

# **Montana Administrative Statutes and Rules for Special Education**



**Prepared by the Montana Office of Public Instruction  
Linda McCulloch, Superintendent  
Division of Special Education  
PO Box 202501  
Helena, MT 59620-2501**

**June 2001**

This guide contains Montana's statutes and administrative rules for special education. The guide is intended as a companion reference document to the IDEA regulations.

If you have questions regarding state or federal special education rules and regulations, please contact the Division of Special Education at 444-5661 or 1-888-231-9393. You may also visit our website at:

[www.opi.state.mt.us/SpecEd/](http://www.opi.state.mt.us/SpecEd/)

An electronic copy of the IDEA regulations is available at:

<http://www.ideapractices.org/idearegsmain.htm>

# Administrative Rules and Statutes Index

[A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)

## ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE

10.16.3008 Page 27

## ADVISORY PANEL

10.16.3150 Page 40

## **ALLOWABLE COSTS**

[Advance on payments](#)

10.16.3814 Page 75

[Annual accounting](#)

20-7-431 Page 18

[Calculation of cost payments](#)

10.16.3812 Page 73

[Contested cases](#)

10.16.3819 Page 78

[Cooperatives](#)

10.16.3808 Page 71

[Definitions](#)

10.16.3803 Page 67

[Distribution of payments](#)

10.16.3816 Page 76

[Eligibility to receive payment](#)

10.16.3810 Page 72

[Funding reversion](#)

10.16.3817 Page 77

[General principles of calculation](#)

10.16.3811 Page 72

[General principles of funding](#)

10.16.3804 Page 68

[Instructional block grant](#)

10.16.3806 Page 69

[Limitations](#)

10.16.3805 Page 68

[Local matching funds](#)

10.16.3813 Page 74

[Payment calculation](#)

10.16.3811 Page 72

[Related services block grant](#)

10.16.3807 Page 70

[Transfers and payments to others](#)

10.16.3815 Page 75

[Schedule for special programs](#)

20-7-431 Page 18

[Superintendent to make rules](#)

20-7-431 Page 18

[Transportation](#)

10.16.3820 Page 78

[Tuition rates](#)

10.16.3818 Page 77

## ADVERSE TREATMENT PROCEDURES

10.16.3346 Page 48

## **BOARD POLICIES**

[Special education to comply with . . .](#)

20-7-402 Page 12

## **CHILD COUNT**

[LEA responsibility](#)

10.16.3752 Page 65

[OPI responsibility](#)

10.16.3751 Page 65

## CHILD FIND

10.16.3125 Page 35

## **CHILD STUDY TEAM**

<a href="#">Composition</a>	10.16.3322	Page 46
<a href="#">Comprehensive evaluation process</a>	10.16.3321	Page 45

## **COMPLAINT PROCEDURES**

<a href="#">Opportunity to present</a>	10.16.3661	Page 62
<a href="#">State complaint procedures</a>	10.16.3662	Page 63

## **COOPERATIVES**

<a href="#">Approval and filing of cooperative contract</a>	20-7-454	Page 23
<a href="#">Authorization to create cooperatives</a>	20-7-451	Page 22
<a href="#">Boundaries</a>	10.16.3809	Page 71
<a href="#">Contents of cooperative contracts</a>	20-7-452	Page 23
<a href="#">Contract submission to attorney general</a>	20-7-453	Page 23
<a href="#">Duration of cooperative</a>	10.16.3901	Page 79
<a href="#">Funding provisions</a>	20-7-457	Page 24
<a href="#">Funds for cooperative contract</a>	20-7-455	Page 24
<a href="#">Management board</a>	10.16.3902	Page 79
<a href="#">Non-participating districts</a>	10.16.3903	Page 79
<a href="#">Procedures for approval</a>	10.16.3904	Page 79
<a href="#">Tenure of teachers</a>	20-7-456	Page 24

## **CRITERIA FOR IDENTIFICATION**

<a href="#">Autism</a>	10.16.3011	Page 28
<a href="#">Child with disabilities</a>	10.16.3010	Page 27
<a href="#">Cognitive delay</a>	10.16.3012	Page 29
<a href="#">Deaf-blindness</a>	10.16.3013	Page 29
<a href="#">Deafness</a>	10.16.3014	Page 29
<a href="#">Emotional disturbance</a>	10.16.3015	Page 30
<a href="#">Hearing impairment</a>	10.16.3016	Page 30
<a href="#">Orthopedic impairment</a>	10.16.3017	Page 31
<a href="#">Other health impairment</a>	10.16.3018	Page 31
<a href="#">Specific learning disability</a>	10.16.3019	Page 31
<a href="#">Speech-language impairment</a>	10.16.3020	Page 32
<a href="#">Traumatic brain injury</a>	10.16.3021	Page 33
<a href="#">Visual impairment</a>	10.16.3022	Page 33

<a href="#">CSPD</a> (Comprehensive System of Personnel Development)	10.16.3135	Page 37
--	------------	---------

## **DEFINITIONS**

	20-7-401	Page 9
--	----------	--------

## **DUE PROCESS**

<a href="#">Conference and informal disposition</a>	10.16.3511	Page 55
<a href="#">Cross-examination</a>	10.16.3518	Page 57
<a href="#">Discovery</a>	10.16.3513	Page 56
<a href="#">Discovery methods</a>	10.16.3514	Page 56
<a href="#">Ex-parte consultations</a>	10.16.3519	Page 57
<a href="#">Expedited hearing</a>	10.16.3530	Page 60
<a href="#">Final decision in expedited hearing</a>	10.16.3531	Page 60
<a href="#">Final order on hearing decisions</a>	10.16.3523	Page 58
<a href="#">Hearing</a>	10.16.3521	Page 58
<a href="#">Hearing procedures</a>	10.16.3509	Page 54
<a href="#">Initiating due process</a>	10.16.3508	Page 53
<a href="#">Initiating expedited hearing</a>	10.16.3528	Page 59
<a href="#">Limitations on discovery</a>	10.16.3516	Page 56
<a href="#">Notice of hearing</a>	10.16.3510	Page 54
<a href="#">Participation in the hearing</a>	10.16.3518	Page 57
<a href="#">Powers of the impartial hearing officer</a>	10.16.3520	Page 57
<a href="#">Prehearing - formulating issues</a>	10.16.3512	Page 55
<a href="#">Record</a>	10.16.3522	Page 58
<a href="#">Scope of discovery</a>	10.16.3515	Page 56
<a href="#">Scope of rules</a>	10.16.3507	Page 53
<a href="#">Selection of expedited hearing officer</a>	10.16.3529	Page 60
<a href="#">Sequence and timing of discovery</a>	10.16.3517	Page 57

<b><a href="#">EARLY ASSISTANCE PROGRAM</a></b>	10.16.3660	Page 62
---	------------	---------

<b><a href="#">ELIGIBLE STUDENTS UNDER IDEA</a></b>	10.16.3007	Page 27
---	------------	---------

## **FAPE**

<a href="#">Definition</a>	20-7-401	Page 10
<a href="#">OPI responsibility for . . .</a>	10.16.3121	Page 34
<a href="#">Obligation to establish sped program</a>	20-7-411	Page 13
<a href="#">Regular classes preferred</a>	20-7-411	Page 13

## **FEDERAL FUNDS**

<a href="#">Approval/disapproval of applications</a>	10.16.3194	Page 42
<a href="#">Disapproval of federal funds</a>	10.16.3196	Page 42
<a href="#">LEA Applications</a>	10.16.3181	Page 41
<a href="#">Failure to return federal funds</a>	10.16.3146	Page 40
<a href="#">Procedures for recovery of federal funds</a>	10.16.3145	Page 40
<a href="#">Notice of availability</a>	10.16.3180	Page 41

## **FINANCIAL ASSISTANCE**

<a href="#">Under-six-year-old class or program</a>	20-7-443	Page 22
---	----------	---------

## **INTERAGENCY**

<a href="#">Agreements</a>	10.16.3142	Page 39
<a href="#">Cooperation of state agencies</a>	20-7-404	Page 13
<a href="#">Coordination for Part C, IDEA</a>	10.16.3132	Page 36

## **LOCAL EDUCATIONAL AGENCY**

<a href="#">Approval of classes and programs</a>	20-7-414	Page 15
<a href="#">Determination of children in need</a>	20-7-414	Page 15
<a href="#">Determination of special education needed</a>	20-7-414	Page 15
<a href="#">Establishment of special education program</a>	20-7-412	Page 14
<a href="#">Funds for cooperative contract</a>	20-7-455	Page 24
<a href="#">Obligation to establish special education</a>	20-7-411	Page 13
<a href="#">Regular classes preferred</a>	20-7-411	Page 13
<a href="#">Responsibility for promotion</a>	10.16.3345	Page 48
<a href="#">Responsibility for students with disabilities</a>	10.16.3122	Page 34

## **MEDIATION**

	10.16.3506	Page 53
--	------------	---------

## **MISCLASSIFIED CHILDREN**

<a href="#">Failure to return federal funds</a>	10.16.3146	Page 40
<a href="#">Procedures for recovery of federal funds</a>	10.16.3145	Page 40

## **MONITORING**

	10.16.3141	Page 38
--	------------	---------

## **OUT-OF-STATE PLACEMENT**

<a href="#">Payment of costs</a>	20-7-422	Page 17
----------------------------------	----------	---------

## **PARENTAL**

<a href="#">Consent</a>	10.16.3505	Page 51
<a href="#">Consent for records</a>	10.16.3571	Page 61
<a href="#">Involvement</a>	10.16.3129	Page 36
<a href="#">Transfer of parental rights at age of majority</a>	10.16.3502	Page 51

## **PLACEMENT DECISIONS**

<a href="#">IEP and . . .</a>	10.16.3340	Page 47
-------------------------------	------------	---------

## **PROGRAM NARRATIVE**

	10.16.3220	Page 44
--	------------	---------

## **PROMOTION OF STUDENTS WITH DISABILITIES**

	10.16.3345	Page 48
--	------------	---------

## **PSYCHIATRIC HOSPITALS**

<a href="#">Definition</a>	20-7-436	Page 21
<a href="#">Funding of educational programs</a>	20-7-435	Page 19

## **RECORDS**

<a href="#">Parental Consent</a>	10.16.3571	Page 61
<a href="#">Special Education Records</a>	10.16.3560	Page 61

## **REFERRAL**

	10.16.3320	Page 45
--	------------	---------

## **RELATED SERVICES**

<a href="#">Definition</a>	20-7-401	Page 11
----------------------------	----------	---------

## **RESIDENCY**

<a href="#">Arranging attendance in another district</a>	20-7-421	Page 16
<a href="#">Financial responsibility</a>	20-7-420	Page 16
<a href="#">Requirements</a>	20-7-420	Page 16
<a href="#">Tuition</a>	20-7-421	Page 16

## **RESIDENTIAL PLACEMENT**

<a href="#">By public agency other than LEA</a>	10.16.3341	Page 47
---	------------	---------

## **RESIDENTIAL TREATMENT FACILITY**

<a href="#">Definition</a>	20-7-436	Page 21
<a href="#">Funding of educational programs</a>	20-7-435	Page 19

## **SPECIAL EDUCATION**

<a href="#">Definition</a>	20-7-401	Page 11
----------------------------	----------	---------

## **STAFF QUALIFICATIONS**

	10.16.3136	Page 38
--	------------	---------

## **SUPERINTENDENT OF PUBLIC INSTRUCTION**

<a href="#">Approval of classes and programs</a>	20-7-414	Page 15
<a href="#">Duties of</a>	20-7-403	Page 12
<a href="#">Rules</a>	20-7-419	Page 15

## **SURROGATE PARENTS**

	10.16.3504	Page 51
<a href="#">Appointment</a>	20-7-461	Page 25
<a href="#">Definition</a>	20-7-401	Page 11
<a href="#">Immunity from liability</a>	20-7-463	Page 26
<a href="#">Reimbursement</a>	20-7-463	Page 26
<a href="#">Responsibilities of</a>	20-7-462	Page 26
<a href="#">Termination of appointment</a>	20-7-461	Page 25

## **TRANSFER OF PARENTAL RIGHTS**

	10.16.3502	Page 51
--	------------	---------

## **TRANSFER STUDENTS**

	10.16.3342	Page 47
--	------------	---------

**TRANSPORTATION**[Child eligibility for](#)

20-7-441 Page 21

[Not allowable cost](#)

10.16.3820 Page 78

[Reimbursement](#)

20-7-442 Page 22

**TUITION**[When attending state institution](#)

20-7-424 Page 17

## Title 20

### Chapter 7

#### Part 4

### Special Education for Exceptional Children

#### **20-7-401 Definitions.**

In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

(2) "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 a child with a disability;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(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, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child with a disability.

