child does not achieve adequately for the child's age or ***fails*** to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and

instruction appropriate for the child's age or State-approved grade-level standards—

(i) Oral expression

(ii) Listening comprehension

(iii) Written expression

(iv) Basic reading skill

(v) Reading fluency skills

(vi) Reading comprehension

(vii) Mathematics calculation

(viii) Mathematics problem solving

(2) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) ***above*** when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) ***above*** are not primarily the result of—

(i) A visual, hearing, or motor disability;

(ii) Mental retardation;

(iii) Emotional disturbance;

(iv) Cultural factors;

(v) Environmental or economic disadvantage; or

(vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to a lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in ***general*** education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 ***(Initial Evaluations)*** and 300.303 ***(Reevaluations)***, unless extended by mutual written agreement of the child's parents and a group of qualified professionals as described in §300.306(a)(1) ***(Determination of Eligibility)***—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2); and

(2) Whenever a child is referred for an evaluation.

300.310 Observation

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

(b) The ***multidisciplinary evaluation team***, in determining whether a child has a specific learning disability, must decide to—

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the ***multidisciplinary evaluation team*** conduct an observation of the child's academic performance in the ***general education*** classroom after the child has been referred for an evaluation and parental consent consistent with §300.300(a) is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

300.311 Specific documentation for the eligibility determination

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2) ***(Determination of Eligibility)***, must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1) ***(Procedures for Determining Eligibility and Educational Needs)***;

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1) ***(Determining the Existence of a Specific Learning Disability)***; and

(ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i) (***Determining the Existence of a Specific Learning Disability***); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development consistent with §300.309(a)(2)(ii);

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability, mental retardation; emotional disturbance; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child's parents were notified about—

(A) ***MDE***'s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusions, the group member must submit a separate statement presenting the member's conclusions.

Individualized Education Programs

Section

300.320 Definition of individualized education program

(a) *General.* The term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

(1) A statement of the child's present levels of academic achievement and functional performance, including—

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2) (i) A statement of measurable annual goals, including academic and functional goals designed to—

(A) 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

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of—

(i) How the child's progress toward meeting the annual goals described in paragraph (2) ***above*** will be measured; and

(ii) 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;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) ***above***, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the ***general education*** class and in the activities described in paragraph (a)(4) ***above***;

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments consistent with section 612(a)(16) of ***IDEA***; and

(ii) If the IEP ***committee*** determines that the child must take an alternate assessment instead of a particular ***general education*** State or district-wide assessment of student achievement, a statement of why—

(A) The child cannot participate in the ***general education*** assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) ***above***, and the anticipated frequency, location, and duration of those services and modifications.

(b) *Transition services***.** Beginning not later than the first IEP to be in effect when the child turns ***fourteen (14)***, or younger if determined appropriate by the IEP ***committee***, and updated annually, thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) *Transfer of rights at age of majority*. Beginning not later than one year before the child reaches the age of majority ***[age twenty-one (21) under Miss. Code Ann. §1-3-27]***, the IEP must include a statement that the child has been informed of the child's rights under Part B of ***IDEA***, if any, that will transfer to the child on reaching the age of majority under §300.520.

(d) *Construction.* Nothing in this section shall be construed to require—

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of ***IDEA***; or

(2) The IEP ***committee*** to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

300.321 IEP *committee*

(a) *General.* The public agency must ensure that the IEP ***committee*** for each child with a disability includes—

(1) The parents of the child;

(2) Not less than one ***general*** education teacher of the child (if the child is, or may be, participating in the ***general*** education environment);

(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(4) A representative of the public agency who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the public agency.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) ***above*** through (a)(6) ***below***;

(6) 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

(7) Whenever appropriate, the child with a disability.

(b) *Transition services participants.*

(1) In accordance with paragraph (a)(7) ***above***, the public agency must invite a child with a disability to attend the child's IEP ***committee*** meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).

(2) If the child does not attend the IEP ***committee*** meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) ***above***, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) *Determination of knowledge and special expertise.* The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) ***above*** must be made by the party (parents or public agency) who invited the individual to be a member of the IEP ***committee***.

(d) *Designating a public agency representative.* A public agency may designate a public agency member of the IEP ***committee*** to also serve as the agency representative, if the criteria in paragraph (a)(4) ***above*** are satisfied.

(e) *IEP **committee** attendance.*

(1) A member of the IEP ***committee*** described in paragraphs (a)(2) through (a)(5) ***above*** is not required to attend an IEP ***committee*** meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP ***committee*** described in paragraph (e)(1) ***above*** may be excused from attending an IEP ***committee*** 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—

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP ***committee***, input into the development of the IEP prior to the meeting.

(f) *Initial IEP* ***committee****, meeting for child under Part C* ***of IDEA***. In the case of a child who was previously served under Part C of ***IDEA (Infants and Toddlers with Disabilities)***, an invitation to the initial IEP ***committee*** meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

300.322 Parent participation

(a) *Public agency responsibility – general.* Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP ***committee*** meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) *Information provided to parents.*

(1) The notice required under paragraph (a)(1) ***above*** must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance ***by name and position (substitutions by position for persons named to be in attendance are permitted)***; and

(ii) Inform the parents of provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP ***committee*** who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of ***Part C*** of IDEA service coordinator or other representatives of the Part C system at the initial IEP ***committee*** meeting for a child previously served under Part C of ***IDEA***).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns ***fourteen (14)***, or younger if determined appropriate by the IEP ***committee*****,** the notice also must—

(i) Indicate—

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) *Other methods to ensure parent participation.* If neither parent can attend an IEP ***committee*** meeting, the public agency must use other methods to ensure parent participation, including ***but not limited to*** individual or conference

telephone calls, consistent with §300.328 (related to alternate means of meeting participation).

(d) *Conducting an IEP* ***committee*** *meeting without a parent in attendance.* A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed upon time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

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

(e) *Use of interpreters or other action as appropriate.* The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP ***committee*** meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) *Parent copy of child's IEP.* The public agency must give the parent a copy of the child's IEP at no cost to the parent.

300.323 When IEPs must be in effect

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) *IEP or IFSP for children aged three **(3)** through five **(5)**.*

(1) In the case of a child with a disability aged three ***(3)*** through five ***(5)*** ***and*** a two-year-old child with a disability who will turn age three ***(3)*** during the school year, the IEP ***committee*** must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of ***IDEA*** and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three ***(3)*** years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In ***developing an IEP or IFSP for a child aged three (3) through five (5)***, the public agency must—

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the ***agency and*** parents choose an IFSP, ***the agency must*** obtain written informed consent from the parents.

(c) *Initial IEPs; provision of services.* Each public agency must ensure that—

(1) A meeting to develop an IEP for a child 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 development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(d) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that—

(1) The child's IEP is accessible to each ***general*** education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) ***above*** is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications and supports that must be provided for the child in accordance with the IEP.

(e) *IEPs for children who transfer public agencies within* ***Mississippi****.* If a child with a disability (who had an IEP that was in effect in a previous public agency in ***Mississippi***), transfers to a new public agency in the State and

enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

(f) *IEPs for children who transfer from another State.* If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in ***the*** State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency—

(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

(g) *Transmittal of records.* To facilitate the transition for a child described in paragraphs (e) and (f) ***above***—

(1) The new public 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 public agency in which the child was enrolled, pursuant to 34 CFR section 99.31(a)(2) ***(Requirements under FERPA)***; and

(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency**.**

Development of IEP

300.324 Development, review, and revision of IEP

(a) *Development of IEP—*

(1) *General.* In developing each child's IEP, the IEP ***committee*** must consider—

(i) The strengths of the child;

(ii) The concerns of the parents for enhancing the education of their child;

(iii) The results of the initial or most recent evaluation of the child; and

(iv) The academic, developmental, and functional needs of the child.

(2) *Consideration of special factors.* The IEP ***committee***—

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider***s*** the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) In the case of a child with limited English proficiency, consider***s*** the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide***s*** 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;

(iv) Consider***s*** the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider***s*** the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider***s*** whether the child needs assistive technology devices and services.

(3) *Requirement with respect to* ***general*** *education teacher.* A ***general*** education teacher of a child with a disability, as a member of the IEP ***committee***, to the extent appropriate, participate***s*** in the development of the IEP of the child, including the determination of—

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(4) *Agreement.*

(i) In making changes to a child's IEP after the annual IEP ***committee*** meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP ***committee*** meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) ***above***, the public agency ensure***s*** that the child's IEP ***committee*** is informed of those changes.

(5) *Consolidation of IEP* ***committee*** *meetings.* To the extent possible, the public agency ***must*** encourage the consolidation of reevaluation meetings for the child and other IEP ***committee*** meetings for the child.

(6) *Amendments.* Changes to the IEP may be made either by the entire IEP ***committee*** at an IEP ***committee*** meeting, or as provided in paragraph (a)(4) ***above***, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) *Review and revision of IEPs—*

(1) *General.* Each public agency ensure***s*** that, subject to paragraphs (b)(2), and (b)(3) ***below***, the IEP ***committee***—

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) *Consideration of special factors.* In conducting a review of the child's IEP, the IEP ***committee*** consider***s*** the special factors described in paragraph (a)(2) ***above***.

(3) *Requirement with respect to* ***general*** *education teacher.* A ***general*** education teacher of the child, as a member of the IEP ***committee,*** consistent with paragraph (a)(3) ***above***, participate***s*** in the review and revision of the IEP of the child.

(c) *Failure to meet transition objectives—*

(1) *Participating agency failure.* If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency reconvene***s*** the IEP ***committee*** to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) *Construction.* Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) *Children with disabilities in adult prisons*—

(1) *Requirements that do not apply.* The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons—

(i) The requirements contained in section 612(a)(16) of ***IDEA*** and §300.320(a)(6) (relating to the participation of children with disabilities in general assessments).

(ii) The requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of ***IDEA*** will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) *Modifications of IEP or placement.*

(i) Subject to paragraph (d)(2)(ii) ***below***, the IEP ***committee*** of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) ***above***.

300.325 Private school placements by public agencies

(a) *Developing IEPs.*

(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency initiate***s*** and conduct***s*** a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.

(2) The agency ensure***s*** that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) *Reviewing and revising IEPs.*

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and

conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the ***MDE***.

300.326 (Reserved)

300.327 Educational placements

Consistent with §300.501(c), each public agency ensure***s*** that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

300.328 Alternative means of meeting participation

When conducting IEP ***committee*** meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of ***IDEA*** (such as scheduling, exchange of witness lists, and status conferences), the

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

SUBPART E – PROCEDURAL SAFEGUARDS

Due Process Procedures for Parents of Children

Section

300.500 Responsibilities of Public Agencies

Each public agency ***must*** establish, maintain, and implement procedural safeguards that meet the requirements of §§300.500 through 300.536.

300.501 Opportunity to examine records; parent participation in meetings

(a) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(b) *Parent participation in meetings.*

(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) ***above***.

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

(c) *Parent involvement in placement decisions.*

(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) ***above***, the public agency must use procedures consistent with the procedures described in §§300.322 (a) through (b)(1) ***(Parent Participation)***.

(3) 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 public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the

parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

300.502 Independent educational evaluation

(a) *General.*

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) ***below***.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) ***below***.

(3) For the purposes of this subpart—

(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(b) *Parent right to evaluation at public expense.*

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by

the public agency, subject to the conditions in paragraphs (b)(2) through (4) ***below***.

(2) If a parent requests an independent educational evaluation at public expense, the public agency, without unnecessary delay, either—

(i) File***s*** a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure***s*** that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) *Parent-initiated evaluations.*

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint subpart E ***of the IDEA 2004 regulations*** regarding that child.

(d) *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 cost of the evaluation must be at public expense.

(e) *Agency criteria.*

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) ***above***, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

300.503 Prior notice by the public agency, content of notice

(a) *Notice.* Written notice that meets the requirements of paragraph (b) ***below*** must be given to parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) *Content of notice.* The notice required under paragraph (a) ***above*** must include—

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

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

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an

initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of ***IDEA and State policies and procedures (procedural safeguards)***;

(6) A description of other options that the IEP ***committee*** considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) *Notice in understandable language.*

(1) The notice required under paragraph (a) ***above*** must be—

(i) Written in language understandable to the general public; and

(ii) Provided 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.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) ***above*** have been met.

300.504 Procedural safeguards notice

(a) *General.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parent—

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first ***formal*** State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;

(3) In accordance with the discipline procedures in §300.530(h); and

(4) Upon request by a parent.

(b) *Internet Web site.* A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) *Contents.* The procedural safeguards notice must include a full explanation of all of the procedural safeguards ***required by the IDEA 2004 regulations as well as those*** available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §300.520, §§300.530 through 300.536 and §§300.6***11*** through 300.625 relating to—

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and ***formal*** State complaint procedures, including—

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the ***formal*** State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child's placement during the pendency of any due process complaint;

(8) Procedures for students who are subject to placement in an interim alternative educational setting;

(9) Requirements for unilateral placement by parents of children in private schools at public expense;

(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(11) Civil actions, including the time period in which to file those actions; and

(12) Attorneys' fees.

(d) *Notice in understandable language.* The notice required under paragraph (a) ***above*** must meet the requirements of §300.503(c).

300.505 Electronic mail

A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

300.506 Mediation

(a) *General.* Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) *Requirements.* The procedures meet the following requirements—

(1) The procedures ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of ***IDEA***; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of ***IDEA***; and

(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3) (i) The ***MDE*** maintain***s*** a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The ***MDE*** select***s*** mediators on a random, rotational, or other impartial basis.

(4) The ***MDE*** bear***s*** the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) ***above***.

(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 the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—

(i) States 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 proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any ***f***ederal court or State court of a State receiving assistance under this part.

(c) *Impartiality of mediator.*

(1) An individual who serves as a mediator under this part—

(i) May not be an employee of the ***MDE*** or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.

300.507 Filing a due process complaint

(a) *General.*

(1) A parent or a public agency may file a due process complaint ***(request for a due process hearing)*** on any of the matters described in

§300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a 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 due process complaint, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) *Information for parents.* The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section.

300.508 Due process complaint

(a) *General.*

(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the ***Mississippi Department of Education, Office of Special Education, P.O. Box 771, 359 North West Street, Jackson, MS 39205***.

(b) *Content of complaint.* The due process complaint required in paragraph (a)(1) ***above*** must include—

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth [within the meaning of section 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;

(5) 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

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on the due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) ***above***.

(d) *Sufficiency of complaint.*

(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen ***(15)*** days of receipt of the due process complaint, that the receiving party

believes the due process complaint does not meet the requirements in paragraph (b) ***above***.

(2) Within five ***(5)*** days of receipt of notification under paragraph (d)(1) ***above***, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) ***above***, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five ***(5)*** days before a due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

(e) *LEA response to a due process complaint.*

(1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten ***(10)*** days of receiving the due process complaint, send to the parent a response that includes—

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

(ii) A description of other options that the IEP ***committee*** considered and the reasons why those options were rejected;

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

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

(2) A response by an LEA under paragraph (e)(1) ***above*** shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) *Other party response to a due process complaint.* Except as provided in paragraph (e) ***above***, the party receiving a due process complaint must, within ten ***(10)*** days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

300.509 Model form

(a) The ***MDE has*** develop***ed a*** model form to assist parents and public agencies in filing a request for due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other

parties in filing a ***formal*** State complaint under §§300.151 through 300.153. However, use of the model forms ***is not*** require***d***.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) ***above***, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements of §300.508(b) for filing a ***due process*** complaint.

300.510 Resolution process

(a) *Resolution meeting.*

(1) Within ***fifteen (***15***)*** days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP ***committee*** who have specific knowledge of the facts identified in the due process complaint that—

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraphs (a)(1) and (2) ***above*** need not be held if—

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in §300.506.

(4) The parent and the LEA determine the relevant members of the IEP ***committee*** to attend the meeting.

(b) *Resolution period.*

(1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within ***thirty (***30***)*** days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) ***below***, the timeline for issuing a final decision under §300.515 begins at the expiration of this ***thirty (***30***)*** day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) ***above***, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at

the conclusion of the ***thirty (***30***)*** day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) ***above*** within ***fifteen (***15***)*** days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) *Adjustments to* ***thirty (30)*** *day resolution period.* The ***forty-five (***45***)*** day timeline for the due process hearing in §300.515(a) starts the day after one of the following events—

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

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

(3) If both parties agree in writing to continue the mediation at the end of the ***thirty (***30***)*** day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) ***above***, the parties must execute a legally binding agreement that is—

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

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States.

(e) *Agreement review period.* If the parties execute an agreement pursuant to paragraph (c) ***above***, a party may void the agreement within ***three (***3***)*** business days of the agreement's execution.

300.511 Impartial due process hearing

(a) *General.* Whenever a due process complaint is received under §300.507 or §300.532 the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.

(b) *Agency responsible for conducting the due process hearing.* The hearing described in paragraph (a) ***above*** must be conducted by ***an impartial due process hearing officer in accordance with State laws and MDE policies and procedures***.

(c) *Impartial hearing officer.*

(1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the ***MDE*** or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of ***IDEA***, ***f***ederal and State regulations pertaining to ***IDEA***, and legal interpretations of ***IDEA*** by ***f***ederal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) ***above*** is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) ***The MDE shall maintain*** a list of the persons serv***ing*** as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) *Subject matter of due process hearings.* The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.

(e) *Timeline for requesting a hearing.* A parent or agency must request an impartial ***due process*** hearing on their complaint within two ***(2)*** years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

(f) *Exceptions to the timeline.* The timeline described in paragraph (e) ***above*** does not apply to a parent if the parent was prevented from filing a due process complaint due to—

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA withh***eld*** information from the parent that was required to be provided to the parent.

300.512 Hearing rights

(a) *General.* Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether the parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

(2) Present evidence***,*** confront, cross-examine and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five ***(5)*** business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) *Additional disclosure of information.*

(1) At least five ***(5)*** business days prior to a hearing ***being*** conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) ***above*** from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) *Parental rights at hearings.* Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) ***above*** provided at no cost to parents.

300.513 Hearing decisions

(a) *Decision of the hearing officer on the provision of FAPE.*

(1) Subject to paragraph (a)(2) ***below***, a hearing officer's determination of whether a child received FAPE must be on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies—

(i) Impeded the child's right to FAPE;

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

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) ***above*** shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

(b) **(*Omitted*)**

(c) *Separate request for a due process hearing.* Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State ***Special Education*** Advisory Panel established under §300.167; and

(2) Make those findings and decisions available to the public.

300.514 Finality of decision; appeal; impartial review

(a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final.

(b) **(*Omitted*)**

(c) **(*Omitted*)**

(d) *Finality of review decision.* The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

300.515 Timelines and convenience of hearings and reviews

(a) The ***MDE*** must ensure that not later than ***forty-five (***45***)*** days after the expiration of the ***thirty (***30***)*** day period under §300.510(b), or the adjusted time periods described in §300.510(c)—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) **(*Omitted*)**

(c) A hearing officer may grant specific extensions of time beyond the periods set out in paragraph (a) ***above*** at the request of either party.

(d) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

300.516 Civil action

(a) *General.* Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The 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.

(b) *Time limitation.* The party bringing the action shall have ***forty-five (45)*** days from the date of the decision of the hearing officer to file a civil action.

(c) *Additional requirements.* In any action brought under paragraph (a) ***above***, the court—

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of ***IDEA*** without regard to the amount in controversy.

(e) *Rule of construction.* Nothing ***herein or*** in ***the IDEA 2004 regulations*** restricts or limits 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 ***f***ederal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of ***IDEA***, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of ***IDEA***.

300.517 Attorneys' fees

(a) *In general.*

(1) In any action or proceeding brought under section 615 of ***IDEA***, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to—

(i) The prevailing party who is the parent of a child with a disability;

(ii) A prevailing party who is ***the 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

(iii) A prevailing ***MDE*** or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or

subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) **(*Omitted*)**

(b) *Prohibition on use of funds.*

(1) Funds under Part B of ***IDEA*** may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of ***IDEA*** and subpart E of this part.

(2) Paragraph (b)(1) ***above*** does not preclude a public agency from using funds under Part B of ***IDEA*** for conducting an action or proceeding under section 615 of ***IDEA***.

(c) *Award of fees.* A court awards reasonable attorneys' fees under section 615(i)(3) of ***IDEA*** consistent with the following**—**

(1) Fees awarded under section 615(i)(3) of ***IDEA*** must be based on rates prevailing 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 under this paragraph.