(3) "Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

(4) "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism;

traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities and who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with a disability without the specific disability being specified.

(5) "Cognitive delay" 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.

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

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

(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.

(9) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(10) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.

(11) "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, or cerebral palsy).

(12) "Other health impairment" means limited strength, vitality, or alertness because of chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

(13) "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with a disability to benefit from special education and includes speech-language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

(14) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(15) "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 an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive delay; or environmental, cultural, or economic disadvantages.

(16) "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.

(17) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.

(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness.

(History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974; amd. Sec. 27, Ch. 266, L. 1977; amd. Sec. 1, Ch. 539, L. 1977; R.C.M. 1947, 75-7801; amd. Sec. 1, Ch. 311, L. 1981; amd. Sec. 1, Ch. 461, L. 1983; amd. Sec. 1, Ch. 560, L. 1985; amd. Sec. 1, Ch. 618, L. 1985; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 19, Ch. 16, L. 1991; amd. Sec. 3, Ch. 249, L. 1991; amd. Sec. 1, Ch. 356, L. 1993; amd. Sec. 19, Ch. 472, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999.)

### **20-7-402 Special education to comply with board policies.**

- (1) The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies shall assure and include but are not limited to:
- (a) placement of a child with a disability in the least restrictive alternative setting;
  - (b) due process for a child with a disability, including the appointment of a surrogate parent if necessary;
  - (c) use of child study teams to identify a child with a disability and use of instructional teams to plan individual education programs;
  - (d) comprehensive evaluation for each child with a disability; and
  - (e) other policies needed to assure a free and appropriate public education.
- (2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

(History: En. 75-7802 by Sec. 420, Ch. 5, L. 1971; amd. Sec. 2, Ch. 539, L. 1977; R.C.M. 1947, 75-7802; amd. Sec. 2, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999.)

### **20-7-403 Duties of superintendent of public instruction.**

The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

- (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying a child with a disability;
- (5) recommending to districts the type of special education class or program needed to serve the child with a disability of the districts and preparing appropriate guides for developing individualized education programs;
- (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from those programs;
- (7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;
- (8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;
- (9) providing technical assistance to district superintendents, principals, teachers, and trustees;
- (10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

(13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(14) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child placed in an in-state residential facility or children's psychiatric hospital.

(History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971; amd. Sec. 1, Ch. 174, L. 1975; amd. Sec. 3, Ch. 539, L. 1977; R.C.M. 1947, 75-7803; amd. Sec. 1, Ch. 204, L. 1979; amd. Sec. 1, Ch. 434, L. 1981; amd. Sec. 3, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 3, Ch. 765, L. 1991; amd. Sec. 2, Ch. 356, L. 1993; amd. Sec. 4, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999.)

#### **20-7-404 Cooperation of state agencies.**

The department of public health and human services and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. This section may not be construed to interfere with the purpose and function of these state agencies.

(History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971; amd. Sec. 5, Ch. 539, L. 1977; R.C.M. 1947, 75-7804; amd. Sec. 23, Ch. 609, L. 1987; amd. Sec. 69, Ch. 546, L. 1995.)

20-7-405 through 20-7-410 reserved.

#### **20-7-411 Regular classes preferred -- obligation to establish special education program.**

(1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular

educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with a disability between the ages of 6 and 18, inclusive.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability between the ages of 3 and 6, inclusive.

(4) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

(5) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids.

(History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974; amd. Sec. 6, Ch. 539, L. 1977; R.C.M. 1947, 75-7805; amd. Sec. 3, Ch. 558, L. 1979; amd. Sec. 1, Ch. 258, L. 1987; amd. Sec. 4, Ch. 249, L. 1991; amd. Sec. 3, Ch. 356, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999.)

#### **20-7-412 Establishment of individual district special education program.**

(1) The trustees of a district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of children with disabilities in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Programs may be established for persons with disabilities between the ages of 0 and 21 when the superintendent of public instruction and the trustees have determined that the programs will:

(a) assist a person to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills that will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages that will materially benefit the person.

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.

(4) When an agency that has responsibility for a person with disabilities over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide the services.

(History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974; amd. Sec. 7, Ch. 539, L. 1977; R.C.M. 1947, 75-7806; amd. Sec. 4, Ch. 558, L. 1979; amd. Sec. 5, Ch. 249, L. 1991. )

20-7-413. Repealed.

**20-7-414 Determination of children in need and type of special education needed -- approval of classes and programs by superintendent.**

(1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the allowable cost payment for special education.

(History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971; amd. Sec. 12, Ch. 539, L. 1977; R.C.M. 1947, 75-7811; amd. Sec. 4, Ch. 618, L. 1985; amd. Sec. 17, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 249, L. 1991; amd. Sec. 4, Ch. 356, L. 1993; amd. Sec. 55, Ch. 633, L. 1993.)

20-7-415. Repealed.

(History: En. 75-7817 by Sec. 4, Ch. 539, L. 1977; R.C.M. 1947, 75-7817; amd. Sec. 10, Ch. 249, L. 1991.)

20-7-416 through 20-7-418 reserved.

**20-7-419 Rules.**

The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

- (1) the calculation of tuition under 20-7-420;
- (2) the calculation and distribution of funds under 20-7-435; and
- (3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

(History: En. Sec. 7, Ch. 375, L. 1993.)

**20-7-420 Residency requirements -- financial responsibility for special education.**

(1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

(History: En. Sec. 1, Ch. 470, L. 1979; amd. Sec. 4, Ch. 765, L. 1991; amd. Sec. 1, Ch. 375, L. 1993; amd. Sec. 10, Ch. 563, L. 1993; amd. Sec. 28, Ch. 509, L. 1995; amd. Sec. 5, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 6, Ch. 343, L. 1999.)

**20-7-421 Arranging attendance in another district in lieu of a special education program -- tuition.**

(1) In accordance with a placement decision made by persons determining an individualized education program for a child with a disability, the trustees may arrange for the attendance of a child in need of special education and related services in another district within the state of Montana.

(2) Tuition and transportation as required under 20-5-323 may be charged as provided in 20-7-420.

(History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971; amd. Sec. 1, Ch. 140, L. 1975; amd. Sec. 9, Ch. 539, L. 1977; R.C.M. 1947, 75-7808; amd. Sec. 2, Ch. 470, L. 1979; amd. Sec. 2, Ch. 481, L. 1979; amd. Sec. 2, Ch. 661, L. 1979; amd. Sec. 5, Ch. 765, L. 1991; amd. Sec. 2, Ch. 375, L. 1993; amd. Sec. 11, Ch. 563, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999.)

### **20-7-422 Out-of-state placement of child with disability -- payment of costs.**

(1) In accordance with a placement made by persons determining an individualized education program for a child with a disability, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with a disability who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with a disability who is in need of special education and related services is placed by a state agency in an out-of-state residential facility, the state agency making the placement shall pay the education costs resulting from the placement.

(4) The state agency shall place the child with a disability in a facility that will provide the child with a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

(History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971; amd. Sec. 2, Ch. 140, L. 1975; amd. Sec. 10, Ch. 539, L. 1977; R.C.M. 1947, 75-7809; amd. Sec. 3, Ch. 661, L. 1979; amd. Sec. 24, Ch. 609, L. 1987; amd. Sec. 18, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 765, L. 1991; amd. Sec. 3, Ch. 375, L. 1993; amd. Sec. 12, Ch. 563, L. 1993; amd. Sec. 2, Ch. 458, L. 1995; amd. Sec. 6, Ch. 529, L. 1997; amd. Sec. 3, Ch. 550, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999.)

20-7-423. Repealed.

(History: En. 75-7809.1 by Sec. 11, Ch. 539, L. 1977; R.C.M. 1947, 75-7809.1; amd. Sec. 4, Ch. 661, L. 1979; amd. Sec. 10, Ch. 249, L. 1991.)

### **20-7-424 No tuition when attending state institution.**

Whenever a child is attending a state-funded institution in Montana, the resident district or county is not required to pay tuition to the state institution for the child, but whenever at the recommendation of institution officials the child attends classes conducted by a school within a local district, the district or county where the parents or guardian of the child maintains legal residence shall pay tuition to the district operating the school in accordance with the provisions of 20-5-321 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments must be made for students enrolled in any school district classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments must be approved in accordance with existing transportation payment schedules and must be approved by the county transportation committee and the superintendent of public instruction.

(History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973; R.C.M. 1947, 75-7810; amd. Sec. 13, Ch. 563, L. 1993.)

20-7-425 through 20-7-430 reserved.

**20-7-431 Allowable cost schedule for special programs -- superintendent to make rules -- annual accounting.**

(1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks for special programs;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(b) related services, including:

(i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education related services personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(5) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total special education allowable cost payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations.

(History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; amd. Sec. 13, Ch. 539, L. 1977; R.C.M. 1947, 75-7813.1; amd. Sec. 1, Ch. 481, L. 1979; amd. Sec. 1, Ch. 661, L. 1979; amd. Sec. 1, Ch. 166, L. 1981; amd. Sec. 1, Ch. 548, L. 1983; amd. Sec. 1, Ch. 376, L. 1985; amd. Sec. 1, Ch. 243, L. 1987; amd. Sec. 19, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 765, L. 1991; amd. Sec. 1, Ch. 466, L. 1993; amd. Sec. 55, Ch. 633, L. 1993.)

20-7-432 through 20-7-434 reserved.