(2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of ***IDEA*** for services performed subsequent to the time of a written offer of settlement to a parent if—

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an

administrative proceeding, at any time more than ***ten (***10***)*** days before the proceeding begins;

(B) The offer is not accepted within ***ten (***10***)*** days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP ***committee*** unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the ***MDE***, for a mediation described in §300.506.

(iii) A meeting conducted pursuant to §300.510 shall not be considered—

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) ***above***, 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.

(4) Except as provided in (c)(5) ***below***, the court reduces, accordingly, the amount of attorneys' fees awarded under section 615 of the ***IDEA***, if the court finds that—

(i) The parent, or the 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 LEA the appropriate information in the due process request notice in accordance with §300.508.

(5) The provisions of paragraph (c)(4) ***above*** do not apply in any action or proceeding if the court finds that the ***MDE*** or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the ***IDEA***.

300.518 Child's status during proceedings

(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the ***MDE*** or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

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

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of ***IDEA*** to Part B and is no longer eligible for Part C services because the child has turned three ***(3)***, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and public agency.

(d) If the hearing officer in a due process hearing conducted by the ***MDE*** agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the ***MDE*** and the parents for purposes of paragraph (a) ***above***.

300.519 Surrogate parents

(a) *General.* Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in §300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of the State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11434a(6)].

(b) *Duties of public agency.* The duties of a public agency under paragraph (a) ***above*** include the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) *Wards of the State.* In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) ***below***.

(d) *Criteria for selection of surrogate parents.*

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Is not an employee of the ***MDE***, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) *Non-employee requirement; compensation.* A person otherwise qualified to be a surrogate parent under paragraph (d) ***above*** is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) *Unaccompanied homeless youth.* In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents, without regard to paragraph (d)(2)(i) ***above***, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) ***above***.

(g) *Surrogate parent responsibilities.* The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(h) ***Public agency*** *responsibility.* ***Each public agency shall*** make reasonable efforts to ensure the assignment of a surrogate parent not more than ***thirty (***30***)*** days after ***the*** public agency determines that the child needs a surrogate parent.

300.520 Transfer of parental rights at age of majority

(a) *General.* When a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1) (i) The public agency must provide any notices required by ***the IDEA 2004 regulations*** to both the child and the parents; and

(ii) All rights accorded to parents under ***the IDEA 2004 regulations*** transfer to the child;

(2) All rights accorded to parents under ***the IDEA 2004 regulations*** transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever ***Mississippi*** provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) ***above***, the ***public*** agency must notify the child and the parents of the transfer of rights.

(b) *Special rule.* ***The MDE has*** establish***ed*** procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of ***IDEA*** if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

300.521 – 300.529 (Reserved)

Discipline Procedures

Section

300.530 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, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) *General.*

(1) School personnel under this section, may remove a child with a disability who violates a code of student conduct from his or her 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 those alternatives are applied to children without disabilities), and for 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 §300.536).

(2) 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, during any subsequent days of removal, the public agency must provide services to the extent required under paragraph (d) ***below***.

(c) *Additional authority* ***for disciplinary changes of placement***. 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 paragraph (e) ***below***, school personnel may apply 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, except as provided in paragraph (d) ***below***.

(d) *Services.*

(1) A child with a disability who is removed from the child's current placement, pursuant to paragraphs (c) ***above*** or (g) ***below*** must—

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications, that are designed to address the behavior violation ***to prevent said behavior from recurring***.

(2) The services required by paragraph (d)(1) ***above***, (d)(3), (d)(4), and (d)(5) ***below*** may be provided in an interim alternative educational setting.

(3) A public agency is only required 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 it provides services to a child without disabilities who is similarly removed.

(4) 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 a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under §300.536, the child's IEP ***committee*** determines appropriate services under paragraph (d)(1) ***above***.

(e) *Manifestation determination.*

(1) 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 LEA, the parent, and relevant members of the child's IEP ***committee*** (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—

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

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP ***committee*** determine that a condition in either paragraph (e)(1)(i) or (1)(ii) ***above*** was met.

(3) If the LEA, the parent, and relevant members of the child's IEP ***committee*** determine the condition described in paragraph (e)(1)(ii) ***above*** was met, the LEA must take immediate steps to remedy those deficiencies.

(f) *Determination that behavior was a manifestation.* If the LEA, the parent, and relevant members of the IEP ***committee*** make the determination that the conduct was a manifestation of the child's disability, the IEP ***committee*** must—

(1) Either—

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavior assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) ***below***, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(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, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of ***the*** 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 ***the*** 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 ***the*** LEA.

(h) *Notification.* On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) *Definitions.* For the purposes of this section, the following definitions apply**—**

(1) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act [21 U.S.C. 812(c)].

(2) *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 ***f***ederal law.

(3) *Serious bodily injury* ***is defined in*** paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) *Weapon* ***is defined in*** paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

300.531 Determination of setting

The child's IEP ***committee*** determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g).

300.532 Appeal

(a) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

(b) *Authority of hearing officer.*

(1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) ***above***.

(2) In making the determination under paragraph (b)(1) ***above***, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than

forty-five (45***)*** school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) ***above*** may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) *Expedited due process hearing.*

(1) Whenever a hearing is requested under paragraph (a) ***above***, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) ***below***.

(2) The ***MDE*** is responsible for arranging the expedited due process hearing, which must occur within ***twenty (***20***)*** school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ***ten (***10***)*** school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) ***below***, or agree to use the mediation process described in §300.506—

(i) A resolution meeting must occur within seven ***(7)*** days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within ***fifteen (***15***)*** days of the receipt of the due process complaint.

(4) **(*Omitted*)**

(5) The decisions on expedited due process hearings are appealable consistent with §300.514.

300.533 Placement during appeals

When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the ***MDE*** or LEA agree otherwise.

300.534 Protections for children not determined eligible for special education and related services

(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) ***below***) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) *Basis of knowledge.* A public agency must 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 expressed concern in writing to supervisory or administrative personnel of the appropriate educational 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 requested an evaluation of the child pursuant to §§300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) ***above*** if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) *Conditions that apply if no basis of knowledge.*

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) ***above***) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) ***below***.

(2) (i) 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 §300.530, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) 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 agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of ***IDEA***.

300.535 Referral to and action by law enforcement and judicial authorities

(a) *Rule of construction.* Nothing in this part prohibits 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 ***f***ederal and State law to crimes committed by a child with a disability.

(b) *Transmittal of records.*

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that such transmission is permitted by the Family Educational Rights and Privacy Act.

300.536 Change of placement because of disciplinary removals

(a) For purposes of removals of a child with a disability from the child's current educational placement, under §§300.530 through 300.535, a change of 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—

(i) Because the series of removals total more than ***ten (***10***)*** school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) 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 one another.

(b) (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

300.537 (*Omitted*)

300.538 – 300.599 (Reserved)

SUBPART F – MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

Monitoring, Technical Assistance and Enforcement

Section

300.600 State monitoring and enforcement

(a) The ***MDE***—

(1) Monitor***s*** the implementation of ***Part B of IDEA***;

(2) Make***s*** determinations annually about the performance of each LEA using the categories in §300.603(b)(1);

(3) Enforce***s Part B of IDEA***, consistent with §300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the ***MDE***); and

(4) Report***s*** annually on the performance of the State and of each LEA under ***Part B of IDEA***, as provided in §300.602(b)(1)(i)(A) and (b)(2).

(b) The primary focus of the ***MDE's*** monitoring activities ***is***—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of ***IDEA***, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As part of its responsibilities under paragraph (a) ***above***, the ***MDE*** use***s*** quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) ***below***, and the indicators established by the Secretary ***of the U.S. Department of Education*** for State Performance Plans.

(d) The ***MDE*** monitor***s*** the LEAs located in ***Mississippi***, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in these areas—

(1) Provision of FAPE in the least restrictive environment;

(2) State exercise of general supervision, including ***C***hild ***F***ind, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in §300.43 and in 20 U.S.C. 1437(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the ***MDE*** must ensure that when it identifies noncompliance with the requirements of ***Part B of IDEA*** by LEAs, the noncompliance is

corrected as soon as possible, and in no case later than one ***(1)*** year after the ***MDE***'s identification of noncompliance.

300.601 State performance plans and data collection

(a) *General.* ***The MDE has*** in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of ***IDEA***, and describes how the State will improve such implementation.

(1) ***The MDE*** submit***s*** the State ***P***erformance ***P***lan ***(SPP)*** to the Secretary ***of the U.S. Department of Education*** for approval in accordance with the approval process described in section 616(c) of ***IDEA***.

(2) ***The MDE*** review***s the SPP*** at least once every six ***(6)*** years, and submit***s*** any amendments to the Secretary ***of the U.S. Department of Education***.

(3) As part of the ***SPP***, ***the MDE*** establish***ed*** measurable and rigorous targets for the indicators established by the Secretary ***of the U.S. Department of Education*** under the priority areas described in §300.600(d).

(b) *Data collection.*

(1) ***The MDE*** collect***s*** valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the ***SPP***.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data

through State monitoring or sampling, the ***MDE will*** collect data on those indicators for each LEA at least once during the period of the ***SPP***.

(3) Nothing in Part B of ***IDEA*** 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 Part B of ***IDEA***.

300.602 State use of targets and reporting

(a) *General.* ***The MDE*** use***s*** the targets established in ***the SPP*** under §300.601 and the priority areas described in §300.600(d) to analyze the performance of each LEA.

(b) *Public reporting and privacy—*

(1) *Public report.*

(i) Subject to paragraph (b)(1)(ii) ***below***, the ***MDE***—

(A) Report***s*** annually to the public on the performance of each LEA located in ***Mississippi*** on the targets in the **SPP** as soon as practicable but no later than 120 days following ***Mississippi's*** submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make***s*** each of the following items available through public means: ***Mississippi's*** performance plan, under §300.601(a); annual performance reports, under paragraph (b)(2) of this section; and

Mississippi's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, ***Mississippi*** post***s*** the plan and reports on ***MDE's*** website, and distribute***s*** the plan and reports to the media and through public agencies.

(ii) If the ***MDE***, in meeting the requirements of paragraph (b)(1)(i) ***above***, collects performance data through State monitoring or sampling, the ***MDE will*** include in its report under paragraph (b)(1)(i)(A) ***above*** the most recently available performance data on each LEA, and the date the data were obtained.