**20-7-435 Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children with emotional disturbances.**

(1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for an eligible child with a disability that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

(History: En. Sec. 9, Ch. 765, L. 1991; amd. Sec. 4, Ch. 375, L. 1993; amd. Sec. 51, Ch. 633, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999. )

## **20-7-436 Definitions.**

For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age, who is emotionally disturbed as defined in 20-7-401, and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children or youth with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(History: En. Sec. 10, Ch. 765, L. 1991; amd. Sec. 5, Ch. 375, L. 1993; amd. Sec. 34, Ch. 18, L. 1995; amd. Sec. 50, Ch. 418, L. 1995; amd. Sec. 70, Ch. 546, L. 1995.)

20-7-437. Renumbered 20-5-316.

20-7-438 through 20-7-440 reserved.

## **20-7-441 Special education child eligibility for transportation.**

With the approval of the superintendent of public instruction, any special education child shall be eligible for transportation, which shall be provided by the resident district, when he is enrolled:

(1) in a special education class or program operated by the district of such child's residence;

(2) in a special education class or program operated by a Montana district other than the child's resident district;

- (3) under an approved tuition agreement in a special education class or program operated outside of the state of Montana; or
- (4) under an approved tuition agreement in a private institution.

(History: En. 75-7814 by Sec. 432, Ch. 5, L. 1971; amd. Sec. 14, Ch. 539, L. 1977; R.C.M. 1947, 75-7814.)

#### **20-7-442 State transportation reimbursement for special education children.**

Districts providing children with transportation to a special education class or program and complying with the special education transportation regulations promulgated by the superintendent of public instruction shall be eligible for a transportation reimbursement. The reimbursement shall be calculated from a schedule established by the superintendent of public instruction with the state providing 50% of the reimbursement.

(History: En. 75-7815 by Sec. 433, Ch. 5, L. 1971; R.C.M. 1947, 75-7815; amd. Sec. 4, Ch. 711, L. 1991; amd. Sec. 1, Ch. 9, Sp. L. July 1992.)

#### **20-7-443 Financial assistance for under-six-year-old special education class or program.**

Any district operating an approved special education class or program for children under the age of 6 years shall be eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement under 20-7-442.

(History: En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971; amd. Sec. 15, Ch. 539, L. 1977; R.C.M. 1947, 75-7816. )

20-7-444 through 20-7-450 reserved.

#### **20-7-451 Authorization to create full service education cooperatives.**

(1) A school district may contract with one or more other school districts to establish a cooperative to perform any or all education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

- (a) recruitment of professionals or employees for the cooperative; and
- (b) facility rental and supportive services, including but not limited to janitorial and communication services.

(History: En. Sec. 1, Ch. 471, L. 1979; amd. Sec. 1, Ch. 156, L. 1985; amd. Sec. 2, Ch. 343, L. 1989; amd. Sec. 1, Ch. 136, L. 1991.)

### **20-7-452 Detailed contents of full service education cooperative contracts.**

The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

- (1) its duration, which may not be less than 3 years for purposes of providing special education services;
- (2) the precise organization, composition, and nature of the cooperative;
- (3) the purpose of the cooperative;
- (4) the manner of financing the cooperative and establishing and maintaining a budget for the cooperative;
- (5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;
- (6) provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives;
- (7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;
- (8) any other necessary and proper matters.

(History: En. Sec. 2, Ch. 471, L. 1979; amd. Sec. 3, Ch. 343, L. 1989; amd. Sec. 2, Ch. 136, L. 1991.)

### **20-7-453 Submission of agreement to attorney general.**

(1) Every contract made under the provisions of 20-7-451 through 20-7-456 must, as a condition precedent to its performance, be submitted to the attorney general who must determine whether the contract is in proper form and compatible with the laws of Montana.

(2) The attorney general must approve any contract submitted to him pursuant to 20-7-451 unless he finds that it does not meet the conditions set forth in 20-7-451 and 20-7-452, in which case he must detail, in writing addressed to the school districts concerned, the specific respects in which the proposed contract fails to meet the requirements of law. Failure to disapprove a contract within 30 days of its submission constitutes approval of the contract by the attorney general.

(History: En. Sec. 3, Ch. 471, L. 1979.)

### **20-7-454 Final approval and filing of full service education cooperative contract.**

Within 10 days after approval by the attorney general and prior to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451 through 20-7-456 must be:

- (1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;
- (2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state.

(History: En. Sec. 4, Ch. 471, L. 1979; amd. Sec. 3, Ch. 136, L. 1991.)

**20-7-455 Authorization to appropriate funds for purpose of full service education cooperative contract.**

A school district entering into a full service education cooperative contract pursuant to 20-7-451 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract such material, personnel, or services as may be within its legal power to furnish.

(History: En. Sec. 5, Ch. 471, L. 1979; amd. Sec. 4, Ch. 136, L. 1991.)

**20-7-456 Tenure of teachers employed by cooperatives.**

(1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

(History: En. Sec. 6, Ch. 471, L. 1979; amd. Sec. 5, Ch. 136, L. 1991.)

**20-7-457 Funding provisions for special education purposes of cooperatives or joint boards.**

(1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) A cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) Before July 1, 1994, the superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member.

(History: En. Sec. 4, Ch. 343, L. 1989; amd. Sec. 6, Ch. 136, L. 1991; amd. Sec. 4, Ch. 568, L. 1991; amd. Sec. 2, Ch. 466, L. 1993.)

20-7-458. Repealed.

(History: En. Sec. 5, Ch. 343, L. 1989; amd. Sec. 7, Ch. 136, L. 1991.)

20-7-459 and 20-7-460 reserved.

### **20-7-461 Appointment and termination of appointment of surrogate parent.**

(1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency that is providing educational services to the child. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or

their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

- (a) a child's parents are identified;
- (b) the location of the parents is discovered;
- (c) the child is no longer a ward of the state; or
- (d) the surrogate parent wishes to discontinue the appointment.

(History: En. Sec. 5, Ch. 618, L. 1985; amd. Sec. 7, Ch. 249, L. 1991; amd. Sec. 5, Ch. 356, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd 3/2002. )

### **20-7-462 Responsibilities of surrogate parent.**

A person assigned as a surrogate parent shall represent the child with a disability in all decision making processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which he is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving his approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and such other programs as may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever such assistance is in the best interest of the child.

(History: En. Sec. 6, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999.)

### **20-7-463 Surrogate parent -- immunity from liability -- reimbursement.**

(1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by him in his capacity as a surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of his duties, as prescribed by rules adopted by the superintendent of public instruction.

(History: En. Sec. 7, Ch. 618, L. 1985.)

## Sub-Chapter 30

### Definitions

10.16.3001 through 10.16.3006 reserved

#### **10.16.3007 ELIGIBLE STUDENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

(1) To be eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), a student must meet the criteria for one or more of the disabling conditions listed in 34 CFR 300.7(a)(1) and as a result of that condition the student is in need of special education as defined in 34 CFR 300.26.

(2) "In need of special education" means the student must need specially designed instruction delivered or directed by a qualified special educator, either alone or in collaboration with other qualified personnel.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3008 ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE**

(1) "Adversely affect the student's educational performance" means that there is evidence that measures of student performance (e.g., achievement tests, grades, behavioral assessments, analysis of classroom assignments, or criterion-referenced tests, etc.) indicate a pattern of educational attainment that can wholly or in part be attributed to the disabling condition.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3009 reserved

#### **10.16.3010 CRITERIA FOR IDENTIFICATION OF A CHILD WITH DISABILITIES AGES 3-5**

(1) A student may be identified as being a child with disabilities, without the specific category being identified, if the student is 3, 4, or 5 years old and meets the criteria for one or more disabilities in ARM 10.16.3011 through 10.16.3022.

(2) At the discretion of the local educational agency, a student may be identified as being a child with disabilities if the student experiences a severe delay in development. A severe delay in development means:

(a) the student functions at a developmental level two or more standard deviations below the norm in any one area of development or 1.5 standard deviations below the norm in two or more areas of development; and

(b) the areas of development include one or more of the following areas: cognitive development, physical development, communication development, social and emotional development, or adaptive functioning skills.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## **10.16.3011 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM**

(1) The student may be identified as having autism if documentation supports the existence of a developmental disability that was generally evident before the student was three years of age and if the student has communication difficulties in verbal and nonverbal communication and social interaction.

(2) Assessments shall document the presence of significant delays in verbal and nonverbal communication and social interaction.

(a) Significant delays in verbal communication are manifested by at least one of the following:

(i) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime);

(ii) in students with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others.

(b) Significant delays in nonverbal communication are manifested by a marked impairment in the use of multiple nonverbal behaviors such as eye to eye gaze, facial expression, body postures, or gestures to regulate social interaction.

(c) Significant delays in social interaction are manifested by at least one of the following:

(i) failure to develop peer relationships appropriate to developmental levels;

(ii) lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., lack of showing, bringing or pointing out objects of interest);

(iii) lack of social or emotional reciprocity;

(iv) lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level.

(3) Other characteristics often associated with autism may include restricted, repetitive and stereotyped patterns of behavior, interests and activities, as manifested by one or more of the following:

(a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;

(b) Apparently inflexible adherence to specific nonfunctional routines or rituals;

(c) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements);

(d) Persistent preoccupation with parts of objects.

(4) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (2) and (3) are met.

(5) The student may not be identified as having autism if the student's educational performance is adversely affected primarily because the student has an emotional disturbance.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3012 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING COGNITIVE DELAY**

(1) The student may be identified as having cognitive delay if the student has a significantly subaverage general intellectual functioning and corresponding deficits in adaptive behavior and educational performance, especially in the area of application of basic academic skills in daily life activities.

(2) "General intellectual functioning" means performance on a standardized intelligence test that measures general cognitive ability rather than one limited facet of ability.

(a) "Significantly subaverage general intellectual functioning" is defined as two or more standard deviations below the population mean on a standardized intelligence test. Error in test measurement requires clinical judgment for students who score near two standard deviations below the mean.

(b) The presence of subaverage general intellectual functioning must occur during the developmental period defined as the period of time between conception and the 18th birthday.

(3) Deficits in adaptive behavior is defined as significant limitations in the student's effectiveness in meeting the standards of personal independence, interpersonal communication, and social responsibility expected for the student's age/grade peers and cultural group as measured by standardized instruments or professionally recognized scales.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3013 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAF-BLINDNESS**

(1) The student may be identified as having deaf-blindness if documentation supports that the student:

(a) Meets the criteria in ARM 10.16.3022 for visual impairment;

(b) Meets the criteria in ARM 10.16.3020 for speech-language impairment;

(c) Meets the criteria in ARM 10.16.3016 for hearing impairment or in ARM 10.16.3014 for deafness; and

(d) Is experiencing severe delays in communication and other developmental and educational skills such that services designed solely for students with deafness or for students with blindness would not meet the student's educational needs.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3014 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAFNESS**

(1) The student may be identified as having deafness if an audiological report documents that hearing loss is so severe that the student is impaired in processing linguistic information, with or without amplification, to the extent that prevents the auditory channel from being the primary mode of learning speech and language.