(2) *State performance report.* ***The MDE*** must report annually to the Secretary on the performance of the State under the ***SPP***.

(3) *Privacy.* ***The MDE*** must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data are insufficient to yield statistically reliable information.

300.603 (***Omitted***)

300.604 (***Omitted***)

300.605 (***Omitted***)

300.606 Public Attention

Whenever ***Mississippi*** receive***s*** notice that the Secretary is proposing to take or is taking an enforcement action pursuant to ***34 CFR***§300.604, ***the MDE will***, by means of a public notice, take such actions as may be necessary to notify the public within ***Mississippi*** of the pendency of an action pursuant to ***34 CFR***§300.604, including, at a minimum, by posting the notice on the ***MDE's*** website and distributing the notice to the media and through public agencies.

300.607 (*Omitted*)

300.608 State enforcement

(a) If the ***MDE*** determines that an LEA is not meeting the requirements of Part B of ***IDEA***, including the targets in the ***SPP***, the ***MDE*** must prohibit the LEA from reducing the LEA's maintenance of effort under §300.203 for any fiscal year.

(b) Nothing in ***the IDEA 2004 regulations or herein*** shall be construed to restrict ***the MDE*** from utilizing any other authority available to it to monitor and enforce the requirements of Part B of ***IDEA***.

300.609 (*Omitted*)

Confidentiality of Information

Section

300.610 (***Omitted***)

300.611 Definitions

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

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

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

300.612 Notice to parents

(a) The ***MDE*** give***s*** notice that is adequate to fully inform parents about the requirements of §300.123, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the

methods ***MDE*** intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout ***Mississippi*** of the activity.

300.613 Access rights

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than ***forty-five (***45***)*** days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from a participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records ***after providing written authorization to the agency.***

(c) An agency may presume that the parent has authority to inspect and review the records relating to his or her child unless the agency has been advised that parent does not have the authority under applicable State laws governing such matters as guardianship, separation, and divorce.

300.614 Record of access

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of ***IDEA*** (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

300.615 Records on more than one child

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

300.616 List of types and locations of information

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

300.617 Fees

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

300.618 Amendments of records at parent's request

(a) A parent who believes that information in the education records collected, maintained, or used under ***Part B of IDEA*** is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

(d) If the agency agrees to amend the information in accordance with the request, it must notify the parent within a reasonable time period when the amendment has been completed.

300.619 Opportunity for a hearing

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

300.620 Result of hearing

(a) If, as a result of the hearing, the 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 so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion of the record is maintained by the agency; and

(2) If the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

300.621 Hearing procedures

A hearing held under §300.619 must be conducted according to the procedures at 34 CFR §99.22.

300.622 Consent

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) ***below***, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b) (1) Except as provided in paragraphs (b)(2) and (b)(3) ***below***, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law ***(age 21)***, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3).

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

300.623 Safeguards

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding ***the MDE***'s policies and procedures under §300.123 and 34 CFR part 99.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

300.624 Destruction of information

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, telephone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

300.625 Children's rights

(a) The ***MDE has*** policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for FERPA in 34 CFR section 99.5(a), the rights of parents regarding educational records are transferred to the student at age ***eighteen (***18***)***.

(c) If the rights accorded to parents under Part B of ***IDEA*** are transferred to a student who reaches the age of majority, consistent with §300.520, the rights regarding educational records in §§300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of ***IDEA*** to the student and the parents.

300.626 Enforcement

The ***MDE has*** in effect polices and procedures, including sanctions that the ***MDE*** uses, to ensure that its policies and procedures consistent with §§300.611 through 300.625 are followed and that the requirements of ***IDEA*** and the regulations in this part are met.

300.627 ***(Omitted)***

Reports – Program Information

Section

300.640 Annual report of children served – report requirement

(a) The ***MDE*** annually report***s*** to the Secretary on the information required by section 618 of ***IDEA*** at the times specified by the Secretary.

(b) The ***MDE*** submit***s*** the report on forms provided by the Secretary.

300.641 Annual report of children served – information required in the report

(a) For purposes of the annual report required by section 618 of ***IDEA*** and §300.640, the ***MDE*** and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and

related services on any date between October 1 and December 1 of each year. The ***MDE has selected December 1.***

(b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

(c) The ***MDE*** may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the ***MDE*** must report that child in accordance with the following procedure—

(1) If a child has only two ***(2)*** disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."

300.642 Data reporting

(a) *Protection of personally identifiable data.* The data described in section 618(a) of ***IDEA*** and in §300.641 must be publicly reported by the ***MDE*** in a manner that does not result in the disclosure of data identifiable to individual children.

(b) *Sampling.* ***Upon receiving permission from the Secretary of Education, Mississippi may*** obtain the data in section 618(a) of ***IDEA*** through sampling.

300.643 Annual report of children served – certification

The ***MDE*** include***s*** in its report a certification signed by an authorized official of the agency that the information provided under §300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on ***December 1***.

300.644 Annual report of children served – criteria for counting children

The ***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—

(a) Provides them with both special education and related services that meet State standards;

(b) Provides them only with special education, if a related service is not required, that meets State standards; or

(c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under ***IDEA*** and receive special education or related services or both that meet State standards under §§300.132 through 300.144.

300.645 Annual report of children served – other responsibilities of the *MDE*

In addition to meeting the other requirements of §§300.640 through 300.644, the ***MDE***—

(a) Establish***es*** procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set***s*** dates by which those agencies and institutions must report to the ***MDE*** to ensure that the State complies with §300.640(a);

(c) Obtain***s*** certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate***s*** the data from the count obtained from each agency and institution, and prepare***s*** the reports required under §§300.640 through 300.644; and

(e) Ensure***s*** that documentation is maintained that enables the ***MDE*** and the Secretary to audit the accuracy of the count.

300.646 Disproportionality

(a) *General.* The ***MDE*** provide***s*** for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs with respect to—

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of ***IDEA***;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(b) *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 these children, in accordance with paragraph (a) ***above***, the ***MDE***—

(1) Provide***s*** for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of ***IDEA***;

(2) Require***s*** any LEA identified under paragraph (a) ***above*** to reserve the maximum amount of funds under section 613(f) of ***IDEA*** to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) ***above***; and

(3) Require***s*** the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) ***above***.

SUBPART G – AUTHORIZATION, ALLOTMENT, USE OF FUNDS, AND AUTHORIZATION OF APPROPRIATIONS

Allotments, Grants, and Uses of Funds

Section

300.700 (***Omitted***)

300.701 (***Omitted***)

300.702 (***Omitted***)

300.703 (***Omitted***)

300.704 State-level activities

(a) *State administration.*

(1) For the purpose of administering Part B of ***IDEA***, including paragraph (c) ***below***, section 619 of ***IDEA***, and the coordination of activities under Part B of ***IDEA*** with, and providing technical assistance to, other programs that provide services to children with disabilities ***The MDE*** may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of ***IDEA*** for fiscal year 2004 or

$800,000 (adjusted in accordance with paragraph (a)(2) ***below***), whichever is greater.

(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts—

(i) The maximum amount ***Mississippi*** was eligible to reserve for State administration under section 611 of ***IDEA*** for fiscal year 2004; and

(ii) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Prior to expenditure of funds under paragraph (a) ***above***, the ***MDE*** must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of ***IDEA*** are current.

(4) Funds reserved under paragraph (a)(1) ***above*** may be used for the administration of Part C of ***IDEA***, if the ***MDE*** is the lead agency for ***Mississippi*** under that Part.

(b) *Other State-level activities.*

(1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that ***the MDE*** may reserve for other State-level activities is as follows***—***

(i) If the amount that ***the MDE*** sets aside for State administration under paragraph (a) ***above*** is greater than $850,000 and the ***MDE*** opts to finance a high cost fund under paragraph (c) ***below—***

(A) For fiscal years 2005 and 2006, ***ten (***10***)*** percent of the ***MDE***'s allocation under ***34 CFR*** §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to ***ten (***10***)*** percent of the ***MDE***'s allocation for fiscal year 2006 under ***34 CFR*** §300.703 adjusted cumulatively for inflation.

(ii) If the amount that the ***MDE*** sets aside for State administration under paragraph (a) ***above*** is greater than $850,000 and the ***MDE*** opts not to finance a high cost fund under paragraph (c) ***below***—

(A) For fiscal years 2005 and 2006, nine ***(9)*** percent of the ***MDE***'s allocation under ***34 CFR*** §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine ***(9)*** percent of the ***MDE***'s allocation for fiscal year 2006 adjusted cumulatively for inflation.

(iii) If the amount that the ***MDE*** sets aside for State administration under paragraph (a) ***above*** is less than or equal to $850,000 and the ***MDE*** opts to finance a high cost fund under paragraph (c) ***below—***

(A) For fiscal years 2005 and 2006, 10.5 percent of the ***MDE***'s allocation under ***34 CFR*** §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the ***MDE***'s allocation for fiscal year 2006 under ***34 CFR*** §300.703 adjusted cumulatively for inflation.

(iv) If the amount that the ***MDE*** sets aside for State administration under paragraph (a) ***above*** is equal to or less than $850,000 and the ***MDE*** opts not to finance a high cost fund under paragraph (c) ***below—***

(A) For fiscal years 2005 and 2006, nine and one-half ***(9½)*** percent of the ***MDE***'s allocation under ***34 CFR*** §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half ***(9½)*** percent of the ***MDE***'s allocation for fiscal year 2006 under ***34 CFR*** §300.703 adjusted cumulatively for inflation.

(2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Some portion of the funds reserved under paragraph (b)(1) ***above*** must be used to carry out the following activities—

(i) For monitoring, enforcement, and complaint investigation; and

(ii) To establish and implement the mediation process required by section 615(e) of ***IDEA***, including providing for the costs of mediators and support personnel;

(4) Funds reserved under paragraph (b)(1) ***above*** also may be used to carry out the following activities—

(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;

(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

(iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities;

(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning;

(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

(vii) To assist LEAs in meeting personnel shortages;

(viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and

(xi) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA.

(c) ***LEA*** *high cost fund.*

(1) In general—

(i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, ***the*** State has the option to reserve for each fiscal year ***ten (***10***)*** percent of the amount of funds the ***MDE*** reserves for other State-level activities under paragraph (b)(1) ***above***—

(A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) during the first and succeeding fiscal years of the high cost fund; and

(B) To support innovative and effective ways of cost sharing by the ***MDE***, by an LEA, or among a consortium of LEAs, as determined by the ***MDE*** in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) ***below***.

(ii) For purposes of paragraph (c), ***LEA*** includes a charter school that is an LEA, or a consortium of LEAs.

(2) (i) ***The MDE*** must not use any of the funds reserve***d*** pursuant to paragraph (c)(1)(i) ***above***, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The ***MDE*** may use funds reserve***d*** under paragraph (a) ***above*** for those administrative costs.

(ii) ***The MDE*** must not use more than ***five (***5***)*** percent of the funds reserve***d*** pursuant to paragraph (c)(1)(i) ***above*** for each fiscal year to

support innovative and effective ways of cost sharing among consortia of LEAs.

(3) (i) The ***MDE*** must develop, not later than ***ninety (***90***)*** days after reserve***d*** funds under paragraph (c)(1)(i) ***above***, annually review, and amend as necessary, ***the*** State***'s*** plan for the high cost fund. ***The*** State plan must—

(A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum—

(*1*) Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and

(*2*) Ensures that the cost of the high need child with a disability is greater than ***three (***3***)*** times the average per pupil expenditure (as defined in section 9101 of the ESEA) in ***the*** State;

(B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA;

(C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§300.114 through 300.118;

(D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the ***MDE*** under paragraph(c)(3)(i)(B) ***above***;

(E) Establish an annual schedule by which the ***MDE*** must make its distributions from the high cost fund each fiscal year; and

(F) If the ***MDE*** elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) ***above***, describe how these funds will be used.

(ii) The ***MDE*** must make its final State plan available to the public not less than ***thirty (***30***)*** days before the beginning of the school year, including dissemination of such information on ***MDE's*** website.

(4) (i) ***The MDE*** must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) ***above*** in accordance with the State plan published pursuant to paragraph (c)(3) ***above***.

(ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) ***above***, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined necessary, consistent with §300.114, to implement a child's IEP.

(iii) The funds in the high cost fund remain under the control of the ***MDE*** until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) ***below***.

(5) The disbursements under paragraph (c)(4) ***above*** must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.

(6) Nothing in paragraph (c) of this section —

(i) Limits or conditions the right of a child with a disability who is assisted under Part B of ***IDEA*** to receive FAPE pursuant to section 612(a)(1) of ***IDEA*** in the least restrictive environment pursuant to section 612(a)(5) of ***IDEA***; or

(ii) Authorizes ***the MDE*** or LEA to establish a limit on what may be spent on the education of a child with a disability.

(7) Notwithstanding the provisions of paragraphs (c)(1) through (6) ***above***, ***the MDE*** may use funds reserved pursuant to paragraph (c)(1)(i) ***above*** for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) ***above***.

(8) Disbursements provided under paragraph (c) must not be used to pay costs that otherwise would be reimbursed as medical assistance for a

child with a disability under the State Medicaid program under Title XIX of the Social Security Act.

(9) Funds reserved under paragraph (c)(1)(i) ***above*** from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) ***above*** before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under §300.705 during their final year of availability.

(d) Inapplicability of certain prohibitions. ***The MDE*** may use funds reserve***d*** under paragraphs (a) and (b) ***above*** without regard to—

(1) The prohibition on commingling of funds in §300.162(b).

(2) The prohibition on supplanting other funds in §300.162(c).

(e) Special rule for increasing funds. ***The MDE*** may use funds reserve***d*** under paragraph (a)(1) ***above*** as a result of inflationary increases under paragraph (a)(2) ***above*** to carry out activities authorized under paragraph(b)(4)(i), (iii), (vii), or (viii) ***above***.

(f) Flexibility in using funds for Part C. ***As a*** State eligible to receive a grant under section 619 of ***IDEA, the MDE*** may use funds made available under paragraph (a)(1) ***above***, §300.705(c), or §300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of ***IDEA*** and the ***MDE*** to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of

IDEA to children with disabilities who are eligible for services under section 619 of ***IDEA*** and who previously received services under Part C of ***IDEA*** until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

300.705 Subgrants to LEAs

(a) *Subgrants required*. ***When Mississippi*** receives a grant under section 611 of ***IDEA*** for any fiscal year, ***the MDE*** distribute***s*** any funds not reserve***d*** under §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of ***IDEA*** for use in accordance with Part B of ***IDEA***. Effective with funds that become available on July 1, 2009, ***Mississippi will*** distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

(b) *Allocations to LEAs.* For each fiscal year for which funds are allocated to the State under ***34 CFR*** §300.703, the ***MDE*** allocate***s*** the funds as follows—

(1) *Base payments.* The ***MDE*** first award***s*** each LEA, described in paragraph (a) ***above*** the amount the LEA would have received under section 611 of ***IDEA*** for fiscal year 1999, ***since*** the ***MDE*** distributed ***seventy-five (***75***)*** percent of its grant for that year under section 611(d) of ***IDEA*** as that section was then in effect.

(2) *Base payment adjustments.* For any fiscal year after 1999—

(i) If a new LEA is created, the ***MDE*** divide***s*** the base allocation determined under paragraph (b)(1) ***above*** for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages ***three (***3***)*** through ***twenty (***2***0)***, or ages ***six (***6***)*** through ***twenty (***2***0)*** if ***Mississippi*** has had its payment reduced under ***34 CFR*** §300.703(b), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the ***MDE will*** combine the base allocations of the merged LEAs; and

(iii) If, for two ***(2)*** or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages ***three (***3***)*** through ***twenty (***2***0)*** change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages ***three (***3***)*** through ***twenty (***2***0)***, or ages ***six (***6***)*** through ***twenty (***2***0)*** if ***Mississippi*** has had its payment reduced under ***34 CFR*** §300.703(b)***,*** currently provided special education by each affected LEA.

(iv) If an LEA received a base payment of zero in its first year of operation, the ***MDE*** adjust***s*** the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The ***MDE will*** divide the base allocation determined under paragraph (b)(1) of this section for the

LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative number of children with disabilities ages ***three (***3***)*** through ***twenty (***20***)***, or ***six (***6***)*** through ***twenty (***20***)*** currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(3) *Allocation of remaining funds.* After making allocations under paragraph (b)(1) ***above***, as adjusted by paragraph (b)(2) ***above***, ***MDE***—

(i) Allocate***s eighty-five (***85***)*** percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction; and

(ii) Allocate***s fifteen (***15***)*** percent of those remaining funds to LEAs in accordance with their relative numbers of children living in poverty, as determined by ***MDE***.

(c) *Reallocation of* ***LEA*** *funds.*

(1) If ***the MDE*** determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the ***MDE*** may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE to other LEAs in ***Mississippi*** that are not adequately

providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The ***MDE*** may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.704.

(2) After ***the MDE*** distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the ***MDE*** may reallocate any of those funds not obligated by the LEA to other LEAs in ***Mississippi*** that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The ***MDE*** may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.704.

300.706 (Reserved)

Secretary of the Interior

Section*s*

300.707 – 300.718 (*Omitted*)

SUBPART H – PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

Section

300.800 In general

The Secretary provides grants under section 619 of ***IDEA*** to assist States to provide special education and related services in accordance with Part B of ***IDEA***—

(a) To children with disabilities aged three ***(3)*** through five ***(5)*** years; and

(b) At a ***public agency's*** discretion, to two-year-old children with disabilities who will ***be*** turn***ing*** three ***(3)*** during the school year.

300.801 – 300.802 (Reserved)

300.803 Definition of State

As used in this subpart, State means each of the ***fifty (***50***)*** States, the District of Columbia, and the Commonwealth of Puerto Rico.

300.804 Eligibility

A State is eligible for a grant under section 619 of ***IDEA*** if the State—

(a) Is eligible under 612 of ***IDEA*** to receive a grant under Part B of ***IDEA***; and

(b) Makes FAPE available to all children with disabilities, aged three ***(3)*** through five ***(5)***, residing in the State.

300.805 (Reserved)

300.806 Eligibility for financial assistance

No State or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of part D of ***IDEA*** that relates exclusively to programs, projects, and activities pertaining to children aged three ***(3)*** through five ***(5)*** years, unless the State is eligible to receive a grant under section 619(b) of ***IDEA***.

300.807 Allocations to States

The Secretary allocates the amount available to carry out section 619 of ***IDEA*** for a fiscal year among the States in accordance with §§300.808 through 300.810.

300.808 Increase in funds

If the amount available for allocation to States under §300.807 for a fiscal year is equal to or greater than the amount allocated to the States under section 619 of ***IDEA*** for the preceding fiscal year, those allocations are calculated as follows—

(a) Except as provided in §300.809, the Secretary—

(1) Allocates to each State the amount the State received under section 619 of ***IDEA*** for fiscal year 1997;

(2) Allocates ***eighty-five (***85***)*** percent of any remaining funds to States on the basis of the States' relative populations of children aged three ***(3)*** through five ***(5)***; and

(3) Allocates ***fifteen (***15***)*** percent of those remaining funds to States on the basis of the States' relative populations of all children aged three ***(3)*** through five ***(5)*** who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

300.809 Limitations

(a) Notwithstanding §300.808, allocations under that section are subject to the following**—**

(1) No State's allocation may be less than its allocation under section 619 of ***IDEA*** for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount the State received under section 619 of ***IDEA*** for fiscal year 1997; and

(B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of ***IDEA*** for the fiscal year exceeds the amount appropriated for section 619 of ***IDEA*** for fiscal year 1997;

(ii) The sum of—

(A) The amount the State received under section 619 of ***IDEA*** for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated under section 619 of ***IDEA*** from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount the State received under section 619 of ***IDEA*** for the preceding fiscal year; and

(B) That amount multiplied by ***ninety (***90***)*** percent of the percentage increase in the amount appropriated under section 619 of ***IDEA*** from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under §300.808 may exceed the sum of—

(1) The amount the State received under section 619 of ***IDEA*** for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under 619 of ***IDEA*** from the preceding fiscal year.