(2) The student's educational performance is adversely affected as documented by specific examples. The results and analysis of a current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually is required to show an impairment in processing linguistic information prior to identification.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3015 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING EMOTIONAL DISTURBANCE**

(1) The student may be identified as having emotional disturbance if a condition which includes one or more of the following characteristics is present:

(a) An inability to build or maintain satisfactory relationships with peers and teachers;

(b) Inappropriate types of behavior or feelings under normal circumstances including behaviors which are psychotic or bizarre in nature or behaviors which are atypical and for which no observable reason exists;

(c) A general, pervasive mood of unhappiness or depression including major depression and dysthymia but excluding normal grief reactions;

(d) A tendency to develop physical symptoms or fears associated with personal or school problems including separation anxiety, avoidant disorder and overanxious disorder;

(e) Schizophrenia.

(2) For each of the conditions in (1), the condition shall meet the criteria of having been present to a marked degree, over a long period of time and adversely affecting the student's educational performance.

(3) The student may be identified as having emotional disturbance when:

(a) The student has been observed in more than one setting within the educational environment; and

(b) The local educational agency has planned and implemented one or more positive behavioral interventions specific to the individual student. Interventions shall not unnecessarily delay appropriate identification when it can be shown through a student's social or developmental history, compiled directly from the student's parents or from records when the parents are not available, the existence of characteristics that clearly identify emotional disturbance.

(4) The student may not be identified as having emotional disturbance if delays in educational performance are primarily due to visual impairment, hearing impairment, orthopedic impairment, cognitive delay, health factors, or limited educational opportunity.

(5) Common disciplinary problems may exist in conjunction with emotional disturbance, but cannot be used as the sole criteria for determining the existence of an emotional disturbance.

(6) The term emotional disturbance does not apply to students who are socially maladjusted, unless it is determined that they meet the criteria herein for emotional disturbance.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3016 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING HEARING IMPAIRMENT**

(1) The student may be identified as having a hearing impairment if an audiological report documents that the student has a permanent hearing loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided, or has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to adversely affect educational performance.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3017 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING ORTHOPEDIC IMPAIRMENT**

- (1) The student may be identified as having orthopedic impairment if:
  - (a) The student is diagnosed by a qualified medical practitioner as having an orthopedic impairment;
  - (b) The impairment is severe; and
  - (c) The impairment adversely affects the student's educational performance.
- (2) The term orthopedic impairment includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3018 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT**

- (1) The student may be identified as having other health impairment if:
  - (a) The student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia or tuberculosis; and
  - (b) The condition adversely affects the student's educational performance.
- (2) A medical diagnosis of a chronic or acute health problem is required.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3019 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY**

- (1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age and ability levels:
  - (a) The student's rate of achievement relative to the student's age and ability levels remains below expectations and the student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (1)(b); and
  - (b) The student has a severe discrepancy between the student's intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning.
    - (i) A severe discrepancy is defined as a 50 percent or higher probability of a two standard deviation discrepancy between general cognitive ability and achievement in one or more of the areas identified in (1)(b) when adjusted for regression to the mean. Error in test measurement requires judgment for students who score near two standard deviations below the population mean. When exercising this judgment, consideration of additional information, such as classroom performance relative to the

student's performance on norm referenced tests, shall be used as the basis for determining the severe discrepancy.

(ii) Alternatives to norm referenced tests, such as curriculum-based assessments, shall be utilized to determine severe discrepancy whenever cultural factors, test conditions, size of test item sampling for the student's age, or other factors render standardized assessment results invalid. When utilizing alternative assessment procedures, a determination must still be made that a discrepancy between ability and achievement exists at a level of severity similar in size to the discrepancy that would have otherwise been found in (1)(b)(i).

(2) At least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting.

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

(3) Documentation of the learning disability determination shall:

(a) Meet the requirements for a written report found in 34 CFR 300.543;

(b) If appropriate, state the basis for concluding that the use of standardized test instruments would not be valid whenever provisions of (1)(b)(ii) are utilized to determine a severe discrepancy;

(c) Include educationally relevant medical findings, if any, that have been considered; and

(d) Include a report of one or more intervention techniques specific to the individual student. Interventions shall not unnecessarily delay appropriate identification.

(4) The student may not be identified as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of a visual, hearing, or motor impairment; cognitive delay; emotional disturbance; environmental or economic disadvantage; or cultural difference.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3020 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPEECH-LANGUAGE IMPAIRMENT**

(1) The student may be identified as having a speech-language impairment if the student has a significant deviation in speech such as fluency, articulation or voice, or in the ability to decode or encode oral language which involves phonology, morphology, semantics or pragmatics or a combination thereof.

(a) The student has a significant deviation in oral performance if the student's performance on standardized test is two standard deviations below the population mean, or between 1.5 and two standard deviations below the population mean, and there is documented evidence over a six month period prior to the current evaluation of no improvement in the speech-language performance of the student even with regular classroom interventions.

(b) For articulation, a significant deviation is consistent articulation errors persisting one year beyond the highest age when 90 percent of the students have acquired the sounds based upon specific developmental norms.

(c) If norm referenced procedures are not used, alternative assessment procedures shall substantiate a significant deviation from the norm.

(2) The student may be identified as having a speech-language impairment only when documentation of the student's interpersonal communication effectiveness in a variety of educational settings by the teacher, parent, speech-language pathologist, and others as appropriate supports the adverse educational effect of the speech-language impairment or oral communication in a classroom or school setting.

(3) The student may not be identified as having a speech-language impairment if the speech or language problems primarily result from environmental or cultural factors.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; TRANS, 2000 MAR p. 1048, ff. 7/1/00.)

### **10.16.3021 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING TRAUMATIC BRAIN INJURY**

(1) The student may be identified as having traumatic brain injury if the student has an acquired injury to the brain caused by external physical force which adversely affects the student's functional or psychosocial ability or both and the student's ability to learn or participate in the local educational agency's education program.

(2) The term traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psycho-social behavior; physical function; information processing; and speech.

(3) The student may not be identified as having a traumatic brain injury if the injury to the brain is congenital, degenerative, or caused by birth trauma.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3022 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT**

(1) The student may be identified as having a visual impairment if the student has a visual acuity of 20/70 or less in the better eye with correction or field of vision which at its widest diameter subtends an angle of no greater than 20 degrees in the better eye with correction.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## Sub-Chapter 31

### State and Local Eligibility

10.16.3101 through 10.16.3120 reserved

#### **10.16.3121 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

(1) The office of public instruction shall ensure that all students with disabilities, ages 3 through 18 inclusive, including students with disabilities who have been suspended or expelled from school, are provided a free appropriate public education (FAPE) in accordance with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C., sections 1401 through 1485) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the administrative rules promulgated by the superintendent of public instruction governing special education (ARM Title 10, chapter 16).

(2) The office of public instruction shall ensure that when local educational agencies provide education to students ages 19, 20 or 21, students of the same age with disabilities are provided FAPE in accordance with IDEA.

(3) The office of public instruction shall ensure that all students with disabilities referred to or placed in private schools by a public agency receive the rights and protections under IDEA.

(4) If a local educational agency fails to provide FAPE for a student with disabilities in accordance with IDEA, the office of public instruction shall take immediate steps to ensure FAPE is made available to the student with disabilities.

(a) The office of public instruction may initiate one or more of the following options to ensure that FAPE is made available for the student with disabilities:

(i) provide FAPE directly;

(ii) contract for services to provide FAPE;

(iii) provide an out-of-district placement in accordance with least restrictive environment regulations of IDEA;

(iv) recommend to the board of public education withholding of state education funds;

(v) deny in whole or part IDEA-B federal funds; or

(vi) recommend to the board of public education a change in accreditation status.

(b) Any costs incurred by the office of public instruction to provide FAPE to a student with disabilities due to failure of the local educational agency to provide FAPE, may be recovered from the local educational agency through a reduction in state education funds upon recommendation of the office of public instruction and hearing before the board of public education.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES**

(1) The local educational agency in which a student with disabilities resides is responsible for ensuring the student with disabilities, age 3 through 18, beginning on the student's third birthday, including students with disabilities who have been suspended or expelled from school, has available a free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C., sections 1401 through 1485) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the

administrative rules promulgated by the superintendent of public instruction governing special education (ARM Title 10, chapter 16). If the student's third birthday occurs in the summer, the individualized education program (IEP) team shall decide whether the student is to receive extended school year services during the summer. The local educational agency shall participate in transition planning conferences arranged by the early intervention provider agency.

(2) When the local educational agency provides education to students ages 19, 20 or 21, students of the same age with disabilities will be provided a free appropriate public education in accordance with IDEA.

(3) Students with disabilities unilaterally placed in private schools by their parents when a free appropriate public education is not an issue will be provided services as required by 34 CFR 300.450 through 300.462.

(a) The local educational agency in which the private school is located shall be responsible for child find activities, through referral, for students attending the private school.

(b) The local educational agency in which the private school is located shall refer each student identified under (3)(a) to the local educational agency in which the student resides.

(c) The local educational agency in which the student resides shall follow the procedures established in ARM 10.16.3320(1)(c) or (2) for each referred private school student.

(d) If the student is qualified for special education services, the local educational agency in which the student resides shall consult with the private school officials and develop a service agreement in accordance with 34 CFR 300.454 through 300.456.

(e) Each private school student with disabilities who has been designated to receive services under 34 CFR 300.452 must have a services plan that describes the specific special education and related services that the local educational agency in which the student resides will provide to the student in light of the services that the local educational agency has determined, through the process described in 34 CFR 300.453 through 300.454, it will make available to private school students with disabilities.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3123 and 10.16.3124 reserved

### **10.16.3125 LOCAL EDUCATIONAL AGENCY CHILD FIND RESPONSIBILITIES**

(1) Each local educational agency shall establish procedures to ensure that all students with disabilities living within the boundaries of the local educational agency regardless of the severity of their disability are identified, located, and evaluated including a practical method to determine which students are currently receiving needed special education and related services. If the student is parentally enrolled in a private school outside the boundaries of the local educational agency in which the student is living, the local educational agency where the private school is located is responsible for child find activities through referral.

(a) The procedures shall include a method to screen and develop criteria for further assessment for children between the ages of birth to 21 including all children in public and private agencies operated within the local educational agency legal boundaries.

(b) The written procedures shall describe the methods for collecting, maintaining, and reporting current and accurate data on all student identification activities. At a minimum, the procedures must:

(i) name the title of the person responsible for the coordination, implementation, and documentation of the procedures;

(ii) describe student identification activities including audiological, health, speech/language and visual screening, and review of data or records for students who have been or are being considered for retention, delayed admittance, long term suspension or expulsion, or waiver of learner outcomes (accreditation standards);

(iii) describe the role and responsibilities, if any, of other public or private agencies; and

(iv) ensure the collection and use of data are in accordance with the confidentiality requirements of 34 CFR 300.560 through 300.577.

(2) Before any major identification, location, or evaluation activity, the local educational agency must provide parents with written notice of the policies and procedures it implements to ensure protection of the confidentiality of any personally identifiable information collected, used, or maintained under part B of IDEA. The notice must comply with the requirements of 34 CFR 300.561 and be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the local educational agency boundaries of the activity.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3126 through 10.16.3128 reserved

### **10.16.3129 PARENTAL INVOLVEMENT**

(1) Each local educational or public agency shall afford parents the opportunity to participate in the child study team process and individualized education program meetings.