(c) If the amount available for allocation to States under §300.808 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

300.810 Decrease in funds

If the amount available for allocations to States under §300.807 for a fiscal year is less than the amount allocated to the States under section 619 of ***IDEA*** for the preceding fiscal year, those allocations are calculated as follows—

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—

(1) The amount the State received under section 619 of ***IDEA*** for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received under section 619 of ***IDEA*** for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(b) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State is allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

300. 811 (Reserved)

300.812 Reservation for State activities

(a) ***Mississippi*** may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§300.813 and 300.814.

(b) For each fiscal year, the Secretary determines and reports to the ***MDE*** an amount that is ***twenty-five (***25***)*** percent of the amount the State received under section 619 of ***IDEA*** for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of ***IDEA***; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

300.813 State Administration

(a) For the purposes of administering section 619 of ***IDEA*** (including the coordination of activities under Part B of ***IDEA*** with, and providing technical assistance to, other programs that provide services to children with disabilities), ***the*** State may use not more than ***twenty (***20***)*** percent of the maximum amount the State may reserve under §300.812 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of ***IDEA***.

300.814 Other State-level activities

Mississippi must use any funds the State reserves under §300.812 and does not use for administration under §300.813—

(a) For support services (including establishing and implementing the mediation process required by section 615(e) of ***IDEA***), which may benefit children with disabilities younger than three ***(3)*** or older than five ***(5)*** as long as those services also benefit children with disabilities aged three ***(3)*** through five ***(5)***;

(b) For direct services for children eligible for services under section 619 of ***IDEA***;

(c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of ***IDEA***;

(d) To supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than one ***(1)*** percent of the amount received by the State under section 619 of ***IDEA*** for a fiscal year;

(e) To provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of ***IDEA*** to children with disabilities who are eligible for services under section 619 of

IDEA and who previously received services under Part C of ***IDEA*** until such children enter, or are eligible under State law to enter, kindergarten; or

(f) At the State's discretion, to continue service coordination or case management for families who receive services under Part C of ***IDEA*** consistent with §300.814(e).

300.815 Subgrants to LEAs

Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under § 300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act. Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children aged three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities.

300.816 Allocations to LEAs

(a) *Base payments.* The State must first award each LEA described in §300.815 the amount that agency would have received under section 619 of ***IDEA*** for fiscal year 1997 if the State had distributed ***seventy-five (***75***)*** percent of its grant for that year under section 619(c)(3), as such section was then in effect.

(b) *Base payment adjustments.* For fiscal year 1998 and beyond—

(1) If a new LEA is created, the State must divide the base allocation determined under paragraph (a) 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 LEA and affected LEAs based on the relative numbers of children with disabilities ages three ***(3)*** through five ***(5)*** currently provided special education by each of the LEAs;

(2) If one or more LEAs are combined into a single a new LEA, the State must combine the base allocations of the merged LEAs; and

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three ***(3)*** through five ***(5)*** changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three ***(3)*** through five ***(5)*** currently provided special education by each affected LEA.

(4) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities aged three through five years. The State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving

children with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities aged three ***(3)*** through five ***(5)*** years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(c) *Allocation of remaining funds*. After making allocations under paragraph (a) of this section, the State must—

(1) Allocate ***eighty-five (***85***)*** percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

(2) Allocate ***fifteen (***15***)*** percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty as determined by the ***MDE***.

(d) *Use of best data*. For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

300.817 Reallocation of LEA funds

If ***the MDE*** determines that an LEA is adequately providing FAPE to all children with disabilities aged three ***(3)*** through five ***(5)*** residing in the area served by the LEA with State and local funds, the ***MDE*** may reallocate any portion of the funds under section 619 of ***IDEA*** that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three ***(3)*** through five ***(5)*** residing in the areas the other LEAs serve.

300.818 Part of IDEA inapplicable

Part C of ***IDEA*** does not apply to any child with a disability receiving FAPE, in accordance with Part B of ***IDEA***, with funds received under section 619 of ***IDEA***.

SPECIAL EDUCATION

ELIGIBILITY DETERMINATION

GUIDELINES

It is necessary to adhere to federal regulations and corresponding State Policies when evaluating children suspected of having disabilities and when making eligibility determinations for special education. The applicable federal regulations and corresponding State policies include: §§300.8, 300.39, and 300.304 through 300.311.

LEAs, State Board governed schools, and special State agency schools are allowed to make special education eligibility determinations for children. University based programs, local and regional juvenile detention centers and private school programs are required to work with the LEA responsible for Child Find to determine special education eligibility for children.

GENERAL INFORMATION

The information outlined in this section applies to all eligibility determinations.

A. A comprehensive evaluation to determine special education eligibility must:

1. ***Assure that lack of appropriate instruction in math or reading, including the essential components of reading instruction as defined in section 1208(3) of ESEA, is not the determinant factor;***
2. ***Assure that limited English proficiency or social or cultural differences are not the determinant factors;***
3. ***Indicate the child needs special education and related services; and***
4. ***Identify all educational needs to be addressed in development of the IEP, regardless of whether those needs are typically linked to the disability category; and***
5. ***Consistently support the presence of a disability.***

NOTE: If data appear to represent inconsistencies but the team agrees the preponderance of the data supports the presence of a disability and need for special education and related services, the perceived inconsistencies must be documented and explained.

B. To gather information about the student, personnel must consider a variety of assessment tools and strategies which must include, but not be limited to:

1. ***The Teacher Narrative and/or Developmental History;***

2. ***Documentation about the student's functioning in the home, classroom and/or in an early childhood setting through interview, observation, assessment, or other means;***
3. ***Information contained in the student's cumulative record, including results of statewide assessments;***
4. ***Information about the child's physical condition, including fine and gross motor skills, general physical condition, hearing, vision, and orofacial examination, if necessary;***
5. ***Information about the child's social, behavioral, emotional, and adaptive functioning;***
6. ***Information about pre-academic and/or academic performance;***
7. ***Information about how the student communicates;***
8. ***Indicators of cognitive abilities;***
9. ***Evaluations and other information provided by the parent;***
10. ***Evidence that the child has received appropriate instruction in reading and math (for kindergarten and preschool children, information regarding development and preschool experiences);***
12. ***Information about the impact of social and cultural background and limited English proficiency on educational performance; and***
13. ***For reevaluations, information from IEPs.***

NOTE: A professional who meets the qualifications found on page 286 must be a member of the multidisciplinary team making the eligibility determination when

significant emotional and/or behavioral issues adversely impacting the educational process have been identified and evaluated, regardless of the eligibility category being considered.

Unless otherwise indicated, the MDE does not dictate which test instruments to use or which areas to test. It is the responsibility of the multidisciplinary evaluation team to determine appropriate ways to measure each area and which instruments are necessary to obtain information sufficient to determine the presence of a disability, eligibility for special education, and programming needs. Teams are directed to carefully consider whether administration of a test is necessary to determine existence of a disability, need for special education or related services, and/or all educational needs of the student.

C. Data required for determining the presence of a disability, eligibility for special education, and IEP development must be current according to the definitions below. The team may determine more recent information is needed. Historical data must be considered along with current required information. On or after the date the parent signs consent for evaluation or reevaluation, the following information, if required by MDE policy or determined necessary by the team, may not be more than:

1. One (1) year old:

i. Intelligence measures

ii. Hearing screening and follow-up evaluations

iii. Vision screening and follow-up evaluations

iv. Physical examinations

2. Three (3) months old:

i. Updated Developmental History

ii. Developmental Instruments

3. Six (6) months old:

i. Teacher Narrative

ii. Achievement measures

iii. Social, behavioral, adaptive, and emotional measures

iv. Language/Speech assessments

v. Motor Assessments

vi. Curriculum-based assessments.

D. The multidisciplinary evaluation team has the discretion to allow evaluation team members to submit individual reports or to compile all evaluation information in a single comprehensive report. A separate eligibility determination report must be used to document decisions made in the eligibility meeting. A copy of the evaluation report(s) and the eligibility determination report must be provided to the parents.

E. The eligibility determination report must indicate the conclusion of the team regarding the eligibility category for which the criteria are met, or a statement of that the student does not meet the eligibility criteria. Each member of the

multidisciplinary evaluation team must certify in writing whether the eligibility determination report reflects the member's conclusions. If it does not reflect the member's conclusions, the multidisciplinary evaluation team member must submit a separate statement presenting the member's conclusions.

F. The evaluation report(s) must include the following information:

1. ***Date(s) of assessment(s);***
2. ***Name, title, and qualifications of examiner(s), informants, and/or observers;***
3. ***Testing conditions;***
4. ***Behaviors noted during testing and observations;***
5. ***Results of assessments;***
6. ***Interpretations of assessments;***
7. ***Explanations of any deviations from standardized testing procedures; and***
8. ***Justifications for use of instruments that are not age appropriate.***

G. Generally, a diagnosis from a psychologist, psychiatrist, nurse practitioner, physician or other health care professional using criteria from the Diagnostic and Statistical Manual of Mental Disorders (DSM) and/or International Statistical Classification of Diseases and Related Health Problems (ICD-9 Codes) is not required to determine special education eligibility, nor is such diagnosis alone sufficient to determine eligibility for special education. When a diagnosis, evaluation, or statement by qualified professionals is required for a particular special education disability category, the requirement is listed as part of the

eligibility criteria. When diagnostic or prescriptive information from a health care professional or psychologist is available to the public agency, the team must consider the information when making an eligibility determination for special education.

H. Because language needs are inherent for the following primary disability categories, a secondary ruling for language is not required. The IEP Committee may decide a Speech/Language therapist is an appropriate provider of language as a related service for children who have been identified in any of these categories:

1. ***Hearing Impairment,***
2. ***Autism,***
3. ***Traumatic Brain Injury,***
4. ***Specific Learning Disability (Oral Expression and Listening Comprehension), or***
5. ***Developmentally Delayed, when Communication is one of the areas of delay.***

I. Adverse educational impact applies to academic, social, behavioral, and vocational performance.

DISABILITY

CATEGORIES

AUTISM

(AU)

DEFINITION

Autism (also commonly referred to as Autism Spectrum Disorder) means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance. Additional 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. It is not necessary for the student to exhibit all of these additional characteristics to meet the criteria.

Included in the Autism category are the Pervasive Developmental Disorders, including Autistic Disorder, Asperger Disorder, Pervasive Developmental Disorder-Not Otherwise Specified, Rett's Disorder, and Childhood Disintegrative Disorder. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability. A child who manifests the characteristics of Autism after age three (3) could be identified as having Autism if the definition is satisfied and data consistently support an eligibility ruling of Autism.