(2) No parent of a student receiving special education and related services will be required to perform duties not required of any other parent of a student enrolled in the local educational agency.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3130 and 10.16.3131 reserved

### **10.16.3132 INTERAGENCY COORDINATION FOR PART C, IDEA**

(1) The office of public instruction shall develop and implement interagency agreements with the department of public health and human services for the purpose of coordinating on transition matters between Part C and Part B of IDEA.

(2) The agreement shall include policies and procedures relating to a smooth and effective transition for those children participating in the early intervention program under Part C of IDEA who will participate in preschool programs assisted under Part B of IDEA, including:

- (a) determining financial responsibilities of agencies;
- (b) identifying responsibilities for performing evaluations;
- (c) developing and implementing educational programs;
- (d) coordinating communication between agencies;
- (e) participating in transition planning conferences; and
- (f) ensuring an individualized education program has been developed and implemented by the student's third birthday.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3135 COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT**

(1) The office of public instruction shall establish procedures for the development and conduct of a comprehensive system of personnel development. The procedures shall include:

(a) Analysis of state and local needs for professional development for personnel to serve students with disabilities that includes at a minimum:

(i) the number of personnel providing special education and related services;  
(ii) relevant information on current and anticipated personnel vacancies and shortages including the number of individuals described in (1)(a)(i) with provisional certification; and

(iii) the extent of certification or retraining necessary to eliminate these shortages that is based, to the maximum extent possible, on existing assessments of personnel needs.

(b) An annual statewide needs assessment to be conducted before June 1 of each year to determine if:

(i) a sufficient number of qualified personnel are available in the state;  
(ii) in-service and technical assistance personnel development programs are needed in specific areas related to the provision of special education and related services; and

(iii) preservice preparation of new personnel is needed.

(c) A detailed structure for personnel planning that focuses on preservice and in-service education needs and that describes procedures for:

(i) acquiring, reviewing and disseminating to general and special education teachers, paraprofessional personnel (e.g., teacher aides and instructional assistants), administrators and related service providers significant information about promising educational practices proven effective through research or demonstration;

(ii) providing technical assistance to local educational agencies, educational cooperatives, state operated programs and private programs serving state agency placed students with disabilities; and

(iii) identifying state, local and regional resources which will assist in meeting the state's personnel preparation needs.

(2) The superintendent of public instruction shall appoint a comprehensive system of personnel development council to ensure that public and private institutions of higher education and other agencies and organizations having an interest in the preparation of personnel for the education of students with disabilities have an opportunity to participate fully in the development, review and annual updating of the state comprehensive system of personnel development. The council shall:

(a) develop a long-range personnel development plan and evaluate effectiveness of state personnel training activities in meeting the plan and make recommendations for in-service, preservice and technical assistance programs on an annual basis;

(b) establish procedures to ensure collaboration and coordination of office of public instruction and local educational agency efforts in the utilization of current technology and training techniques in meeting the personnel development needs and use of appropriate networks, linkages and databases; and

(c) prepare a written report on recommendations regarding personnel preparation to the superintendent of public instruction and the state special education advisory panel.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## **10.16.3136 SPECIAL EDUCATION PROFESSIONAL STAFF QUALIFICATIONS**

(1) Any teacher providing special education and related services to students with disabilities shall hold a current Montana teaching certificate with appropriate endorsements.

(a) A special education teacher must hold a current Montana teaching certificate with an endorsement in special education.

(b) A teacher of homebound or hospitalized students must hold a current Montana teaching certificate.

(c) A school psychologist must hold a current Montana Class 6 teaching certificate.

(d) Supervisors of special education teaching personnel must have a Class 3 administrator's certificate with a principal's endorsement or a supervisor's endorsement in special education.

(2) All special education and related services for students with disabilities shall be provided under the direction of qualified personnel.

(3) Each local educational agency must require that each administrator which provides or supervises the provision of special education and related services to students with disabilities, obtains specific skills which enable the administrator to deal effectively with students with disabilities. These skills may be obtained through formal training or in-service training.

(4) Each local educational agency must require that each teacher who implements education services to students with disabilities, obtains specific skills which enable the teacher to deal effectively with students with disabilities under the teacher's supervision. These skills may be obtained through formal training or in-service training or consultation.

(5) A professional person (i.e., occupational therapist, physical therapist, social worker, psychiatrist, nurse, audiologist, speech/language pathologist, recreational therapist, professional counselor or physician) providing special education and related services to students with disabilities under this section shall hold a license from the appropriate state authority and meet the appropriate professional requirements that are based on the highest entry level requirements in the state applicable to the profession or discipline.

(6) Paraprofessional personnel (e.g., teacher aide or instructional assistant) shall meet current office of public instruction accreditation standards under ARM 10.55.707.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3137 through 10.16.3140 reserved

## **10.16.3141 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR MONITORING**

(1) The office of public instruction shall provide an ongoing and systematic monitoring process to ensure compliance with IDEA and its implementing regulations at 34 CFR, part 300, and Montana statutes pertaining to special education at Title 20, chapter 7, part 4, MCA, and implementing administrative rules at ARM Title 10, chapter 16. The procedures shall apply to all educational programs for students with disabilities including those administered by other state agencies and educational programs for students with disabilities referred to or placed in private schools by a public agency.

(a) The procedures shall include:

(i) review of local educational agency policies, procedures, programs, and program data;

- (ii) determination of the need for further information, on-site visitation, training, or technical assistance;
- (iii) development of strategies to enable the local educational agency to improve programs for students with disabilities;
- (iv) office of public instruction review of the effectiveness of the improvement plan and implementation strategies; and
- (v) procedures for identification of noncompliance and its correction including:
  - (A) the local educational agency's response to the findings;
  - (B) written documentation verifying immediate discontinuance of the violation, elimination of any continuing effects of past violations and prevention of the occurrence of any future violations and the steps taken to address the violation; and
  - (C) verification of compliance by the office of public instruction.
- (2) If a local educational agency fails to voluntarily take steps to correct an identified deficiency or fails to take any of the actions specified in a local educational agency corrective action plan, the office of public instruction shall notify the local educational agency in writing of the actions the office of public instruction intends to take in order to enforce compliance with IDEA and its implementing regulations, and Montana statutes pertaining to special education and implementing administrative rules.
  - (a) The notice shall include a statement of the actions the office of public instruction intends to take, right to a hearing and consequence of the local educational agency's continued noncompliance on its accreditation status and approval for state and federal funding of special education services.
  - (b) The office of public instruction may initiate one or more of the options under ARM 10.16.3121 to ensure compliance.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3142 INTERAGENCY AGREEMENTS**

- (1) The office of public instruction shall develop and implement interagency agreements with the board of public education, departments of public health and human services and corrections for the purpose of describing the role that each of these agencies plays in providing for special education or related services.
- (2) The interagency agreement shall define the financial responsibility of each agency for providing a free appropriate public education and establish procedures for resolving interagency disputes among parties to the agreement; and establish procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.
- (3) The interagency agreement shall designate the rules, regulations and educational standards applicable to educational services administered by other public agencies and the monitoring role of the office of public instruction.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3143 and 10.16.3144 reserved

#### **10.16.3145 PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN**

(1) If through the monitoring procedures defined in ARM 10.16.3141, or through other means, the office of public instruction determines that IDEA funds have been made available to a local educational agency as the result of misclassified children, the office of public instruction shall send written notice to the local educational agency.

(a) The notice shall include a statement of the number of misclassified children, means by which the misclassified children were discovered, specific determination of each occurrence of misclassification, and amount, schedule of payment, options for resolving and method of returning funds for misclassified children to the office of public instruction.

(b) The notice must also include a statement of the local educational agency's right to a hearing.

(2) A local educational agency shall have 14 days from receipt of the notice in which to reply in writing to the office of public instruction regarding the accuracy or completeness of its findings.

(3) Upon receipt of the written reply from the local educational agency, the office of public instruction shall review and, if necessary, revise its findings. The office of public instruction shall send written response of its review of the local educational agency reply within 14 days of receipt of the reply.

(4) If a local educational agency disagrees with the findings of the office of public instruction in regard to IDEA funds made available to the local educational agency as a result of misclassified children, the local educational agency may request a hearing under ARM 10.16.3196.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3146 FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN**

(1) If the local educational agency fails to reimburse the office of public instruction according to schedule for payments stated in the written notice for funds made available to local educational agency as a result of misclassified children, the office of public instruction shall implement state procedures under ARM 10.16.3141.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3147 through 10.16.3149 reserved

#### **10.16.3150 STATE ADVISORY PANEL**

(1) The superintendent of public instruction shall establish and maintain the state advisory panel in accordance with 34 CFR 300.650 through 300.653.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3151 through 10.16.3179 reserved

### **10.16.3180 NOTICE OF AVAILABILITY OF FEDERAL FUNDS**

- (1) The office of public instruction shall annually provide written notice of the availability of federal funds under IDEA.
- (2) The notice shall include:
  - (a) procedures for applicants to follow in completing and submitting application for federal funds under IDEA;
  - (b) amount of the federal funds and the period during which the local educational agency may obligate funds;
  - (c) goals and objectives for use of the funds;
  - (d) description of state and federal requirements to which the local educational agency must comply to receive funds;
  - (e) office of public instruction's procedure for approving applications;
  - (f) requirements for project reports;
  - (g) a statement of a local educational agency's obligation to make the application and any evaluations, periodic program plans, or reports required by the office of public instruction for this project available for public inspection; and
  - (h) an application form and an offer of technical assistance from the office of public instruction.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3181 LOCAL EDUCATIONAL AGENCY FEDERAL FUNDS APPLICATIONS**

- (1) In order to receive federal funds under IDEA, a local educational agency shall annually submit an application to the office of public instruction in accordance with application instructions and within announced timelines.
  - (a) A local educational agency may submit a single district application if it has:
    - (i) an entitlement of \$7500 or more; and
    - (ii) established, satisfactory to the office of public instruction, special education and related services which provide a free appropriate public education to students with disabilities.
  - (b) A local educational agency that participates in an education cooperative under 20-7-451 and 20-7-457, MCA, shall submit one consolidated application through the cooperative.
  - (c) A local educational agency that generates an entitlement of less than \$7500 or that is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities shall participate in one consolidated application with other local educational agencies.
- (2) A consolidated application must meet the same requirements as a single district application.
  - (a) If the cooperative interlocal agreement does not specifically delegate the power to apply for IDEA funds on behalf of the participating local educational agency to a prime applicant, each participating local educational agency must delegate to the prime applicant the authority to apply for IDEA funds.
- (3) If a local educational agency makes a significant amendment to its application, the local educational agency shall follow the procedures for submitting an original application under IDEA. The office of public instruction shall follow the same review and approval procedures as required for an original application.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3182 through 10.16.3193 reserved

### **10.16.3194 OFFICE OF PUBLIC INSTRUCTION APPROVAL/DISAPPROVAL OF APPLICATIONS FOR FEDERAL FUNDS**

(1) Local educational agency federal funds applications shall be consistent with state and federal regulations and be completed according to application instructions and timelines as stated in notice of availability of federal funds.

(2) The office of public instruction approval procedures shall include:

(a) consideration of a local educational agency's response to program monitoring and the early assistance program as defined in ARM 10.16.3660, complaint investigation or due process hearing decisions which are adverse to the local educational agency;

(b) consideration of any previous office of public instruction or board of public education decisions resulting in withholding of funds;

(c) determination of maintenance of fiscal effort; and

(d) consideration of an approved program narrative.