EVALUATION REQUIREMENTS

Personnel must gather, document and carefully consider:

A. Results of instruments, observations and/or other data which address:

1. ***Receptive and expressive language skills, including language semantics and pragmatics; prosody (linguistics including intonation, rhythm and focus in speech); and the need for assisted communication;***
2. ***Social interactions;***
3. ***Responses to sensory experiences;***
4. ***Engagement in repetitive activities and stereotyped movements; and***
5. ***Resistance to environmental change or change in daily routines.***

B. A developmental history and/or other documentation which serves to determine the age of onset of autistic characteristics.

C. A statement by a qualified professional supporting the multidisciplinary evaluation team's conclusion that the student meets the eligibility criteria for Autism as defined by federal regulations and State policy. A qualified professional is defined as one of the following:

1. ***School psychologist currently licensed by MDE,***
2. ***Psychometrist currently licensed by MDE,***
3. ***Board-licensed psychologist,***
4. ***Nurse Practitioner, or***
5. ***Physician.***

DEAF-BLIND

(DB)

DEFINITION

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

EVALUATION REQUIREMENTS

When the evaluation team is considering eligibility under the Deaf-Blind category:

A. A statement that the child cannot properly function in a special education program designed solely for children with hearing impairments or visual impairments must be included in the comprehensive evaluation and/or eligibility determination report, and

B. Procedures for assessing both Hearing Impairment and Visual Impairment must be followed.

DEVELOPMENTALLY DELAYED

(DD)

DEFINITION

A child in the age range of birth through nine (9) who is experiencing significant delays in two or more of the five developmental areas (cognitive, fine/gross motor, language, social/emotional/behavioral, and adaptive behavior) meets the eligibility criteria for Developmentally Delayed if, by reason of the developmental delays, they need special education and related services. The criteria for DD could also be met if the child has a diagnosed disorder of known etiology which affects development in a negative fashion and has a high probability of resulting in a developmental delay. For diagnosed disorders, a diagnosis from a physician and research that supports the predicted developmental delays are required.

EVALUATION REQUIREMENTS

Developmentally Delayed is for non-categorical identification when the child has a disability and needs special education and related services, but does not clearly fit one of the other twelve (12) eligibility categories. If the eligibility criteria are clearly met for one or more of the other twelve (12) eligibility categories, DD should not be used. Mississippi has determined that DD applies to the age range birth through nine (9) years. A new eligibility determination must occur before the child's tenth (10th) birthday. The DD eligibility ruling cannot be maintained beyond the child's tenth (10th) birthday.

The following requirements apply to the DD category:

A. Standard scores must be used when the instrument(s) yields standard scores.

B. A significant delay is defined as 1.5 standard deviations below the mean of the test or subtest when the instrument yields standard scores.

C. If the instrument yields only age equivalents, then significant delay is defined as a developmental age 25% below the child's chronological age or corrected age on the test or subtest.

D. Follow guidelines in the test manual for calculating corrected age for children who were born pre-term. If the manual does not address corrected age calculation, the following guidelines should be considered:

1. ***Calculate corrected age for children born prior to thirty-eight (38) weeks gestation, and***
2. ***Calculate corrected age up to twenty-four (24) months chronological age.***

A variety of instruments should be considered and selected to yield information about the full range of the child's functioning in all five (5) developmental areas. When informants are used to gather information, they must have sufficient knowledge of the child's functioning in the areas for which the informant provides input. A description

of all methods and informants used must be included in the report and must meet the administration guidelines and standardized procedures for each instrument.

EMOTIONAL DISABILITY

(EmD)

DEFINITION

Emotional Disability** (EmD) **exists when a student exhibits one (1) or more of the following characteristics over a long period of time and/or to a marked degree, adversely affecting educational performance:

A. An inability to learn that cannot be explained by intellectual, sensory or health factors;

B. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

C. Inappropriate types of behavior or feelings under normal circumstances;

D. A general pervasive mood of unhappiness or depression; and/or

E. A tendency to develop physical symptoms or fears associated with personal or school problems.

***Emotional Disability includes schizophrenia. The term does not refer to children who are socially maladjusted, unless it is determined that they have an Emotional Disability**.*

EVALUATION REQUIREMENTS

When the evaluation team is considering eligibility under the Emotional Disability category, the multidisciplinary team evaluation report and/or eligibility determination report must include:

A. Narrative descriptions of:

1. the student's behaviors,

2. settings in which the behaviors occur,

3. antecedents leading to the behaviors, and

4. consequences immediately following the behaviors;

B. Functional assessments of the student's behavior, if conducted;

C. Attempts to address the behaviors and the results, including:

1. Behavior Intervention Plans, if developed and implemented during the pre-referral process;

2. office discipline referrals; and

3. disciplinary actions;

D. Documentation to support the behaviors have been exhibited for a long period of time and/or to a marked degree;

E. A description of how the behaviors adversely affect educational performance;

F. A statement as to whether the behaviors are typical for the student's age, setting, circumstances, and peer group, and if not, how the behaviors are different;

G. The association between documented patterns of behavior and results of emotional and behavioral assessments;

H. A statement by a qualified professional supporting the team's conclusion that the student meets the eligibility criteria for EmD. Prior to eligibility determination, the qualified professional making the statement must:

1. ***observe the child,***
2. ***review all information gathered during the comprehensive evaluation,***
3. ***be qualified to interpret the test instruments administered according to the user qualifications for each measure, and***
4. ***review the eligibility criteria for EmD.***

Qualified personnel for this purpose include at least one of the following:

1. ***School psychologist currently licensed by MDE,***
2. ***Board-licensed psychologist, or***
3. ***Psychiatrist.***

I. If the team concludes the child does not meet the criteria for EmD because all behavior patterns appear to be the result of social maladjustment, the eligibility determination report must indicate this conclusion. Documentation must be included to support the team's conclusion that the behaviors are indicative of social maladjustment.

HEARING IMPAIRMENT

(HI)

DEFINITION

Hearing Impairment (HI) means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance. 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.

EVALUATION REQUIREMENTS

When the evaluation team is considering eligibility under the Hearing Impairment category, which includes Deafness, the multidisciplinary team evaluation report and/or eligibility determination report must include:

A. An audiometric evaluation explaining:

1. ***type of loss;***
2. ***age of onset, if known;***
3. ***severity of loss;***
4. ***speech reception or speech awareness thresholds, if obtainable;***
5. ***speech discrimination scores, if applicable;***
6. ***recommendations regarding amplification; and***
7. ***other recommended interventions, if any, including the need for assistive technology.***

B. A description of the follow-up examination and results, including:

1. ***how the conditions noted during the examination might interfere with educational testing and performance; and***
2. ***recommendations for accommodations, modifications, and educational programming.***

C. Acoustic Immitance measures;

D. An audiogram and/or measures of auditory evoked potential, such as Auditory Brainstem Response (ABR), Auditory Steady State Response (ASSR), and Otoacoustic Emissions (OAE) that would define the hearing loss;

E. How the hearing loss impacts educational performance; and

F. Communication abilities and needs, including the need for assisted communication.

NOTE: The Audiological examination must be conducted by:

i. an audiologist who holds MDE licensure in audiology,

ii. an audiologist who holds ASHA--CCC certification,

iii. a physician with expertise in conducting audiological evaluations using appropriate audiological equipment,

iv. a qualified audiologist who holds certification from the American Academy of Audiology (AAA), or

v. a qualified audiologist who is appropriately licensed through the designated licensure authority for the State of Mississippi.

LANGUAGE OR SPEECH IMPAIRMENT

(LS)

DEFINITION

Language or Speech Impairment (LS) means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. Speech disorders include impairments in articulation, fluency and/or voice. Language disorders include developmental or acquired impairments in the ability to receive, send, process, and comprehend concepts or verbal, nonverbal, and graphic symbol systems. A communication disorder may range in severity from mild to profound and may appear in combination with other communication disorders. A communication disorder may be the primary disability or secondary to other disabilities.

The American Speech Language and Hearing Association recognizes four (4) communication disorders described in A-D below:

A. An articulation/phonological processing disorder is the atypical production of speech sounds characterized by substitutions, omissions, additions or distortions that may interfere with intelligibility. Phonological processing includes the rules governing the addition or substitution of a phoneme, including but not limited to:

1. *voicing processes;*
2. *deletion processes;*
3. *fronting processes;*
4. *syllable processes; and*
5. *phoneme processes.*

B. A fluency disorder is an interruption in the flow of speaking characterized by:

1. *atypical rate,*
2. *atypical rhythm, and*
3. *repetitions in sounds, syllables, words, and phrases.*

These characteristics might also be accompanied by excessive tension, struggle behavior, and secondary mannerisms.

C. A voice disorder is characterized by the abnormal production and/or absences of:

1. *vocal quality,*
2. *pitch,*
3. *loudness,*
4. *resonance, and/or*
5. *duration, which are inappropriate for an individual's age and/or sex.*

D. A language disorder is impaired comprehension and/or use of spoken, written and/or other symbol systems including:

1. ***the form of language (phonology, morphology, syntax),***
2. ***the content of language (semantics), and/or***
3. ***the function of language in communication (pragmatics).***

EVALUATION REQUIREMENTS

When the evaluation team is considering eligibility under the Language or Speech Impairment category, the multidisciplinary team evaluation report and/or eligibility determination report must include:

A. Results of hearing screening;

B. Results of an orofacial examination and, if necessary, a statement from a medical specialist noting physical problems which would interfere with language/speech production;

C. A physician's statement of release and recommendation(s) for services when a voice evaluation has been conducted;

D. The number, types, and severity of disruptions, and a description of secondary characteristics in various settings (e.g., reading, monologue, conversation) when a fluency evaluation has been conducted;

E. Results of a standardized measure(s) of language, when a language evaluation has been conducted;

NOTE: The score(s) must be at least 1.5 standard deviations below the mean of the test in the areas of expressive language and/or receptive language, including morphology, syntax, semantics and/or pragmatics for an eligibility ruling in Language.

F. When an articulation evaluation has been completed for children ages 30 months and older, evidence that the child's articulation skills are below age-appropriate peers based on normative data, including a measure of stimulability;

G. Documentation that the child's communication impairment adversely affects educational performance including the child's ability to communicate in academic, social and vocational settings; and

H. Documentation of the child's speech/language skills in conversational speech.

NOTE: At the beginning of each school year, the public agency must select current articulation norms for children who are under the age of six (6). These norms may be different from the norms used for children ages six (6) and older.