(3) The office of public instruction shall provide written notice of approval of the application and federal funds award which shall include:

(a) amount of the funds approved;

(b) the period during which the local educational agency may obligate funds; and

(c) statement of federal requirements which apply to the use of the funds.

(4) The office of public instruction shall provide written notice which meets the requirements of U.S. education department general administration regulations (EDGAR) of disapproval of the application and subgrant award.

(5) If a local educational agency or education cooperative makes a significant amendment to its application for federal funds, the local educational agency or education cooperative shall follow the procedures for submitting the original application.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3196 OFFICE OF PUBLIC INSTRUCTION DISAPPROVAL OF FEDERAL FUNDS: OPPORTUNITY FOR HEARING**

(1) If a local educational agency alleges that the office of public instruction violates a state or federal statute or regulation with regard to the disapproval of, or failure to approve the application or project in whole or in part, or failure to provide federal funds in amounts in accordance with requirements of statutes and regulations, the local educational agency shall request a hearing within 30 days of the receipt of notice of proposed disapproval of funds by the office of public instruction.

(a) The request shall be made in writing by the board of trustees of the local educational agency to the superintendent of public instruction.

(b) The request shall include a statement of the specific allegations of violation of state or federal statute or regulation by the office of public instruction and be signed by the chairperson of the board of trustees.

(2) Within 30 days after receipt of the request, the office of public instruction shall hold a hearing on the record and shall review its action.

(a) At least 5 days prior to the hearing, the office of public instruction shall make available at reasonable times and places all records of the agency pertaining to the appeal of the local educational agency including records of other local educational agencies.

(3) No later than 10 days after the hearings, the office of public instruction shall issue its written decision including findings of fact and reasons for the ruling. The office of public instruction shall send a copy of the written decision and findings of fact and reasons for ruling to the board of trustees of the local educational agency.

(4) If the office of public instruction determines that its action was contrary to state or federal statutes or regulations under IDEA, the office of public instruction shall rescind its action.

(5) If the office of public instruction does not rescind its final action after the hearing procedure is completed, a local educational agency may appeal the decision to the secretary of the department of education. The local educational agency must appeal within 20 days of receipt of the written decision and findings of fact and reason for ruling.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## Sub-Chapter 32

### State and Local Eligibility - Specific Conditions

10.16.3201 through 10.16.3219 reserved

#### **10.16.3220 PROGRAM NARRATIVE**

(1) Each local educational agency or education cooperative must have on file with the office of public instruction a written program narrative that describes policies and procedures used for the provision of special education and related services within the local educational agency or education cooperative. The policies, procedures, and programs in the narrative shall be consistent with state policies and address the requirements of 34 CFR 300.121 through 300.156.

(2) The program narrative shall include a copy of the local educational agency or education cooperative special education forms.

(3) If a local educational agency participates in an education cooperative under 20-7-451 and 20-7-457, MCA, the local educational agency must submit a single program narrative through the cooperative.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## Sub-Chapter 33

### Services

10.16.3301 through 10.16.3319 reserved

#### **10.16.3320 REFERRAL**

(1) A local educational agency shall establish a referral process which includes a method for collecting information to determine whether comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) The referral must include a statement of the reasons for referral, including documentation of general education interventions, and the signature of the person making the referral.

(b) Referral shall document the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree which requires special education and related services.

(c) If a comprehensive educational evaluation in accordance with 34 CFR 300.531 through 300.536 is warranted, the local educational agency shall obtain consent of the parent before conducting a comprehensive educational evaluation.

(2) If, after receiving a referral, a child study team determines that a comprehensive evaluation is not necessary, the local educational agency shall notify the parent in writing of its decision, including a description of any options the local educational agency considered and the reasons why those options were rejected and a full explanation of all of the procedural safeguards available under 34 CFR 300.500 through 300.529.

(History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3321 COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS**

(1) Before initial provision of special education and related services, a comprehensive and individualized evaluation of the student's educational needs shall be conducted in accordance with the requirements of 34 CFR 300.531 through 300.543.

(2) For initial evaluations, the child study team report shall address:

(a) The results of assessments 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; and

(b) The data necessary to address criteria established in ARM 10.16.3010 through 10.16.3022.

(3) For all initial evaluations and re-evaluations, the child study team report shall address a review of existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based assessments and observations which include the student's involvement and progress in the general curriculum; and

(c) Observations by teachers and related services providers.

(4) The child study team shall determine whether the evaluation is adequate and whether the student has a disability which adversely affects the student's involvement and progress in the general curriculum and because of that disability needs special education.

(5) The child study team shall prepare a written report of the results of the evaluation. The report shall include the results of assessments and shall include statements of implications for educational planning in terms understandable to all team members.

(6) All child study team reports shall include a summary statement of the basis for making the determination whether the student has a disability and needs special education and related services.

(7) All child study team reports will identify a disability category or categories for each student with a disability consistent with 20-7-401, MCA. This identification of a disability category is for the purposes of data reports required by the office of public instruction.

(8) Each participant of the child study team shall be provided an opportunity to submit a separate statement of conclusions if the report does not reflect the conclusions of the participant.

(9) A copy of the report shall be provided to the parent.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3322 COMPOSITION OF A CHILD STUDY TEAM**

(1) The child study team is a group of individuals that determines whether a student with disabilities is eligible for special education and related services. The child study team includes the following members:

(a) The parents of the student;

(b) At least one general education teacher of the student if the student is or may be participating in the general education environment;

(c) At least one special education teacher or, if appropriate, at least one special education provider;

(d) An administrative representative or designee of the local educational agency who:

(i) is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;

(ii) is knowledgeable about the general curriculum; and

(iii) is knowledgeable about the availability of resources;

(e) At least one teacher or other specialist with knowledge in the area of suspected disability who can interpret the instructional implications of evaluation results. This individual may be a member of the team described in (1)(a) through (f). For specific disabilities, the following specialists or teachers are required for initial evaluation:

(i) emotional disturbance, traumatic brain injury, specific learning disability or cognitive delay - a school psychologist;

(ii) speech-language impairment, deaf/blindness, traumatic brain injury - a speech-language pathologist;

(iii) autism - a school psychologist and speech-language pathologist; and

(iv) deafness or hearing impairment - a speech-language pathologist or audiologist;

(f) At the discretion of the parent or the local educational agency, other individuals who have knowledge or special expertise regarding the student; and

(g) The student, when appropriate.

(2) The local educational agency shall invite other specialists when such specialists are needed to complete a comprehensive evaluation.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3340 INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT DECISIONS**

(1) Local educational agencies shall develop, implement, review, and revise individualized education programs (IEP) in accordance with 34 CFR 300.340 through 300.350.

(2) IEP teams shall make placement decisions in accordance with least restrictive environment provisions at 34 CFR 300.550 through 300.554.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3341 RESIDENTIAL PLACEMENT BY PUBLIC AGENCY OTHER THAN LOCAL EDUCATIONAL AGENCY**

(1) If a student with disabilities has been placed in a residential treatment facility or children's psychiatric hospital according to 20-7-435, MCA, the residential treatment facility or hospital shall initiate action to develop, review or revise the student's individualized education program and, if necessary, to evaluate and identify a student with a disability in accordance with the requirements of IDEA.

(2) The facility or hospital shall notify a representative of the student's resident local educational agency of the student's placement at the facility or hospital and request the participation of the resident LEA in meetings as required by IDEA. If the representative of the resident LEA cannot attend the meetings, the representative shall use other methods to ensure participation by the resident LEA.

(3) The facility or hospital shall notify the parents of their right to participate in any decision about the student's individualized education program and agree to any proposed changes in the program before those changes are implemented.

(4) The student's resident local educational agency is responsible for ensuring that a student placed in a residential treatment facility or children's psychiatric hospital receives FAPE under IDEA. The office of public instruction is responsible for ensuring compliance with IDEA.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3342 TRANSFER STUDENTS: INTRASTATE AND INTERSTATE**

(1) When an IDEA eligible student moves to a new school district within the state and the student's current IEP is available, the new school district shall ensure that there is no interruption of special education and related services. If the current IEP is not available, or if the new school district or the parent believes that the IEP is not appropriate, the new school district must develop a new IEP through appropriate procedures within a short time (normally within one week) after the student enrolls in the new school district. Before the new IEP is finalized, the new school district may provide interim services agreed to by both the parents and the new school district. If the parents and the new school district are unable to agree on an interim IEP and placement, the new school district must implement the former IEP to the extent possible until a new IEP is developed and implemented. To the extent that implementation of the former IEP is impossible, the new school district must provide services that approximate, as closely as possible, the former IEP.

(2) When an IDEA eligible student moves to Montana from another state, the first step is to determine whether to adopt the most recent evaluation and IEP.

(a) If the former IEP is adopted by the new district and the parents agree to its use, it can be implemented.

(b) If the former IEP is refused by the new district or the parents, an IEP meeting must proceed in accordance with 34 CFR 300.343. If the former evaluation is rejected by the new district, an evaluation must be conducted without undue delay.

During the evaluation, the student shall be placed pursuant to an agreed-upon interim IEP, or in general education in absence of such an agreement.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3343 and 10.16.3344 reserved

### **10.16.3345 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PROMOTION OF STUDENTS WITH DISABILITIES**

(1) The local educational agency shall have procedures to ensure continuation of a free appropriate public education for students with disabilities when promoting the student from preschool to elementary school and from elementary school to junior high or middle school and from junior high or middle school to high school.

(2) Whenever a student with disabilities is receiving special education and related services in a non-graded program and the student is age 14 on or before September 10th of the school year, the responsibility for ensuring a free appropriate public education changes from the elementary local educational agency to the high school local educational agency.

(3) Chronological age and physical development should be strong factors in the decision to move a student from the junior high or middle school to the high school. Consideration also must be given to the least restrictive environment principle in planning for promotion.

(4) A student with disabilities shall be promoted or retained according to local educational agency criteria unless waived in the student's IEP.

(5) A student with disabilities who has completed a prescribed course of studies shall be eligible for graduation from high school.

(a) A student who has successfully completed the goals on the IEP shall have completed a prescribed course of study.

(b) Documentation of completion of the annual goals shall be included in the periodic review of the IEP.

(History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3346 AVERSIVE TREATMENT PROCEDURES**

(1) Positive behavioral interventions based on the results of a functional behavioral assessment shall serve as the foundation for any program utilizing aversive procedures to address the behavioral needs of students. Aversive treatment procedures may be appropriate for an individual student who exhibits behaviors which pose a risk of physical harm to the student or others, or a risk of significant damage to property, or significantly disruptive or dangerous behaviors which cannot be modified solely through the use of positive behavioral interventions. Aversive treatment procedures must be designed to address the behavioral needs of an individual student, be approved by the IEP team, and may not be used as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions.

(2) Aversive treatment procedures are defined as:

(a) physical restraint, other than as provided in 20-4-302, MCA, when the IEP team has determined that the frequency, intensity or duration of the restraint warrants an aversive treatment procedure; and

(b) isolation time-out which results in the removal of a student to an isolation room under the following conditions:

(i) the student is alone in the isolation room during the period of isolation;

(ii) the student is prevented from exiting the isolation room during the period of isolation;

(iii) the door to the isolation room remains closed during the period of isolation;  
and

(iv) the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation.

(3) Any student in isolation timeout must be under the direct constant visual observation of a designated staff person throughout the entire period of isolation.

(4) The following procedures are prohibited:

(a) any procedure solely intended to cause physical pain;

(b) isolation in a locked room or mechanical restraint, except in residential treatment facilities and psychiatric hospitals as defined in 20-7-436, MCA, when prescribed by a physician as part of a treatment plan and when implemented in compliance with relevant federal and state law;

(c) the withholding of a meal for a period of greater than one hour from its scheduled starting time;

(d) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation; and

(e) mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device which is not intended for medical reasons.

(5) Exclusion time-out is not considered an aversive treatment procedure. Exclusion time-out is defined as any removal of a student from a regularly scheduled activity for disciplinary purposes that does not result in placing the student in an isolation room under all of the conditions described in (2)(b).

(6) IEPs may include the use of aversive treatment procedures only when:

(a) subsequent to a functional behavioral assessment, a series of no less than two written positive behavioral intervention strategies, which were designed to target the behavior to be changed, were previously implemented;

(b) the IEP team includes a person trained and knowledgeable about best practices in the application of positive behavioral interventions, aversive treatment procedures and nonaversive alternatives for de-escalation of behaviors; and

(c) a written behavioral intervention plan using aversive treatment procedures is developed and incorporated as a part of the IEP.

(7) A behavioral intervention plan using aversive treatment procedures shall:

(a) include a statement describing no less than two positive behavioral intervention strategies previously attempted and the results of these interventions, as described in (6)(a);

(b) describe the target behavior(s) that will be consequented with the use of the aversive treatment procedure(s);

(c) include short-term objective(s) with measurable criteria stating the expected change in the target behavior(s);

(d) provide a written description of the aversive treatment procedure(s);

(e) specify a time limit for the use of the aversive treatment procedure for any one instance;

(f) include data collection procedures for recording each application of the aversive treatment(s);

(g) state when the IEP team will meet to review the ongoing use, modification or termination of the aversive procedure;

(h) designate an individual responsible for ongoing review and analysis of the data on the target behavior;

(i) state how the student's parents will be regularly informed of the progress toward the short-term objectives in the IEP at a frequency no less than is required in 34 CFR 300.347; and

(j) state whether any standard school disciplinary measures are waived.

(8) When an aversive treatment plan is incorporated in the IEP, the parents must be informed that their consent to the IEP includes consent for the aversive

treatment plan. Failure to obtain consent is subject to due process proceedings under ARM 10.16.3507 through 10.16.3523.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## Sub-Chapter 34 Reserved

## Sub-Chapter 35

### Procedural Safeguards

10.16.3501 reserved

#### **10.16.3502 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY**

(1) When a student with disabilities reaches the age of 18, parental rights under IDEA will transfer to the student in accordance with 34 CFR 300.517.

(a) Beginning at least one year before a student's 18th birthday, the student's IEP must document that the student has been informed of his or her rights under part B of IDEA that will transfer to the student.

(b) The parent will be provided written notice of the transfer of rights to the student at least one year before the student reaches the age of 18.

(c) Both the parent and the student will receive all notices required by 34 CFR 300.504.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3503 reserved

#### **10.16.3504 SURROGATE PARENTS**

(1) Procedures for the appointment of a surrogate parent shall comply with 20-7-461, MCA.

(2) A foster parent meeting the requirements of 34 CFR 300.20(b) may act as a parent under Part B of IDEA if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and the foster parent:

(a) has an ongoing, long-term parental relationship with the student;

(b) is willing to make the educational decisions required of parents under IDEA; and

(c) has no interest that would conflict with the interests of the student.

(3) The local educational agency shall petition a court of competent jurisdiction for termination of the surrogate parent appointment when the student's parents are identified, the whereabouts of the parents are discovered, the student is no longer a ward of the state or the surrogate parent wishes to discontinue her or his appointment.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3505 PARENTAL CONSENT**

(1) The local educational agency shall maintain written documentation of the date the notice of intent to conduct an evaluation was sent to the parent and the date of parental consent for the evaluation.

(a) When parental consent for initial evaluation is refused, the local educational agency shall informally attempt to obtain consent from the parent before requesting an impartial due process hearing under ARM 10.16.3507 through 10.16.3523, to determine if the student may be initially evaluated without parental consent.

(b) If the hearing officer upholds the local educational agency, the local educational agency may initially evaluate the student without parental consent subject to the parent's right to bring a civil action.

(2) Written parental consent for initial and annual placement of a student with disabilities in special education and related services shall be obtained by the local educational agency prior to the placement.

(a) The local educational agency shall maintain written documentation of the date of parental consent for initial or annual placement.

(b) If the parents and local educational agency cannot agree on the IEP but can agree on certain IEP services or interim placement, the student's new IEP would be implemented in the areas of agreement and the student's last agreed-upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved.

(c) When parental consent for annual placement has not been obtained and has not been specifically refused, the local educational agency shall informally attempt to obtain consent from the parent.

(i) If parental consent cannot be obtained within a reasonable time, the local educational agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice.

(ii) If no response from the parent is obtained, the local educational agency shall provide the student special education and related services according to the student's IEP without parental consent subject to the parent's right to an impartial due process hearing under ARM 10.16.3507 through 10.16.3523.

(d) When parental consent for annual placement is refused, the local educational agency shall informally attempt to obtain consent from the parent. If, after exhausting informal attempts, the local educational agency is unable to obtain consent or resolve the disagreement, the local educational agency shall:

(i) provide the parent written notice as required by 34 CFR 300.503; and

(ii) if the local educational agency believes its proposed annual placement is necessary to ensure a free appropriate public education, it shall file a request for special education due process hearing in accordance with ARM 10.16.3507 through 10.16.3523, or take other action necessary to ensure that a parent's refusal to consent does not result in a failure to provide the student with a free appropriate public education.

(3) A parent may revoke consent at any time. 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). If the parent revokes consent, the parent and the local educational agency have the right to due process procedures under ARM 10.16.3507 through 10.16.3523.

(History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2001 MAR p. 1099, Eff.6/22/01.)

### **10.16.3506 VOLUNTARY MEDIATION**

(1) Upon receipt by mail of a written request for mediation signed by all parties to a special education controversy as defined in 34 CFR 300.506, prior to, during, or after a request for a due process hearing under ARM 10.16.3507, the superintendent of public instruction shall appoint an impartial mediator.

(2) The parties may mutually agree to any qualified mediator whose name is included on the list maintained by the office of public instruction. If the parties agree to a mediator, the name of the mediator will be included in the request for mediation.

(3) If the request for mediation does not include the name of a qualified mediator, the process for selection is as follows:

(a) The office of public instruction shall mail to each party the names of three mediators from its list of qualified mediators knowledgeable in special education laws and regulations.

(b) Upon receipt of the list of names, the parties shall have three business days to review the list, prioritize their selection, and return the list to the office of public instruction.

(c) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree, the superintendent of public instruction shall appoint a mediator from the names sent to the parties.

(4) The mediator shall schedule a mediation session in a timely manner, but no later than 30 days from the date of receipt of the request for mediation at the office of public instruction.

(5) Mediation shall comply with 34 CFR 300.506.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3507 SCOPE OF RULES**

(1) These rules govern the procedure for conducting all due process hearings concerning and arising from the education of students with disabilities in this state. All rules promulgated by former state superintendents of public instruction with regard to special education due process hearings contrary to these rules are hereby repealed.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3508 INITIATING SPECIAL EDUCATION DUE PROCESS**

(1) A request for an impartial due process hearing involving the education or possible identification of a student with disabilities shall be made in writing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501.

(2) The superintendent of public instruction shall develop a model form to assist parents in filing a request for due process. The request shall include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student attends;

(d) A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) Upon receipt, the office of public instruction shall mail a copy to the other party.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## **10.16.3509 SPECIAL EDUCATION DUE PROCESS HEARING PROCEDURES**

(1) Upon receipt by mail of a written request for a due process hearing involving a special education controversy, the superintendent of public instruction shall:

(a) Promptly advise the district administration and parent, legal guardian or surrogate parent of the request for due process hearing; and

(b) Appoint an impartial hearing officer to conduct a due process hearing.

(i) The superintendent of public instruction shall maintain a list of individuals who are qualified to serve as impartial hearing officers.

(ii) Selection of impartial hearing officer:

(A) Upon receiving a request for hearing, the superintendent of public instruction shall mail to each party a list of the names of five proposed impartial hearing officers together with a summary of their qualifications.

(B) Each party shall have five business days following receipt of the list of names to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the superintendent of public instruction. Requests for more information about proposed impartial hearing officers must be directed to the superintendent of public instruction. Unless good cause is shown, this request for more information does not extend the five business day response time. (This five business days is counted as part of the 45-day period allowed for the issuance of the final order in a due process hearing. See ARM 10.16.3523.)

(C) If the parties arrive at a mutually agreeable choice, the superintendent of public instruction shall make the appointment from the ranking.

(D) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon an impartial hearing officer, the superintendent of public instruction shall make the appointment from the names ranked by the parties.

(2) An impartial hearing officer may at any point withdraw from consideration or from service in any hearing in which the impartial hearing officer believes a personal or professional bias or interest on any of the issues to be decided in the hearing exists which might conflict with the impartial hearing officer's objectivity. Such written request to withdraw shall be directed to the superintendent of public instruction. Any subsequent appointment of an impartial hearing officer shall be conducted as provided above.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## **10.16.3510 NOTICE OF HEARING**

(1) The impartial hearing officer shall within ten days of receipt of notice of appointment by the superintendent of public instruction schedule a prehearing conference pursuant to ARM 10.16.3512. The impartial hearing officer shall inform the parties of all future proceedings in this matter. The notice of hearing shall include:

(a) a statement of the time, place and nature of the hearing;

(b) references to the specific statutes and rules involved available at that time;

(c) a provision advising the parties of their right to be represented by counsel at the hearing;

(d) a provision informing the parent of any free or low-cost legal and other relevant services available in the area;

(e) a statement of issues and matters to be discussed at the hearing.

(2) The notice of hearing shall be sent by certified mail to all parties.

(3) If the impartial hearing officer does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, a party or impartial hearing officer may later demand a more detailed account of the issues and matters to be discussed. The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the impartial hearing officer to such a convenient date as stipulated by the parties and approved by the impartial hearing officer.

(a) The notice of hearing as well as all communications conducted in the hearing shall be written in language understandable to the general public and in the native language of the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication is not written language, the impartial hearing officer shall direct the notice to be translated orally or by other means to the parent in his/her native language or other means of communication.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3511 CONFERENCE AND INFORMAL DISPOSITION**

(1) The impartial hearing officer may informally confer with the parties to the request for impartial due process hearing for the purpose of attempting informal disposition of any special education controversy.