MENTAL RETARDATION

(MR)

DEFINITION

Mental Retardation (MR) (also referred to as Intellectual Disability by some entities) 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.

A child with an eligibility ruling of mental retardation exhibits learning problems which vary in degree from mild to severe. 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.

EVALUATION REQUIREMENTS

When the evaluation team is considering eligibility under the Mental Retardation category, the multidisciplinary team evaluation report and/or eligibility determination report must include results of:

A. An individual standardized achievement test;

B. An individual standardized measure of cognitive abilities;

1. ***Significantly subaverage intellectual functioning is defined according to these categories:***
   - ***i. Educable Mental Retardation (EMR): two (2) standard deviations to three and one-half (3½) standard deviations below the mean of the test of mental abilities;***
   - ***ii. Trainable Mental Retardation (TMR): three and one-half (3½) to four and one-half (4½) standard deviations below the mean of the test of mental abilities;***
   - ***iii. Severe/Profound Mental Retardation (S/Pr): four and one-half (4½) standard deviations or more below the mean of the test of mental abilities.***
2. ***The standard error of measurement may be taken into consideration when determining subcategories for MR.***

C. A norm-referenced measure of adaptive behavior.

1. ***The home version of the adaptive measure is required, if the publisher makes available a home version of the instrument. The informant should be the primary caregiver(s).***
2. ***Any informant for a measure of adaptive behavior must be knowledgeable of how the child functions outside the school environment.***

MULTIPLE DISABILITIES

(MD)

DEFINITION

Multiple Disabilities (MD) means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that children cannot be accommodated in special education programs solely for one of the impairments. Multiple Disabilities do not include Deaf-Blindness, Specific Learning Disability, Developmental Delay or Language or Speech Impairment.

EVALUATION REQUIREMENTS

When the multidisciplinary evaluation team is considering eligibility under the Multiple Disabilities category, the categories that are evidenced by the data and a statement that the child cannot be appropriately served in a special education program designed solely for one of the disabilities must be included in the eligibility determination report.

ORTHOPEDIC IMPAIRMENT

(OI)

DEFINITION

Orthopedic Impairment (OI) means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments 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, amputations, and fractures or burns causing contractures).

EVALUATION REQUIREMENTS

When the multidisciplinary evaluation team is considering eligibility under the Orthopedic Impairment category, the evaluation report and/or the eligibility determination report must include a diagnostic report from a physician or a nurse practitioner that provides information regarding:

A. The nature of the student's congenital or acquired Orthopedic Impairment,

B. Limitations and precautions to be considered, and

C. Recommendations for educational programming.

OTHER HEALTH IMPAIRMENT

(OHI)

DEFINITION

Other Health Impairment (OHI) 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:

A. Is due to chronic or acute health problems such as asthma, attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or Tourette Syndrome; and

B. Adversely affects a child's educational performance.

EVALUATION REQUIREMENTS

When the evaluation team is considering eligibility under the Other Health Impairment category, the evaluation report and/or the eligibility determination report must include a diagnostic report from a physician or a nurse practitioner that provides information regarding:

A. The nature of the student's health impairment,

B. Limitations and precautions to be considered, and

C. Recommendations for educational programming.

When the evaluation team is considering eligibility under the Other Health Impairment (OHI) category due to an attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), the comprehensive evaluation report and/or eligibility determination report must include the following:

A. A description of the student's behaviors, settings in which the behaviors occur, antecedents leading to the behaviors, and consequences immediately following the behaviors;

B. Attempts to address the behaviors and the results, including office discipline referrals and disciplinary actions;

C. A description of how the behaviors adversely affect educational performance;

D. A statement as to whether the behaviors are typical for the student's age, setting, circumstances, and peer group, and if not, how the behaviors are different; and

E. The correlation between documented behaviors and results of ADHD assessments.

NOTE: For ADD and ADHD, a diagnostic report from a physician or a nurse practitioner is not required.

SPECIFIC LEARNING DISABILITY

(SLD)

DEFINITION

Specific Learning Disability (SLD) 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. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disability or of environmental, cultural differences, or economic disadvantage.

PRE-REFERRAL REQUIREMENTS

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

A. ***Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in general education settings, delivered by qualified personnel; and***

B. ***Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.***

The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the evaluation and reevaluation timeframes, unless extended by mutual written agreement of the child's parents and a group of qualified professionals:

A. ***If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction; and***

B. ***Whenever a child is referred for an evaluation.***

EVALUATION REQUIREMENTS

When determining whether a child has a Specific Learning Disability, public agencies:

A. Must first consider a process based on the child's response to scientific, research-based intervention(s) (i.e., Response to Intervention—RtI);

B. May use other alternative research-based procedures; and/or

C. May use a severe discrepancy between intellectual ability and achievement.

NOTE: Severe discrepancy is defined as 1.5 standard deviations below the mean of the standardized test measuring intellectual disability.

TEAM COMPOSITION

The multidisciplinary evaluation team must include the child's parents and a team of qualified professionals, including:

A. The child's general education teacher; or

B. If the child does not have a general education teacher, a general education classroom teacher qualified to teach a child of his or her age; or

C. For a child of less than school age, an individual licensed by the SBE to teach a child of his or her age;

D. A special education teacher; and

E. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, psychometrist, speech-language pathologist, or remedial reading teacher.

REPORT REQUIREMENTS

When the evaluation team is considering eligibility under the Specific Learning Disability category, the eligibility determination report must include:

A. Documentation of an observation using the following guidelines:

1. ***The public agency must ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.***
2. ***The multidisciplinary evaluation team must:***
   - ***i. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or***
   - ***ii. Have at least one member of the multidisciplinary evaluation team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent is obtained.***
3. ***In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.***

B. Statements indicating:

1. ***Whether the child has a specific learning disability;***
2. ***The basis for making the determination;***

3. ***The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;***
4. ***The educationally relevant medical findings, if any;***
5. ***Whether:***
   i. ***The child does not achieve adequately for the child's age or fails to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards in the following areas:***
      a) ***Oral expression***
      b) ***Listening comprehension***
      c) ***Written expression***
      d) ***Basic reading skill***
      e) ***Reading fluency skills***
      f) ***Reading comprehension***
      g) ***Mathematics calculation***
      h) ***Mathematics problem solving;***
   ii. ***The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in the paragraph (5.i.) above when using a process based on the child's response to scientific, research-based intervention; or***
   iii. ***The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development that is determined by the group to be relevant to***

the identification of a specific learning disability, using appropriate assessments.

6. ***The determination of the group concerning the effects of a visual, hearing, or motor disability, mental retardation; emotional disturbance; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and***
7. ***If the child has participated in a process that assesses the child's response to scientific, research-based intervention:***
   i. ***The instructional strategies used and the student-centered data collected; and***
   ii. ***The documentation that the child's parents were notified about:***
      a) ***MDE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;***
      b) ***Strategies for increasing the child's rate of learning; and***
      c) ***The parents' right to request an evaluation.***

C. Each group member must certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusions, the group member must submit a separate statement presenting the member's conclusions.

TRAUMATIC BRAIN INJURY

(TBI)

DEFINITION

Traumatic Brain Injury (TBI) 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 (1) 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/or speech. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.

EVALUATION REQUIREMENTS

When the evaluation team is considering eligibility under the Traumatic Brain Injury category, the comprehensive evaluation report(s) and/or eligibility determination report must include:

A. Information from a variety of sources (e.g., assessments, evaluations, the student's teacher(s), parents and/or caregivers) who are familiar with the student's educational differences in functioning prior to and following the injury, if applicable, in the following areas:

1. ***cognition;***
2. ***language;***
3. ***memory;***
4. ***attention;***
5. ***reasoning;***
6. ***abstract thinking;***
7. ***judgment;***
8. ***problem-solving;***
9. ***sensory, perceptual and motor abilities;***
10. ***psychosocial behavior;***
11. ***physical functions;***
12. ***information processing; and/or***
13. ***speech.***

B. A description of the acquired brain injury and cause of the injury; and

C. Reports from physicians, providers of rehabilitation services, and/or other healthcare providers describing precautions, limitations, and recommendations to consider when planning educational services, if available.

VISUALLY IMPAIRED

(VI)

DEFINITION

Visual Impairment (VI) 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.

EVALUATION REQUIREMENTS

When the evaluation team is considering eligibility under the Visually Impaired category, the comprehensive evaluation report(s) and/or eligibility determination report must include a report from an ophthalmologist or optometrist that includes:

A. visual acuity,

B. diagnosed visual problems,

C. a statement of how the child's visual problem might affect educational performance, and

D. recommendations for educational programming.

REFERENCE GUIDE

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 ***IDEA***;

(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.

ESSENTIAL COMPONENTS OF READING INSTRUCTION

Essential components of reading instruction mean explicit and systematic instruction in: Phonemic awareness; Phonics; Vocabulary development; Reading fluency, including oral reading skills; and Reading comprehension strategies.

LIMITED ENGLISH PROFICIENT

The term *'limited English proficient'*, when used with respect to an individual, means an individual—

(a) ***W***ho is aged ***three (***3***)*** through ***twenty-one (***21***)***;

(b) ***W***ho is enrolled or preparing to enroll in an elementary school or secondary school;

(c) (1) Who was not born in the United States or whose native language is a language other than English;

(2) (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

(3) 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—

(1) The ability to meet the State's proficient level of achievement on State assessments described in §1111(b)(3);

(2) The ability to successfully achieve in classrooms where the language of instruction is English; or

(3) The opportunity to participate fully in society.

SCIENTIFICALLY BASED RESEARCH

Scientifically based research is research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs. To meet this standard, the research must—

(a) Employ systematic, empirical methods that draw on observation or experiment.

(b) Involve rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn.

(c) Rely on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators.

(d) Be evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls.

(e) Ensure that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings.

(f) Have been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

TITLE 42 CHAPTER 119 SUBCHAPTER VI PART B §11434a

The term "homeless children and youths"—

(a) ***M***eans individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of §11302 (a)(1) of this title); and

(b) Includes—

(1) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(2)(C) of this title);

(3) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) Migratory children (as such term is defined in §6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).