(2) This conference of informal disposition may occur at any time prior to the issuing of the final findings of fact, conclusions of law and order of the impartial hearing officer. The parties may informally confer to resolve the special education controversy by stipulation, agreed settlement, consent order, or default. To be effective, any agreement made at such conference must be reduced to writing and signed by all parties. An agreed resolution shall end the proceedings upon formal action of the hearing officer unless a party to the hearing appeals the decision under ARM 10.16.3523.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3512 IMPARTIAL HEARING OFFICER'S PREHEARING - FORMULATING ISSUES**

(1) The impartial hearing officer shall schedule a prehearing conference to:

- (a) identify and clarify the issues;
- (b) determine the necessity or desirability of amendments to the request for impartial due process hearing;
- (c) obtain, if possible, admissions of fact and documents which will avoid unnecessary proof;
- (d) set discovery and prehearing schedule, including schedule for identification of expert witnesses;
- (e) determine if the parent wants an audio record of the hearing and/or the findings of facts and decision; and
- (f) consider such other matters as may aid in the disposition of the action.

(2) The impartial hearing officer shall make an order which recites the action taken at the conference, any amendment to the request for impartial due process hearing, the agreements made by the parties as to any of the matters considered, and which limits the issues for the hearing to those not disposed of by admissions or agreements of the parties. Such order when entered will control the subsequent course of action, unless modified at the hearing to prevent manifest injustice. The impartial hearing officer, in his/her discretion, may establish by rule a prehearing calendar on which actions may be placed for consideration as provided above.

(3) Individual privacy. The impartial hearing officer shall provide for provisions to ensure the privacy of matters before him/her as is required by law. Parents maintain the right to waive their right of confidentiality and privacy in the hearing and to have the hearing be open to the public. The impartial hearing officer shall also provide or allow an opportunity for the student with disabilities to be present at the hearing upon request of the parent, guardian, surrogate parent or the student with disabilities who is the subject of the hearing.

(4) Location of hearing. The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named school district is located.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3513 DISCOVERY**

(1) The impartial hearing officer may compel, limit or conduct discovery prior to the hearing and/or prehearing conference pursuant to ARM 10.16.3514 through 10.16.3516.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3514 DISCOVERY METHODS**

(1) Parties may obtain discovery by one or more of the following methods:

- (a) depositions upon oral examination or written questions;
- (b) written questions;
- (c) production of documents (or things or permission) to enter upon land or property;
- (d) request for admissions.

(2) Any evidence to be introduced at the hearing or on file shall be disclosed to the opposing party at least five business days before the hearing or the evidence will not be admitted.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3515 SCOPE OF DISCOVERY**

(1) Unless otherwise limited by order of the impartial hearing officer, the scope of discovery is as follows:

(a) in general, parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible items, and the identity and location of persons having knowledge of any discoverable material;

(b) a party may discover facts known or opinions held by an expert who has been retained or especially employed by another party in anticipation of litigation or preparation for hearing.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3516 LIMITATIONS ON DISCOVERY BY THE IMPARTIAL HEARING OFFICER**

(1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the impartial hearing officer before whom the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the discovery not be had;
- (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) that the discovery may be had only by a method of discovery other than that selected by the parties seeking discovery;
- (d) that certain matters should not be inquired into, or that the scope of the discovery be limited to certain matters;
- (e) that discovery be conducted with no one present except persons designated by the impartial hearing officer.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3517 SEQUENCE AND TIMING OF DISCOVERY**

(1) The impartial hearing officer shall provide reasonable discovery on the relevant issues for the hearing and shall establish a calendar so that discovery does not delay the hearing. A request for discovery must be made within 15 days of filing the request for impartial due process hearing.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3518 AVAILABILITY OF CROSS-EXAMINATION OR PARTICIPATION IN THE HEARING**

(1) The right to examine, cross-examine or to participate as a party in this action shall be limited to the attorneys, the lay advocates with special knowledge or training with respect to students with disabilities who accompany and advise a particular party named in the matter, the particular parties named in the matter, and the impartial hearing officer.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3519 EX-PARTE CONSULTATIONS**

(1) The impartial hearing officer, after the issuance of the notice of hearing, shall not communicate with any party in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3520 POWERS OF THE IMPARTIAL HEARING OFFICER**

- (1) The impartial hearing officer may:
  - (a) administer oaths;
  - (b) issue subpoenas;
  - (c) provide for the taking of testimony by depositions;
  - (d) set the time and place of the hearing and direct parties to appear and confer to consider simplifications of the issues by consent of the parties involved;
  - (e) fix the time for filing of briefs or other documents;
  - (f) request the submission of proposed findings of facts and conclusions of law at the conclusion of the hearing.

(2) The impartial hearing officer shall be bound by common law and the Montana Rules of Evidence. All evidence and objections to evidence shall be noted in the record:

- (a) any part of the evidence may be received in written form;
- (b) documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the impartial hearing officer's specialized knowledge.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3521 HEARING**

(1) The hearing will be conducted before the impartial hearing officer in the following order:

- (a) statement and evidence of the petitioner or other party in support of its action;
- (b) statement and evidence of the respondent in support of its action;
- (c) rebuttal testimony;
- (d) closing arguments beginning with petitioner and ending with respondent.

(2) The order of procedure may be changed by order of the impartial hearing officer upon a showing of good cause.

(3) Each party shall have the right to conduct cross-examinations for a full and true disclosure of the facts, including the right to cross-examine the authority of any document prepared by or on behalf of or for the use of all parties and offered into evidence. All testimony shall be given under oath or affirmation.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3522 RECORD**

(1) The record in the impartial due process hearing shall include:

- (a) all pleadings, motions, intermediate ruling;
- (b) all evidence received plus a stenographic record of oral proceeding;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections and proceedings thereon;
- (e) proposed findings and exceptions;
- (f) findings of fact, conclusions of law and order by the impartial hearing officer.

(2) Any party to a hearing has the right to obtain an audio record of the hearing. A verbatim record of the impartial due process hearing shall be taken by a certified court reporter and, upon request of either party to the hearing, transcribed. The superintendent of public instruction will pay costs associated with the transcription of the record taken by the court reporter.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3523 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS**

(1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing within 45 days of the superintendent of public instruction's receipt of

the request for hearing unless an extension of time has been granted by the impartial hearing officer. The impartial hearing officer may grant a request by either party for a specific extension of the 45-day period allowed for rendering a final order. The hearing officer shall mail, or personally deliver, a written copy of the findings of fact, conclusions of law and order to each of the parties and to the superintendent of public instruction. The hearing officer shall also mail or deliver the record as defined in ARM 10.16.3522 to the superintendent of public instruction.

(2) In the event the impartial hearing officer has granted a written request from a party to extend the 45-day period in which to render a final decision, the impartial hearing officer shall notify the superintendent of public instruction when the decision is due. In the event the decision is not rendered within 90 days from the date the request for impartial due process hearing was filed with the superintendent of public instruction, the superintendent of public instruction may remove the impartial hearing officer and appoint another impartial hearing officer.

(3) The impartial hearing officer may order reimbursement for parents for the unilateral placement of their child if the school district's placement is determined to be inappropriate and the parent's placement is deemed appropriate.

(4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.

(5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may bring a civil action under 34 CFR 300.512.

(6) The superintendent of public instruction shall only be responsible for paying administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and stenographic services. The parties involved shall each be responsible for any legal or other fees that occur.

(7) Every party to a controversy shall comply with these rules of procedure. Failure of one party to do what is required and which substantially prejudices the proceedings may necessitate a request by the impartial hearing officer of a court order for compliance.

(8) In the event that parents of a student with disabilities prevail, a court of competent jurisdiction, in its discretion, may award reasonable attorney's fees as part of the costs to the parents. The awarding of attorney's fees is subject to the limitations found under 34 CFR 300.513.

(9) The office of public instruction, after deleting any personally identifiable information, shall transmit those findings and decisions to the state special education advisory panel and make those findings and decisions available to the public.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3524 through 10.16.3527 reserved

### **10.16.3528 INITIATING EXPEDITED DUE PROCESS HEARING**

(1) An expedited due process hearing under 34 CFR 300.528 may be initiated by submitting a written request for a hearing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501.

(2) The written request for expedited hearing shall include:

(a) date of the manifestation determination and evidence of a behavioral assessment plan;

(b) general statement of the problem;

(c) name of the school district or public agency, including the name and telephone number of the contact person;

(d) name of the parent and contact phone number;

(e) student's name; and

(f) tentative date(s) that the parties have agreed to hold the expedited hearing.

(3) A facsimile of the request may be submitted, but the original signed request must be received within three business days. The facsimile number may be requested by calling the office of public instruction.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3529 SELECTION OF EXPEDITED DUE PROCESS HEARING OFFICER**

(1) The superintendent of public instruction shall maintain a list of due process hearing officers who have successfully completed at least one regular due process hearing under IDEA and have indicated a willingness to accept appointment to conduct an expedited due process hearing.

(2) The superintendent of public instruction shall appoint a due process hearing officer from the list without input from the parties involved in the hearing.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3530 EXPEDITED HEARING**

(1) Upon appointment, the hearing officer shall:

- (a) contact the parties to schedule a prehearing telephone conference;
- (b) set the date, time and place of the expedited hearing; and
- (c) advise the parties of their right to be represented by counsel.

(2) The hearing officer may compel or limit discovery.

(3) The hearing officer shall prepare an order identifying the issues and matters to be decided.

(4) Evidence to be introduced at the hearing shall be disclosed to the opposing party at least two business days before the hearing or the evidence will not be admitted, unless the hearing officer decides otherwise.

(5) The hearing shall be conducted in accordance with ARM 10.16.3519 through 10.16.3522.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3531 FINAL DECISION IN EXPEDITED DUE PROCESS HEARING**

(1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the expedited hearing as soon as possible and not later than 10 days after the receipt of the request for the expedited hearing by the superintendent of public instruction. An extension may be requested, however, the extension cannot be for more than a total of 35 days.

(2) If the parent requests an audio record of the hearing and/or the findings of facts and decision at the prehearing conference, the due process hearing officer shall provide such a copy to the superintendent of public instruction and the parties.

(3) The hearing officer shall mail or deliver the record as defined in ARM 10.16.3522 to the superintendent of public instruction.

(4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.

(5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may begin a civil action under 34 CFR 300.512.

(History: Sec. 20-7-402, MCA; IMP; Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3532 through 10.16.3559 reserved

### **10.16.3560 SPECIAL EDUCATION RECORDS**

(1) School records and confidentiality of information must follow the provisions under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR, part 99, and must follow the provisions established for special education under IDEA and its implementing regulations at 34 CFR 500.560 through 500.577.

(2) Each special education record shall include access log, referral, permission for evaluation, evaluation data including summaries of assessments, test protocols and other information that are not subject to sole possession requirements of FERPA, child study team reports, individualized education programs, and periodic reviews of the individualized education program.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3561 through 10.16.3570 reserved

### **10.16.3571 PARENTAL CONSENT FOR RECORDS**

(1) Parental consent for disclosure of records shall comply with 34 CFR 300.571.

(2) In the event that parents refuse to consent to disclosure of records, the local educational agency may request an impartial due process hearing in accordance with ARM 10.16.3507 through 10.16.3523 to resolve the controversy.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## Sub-Chapter 36

### State Administration – Complaint Procedures

10.16.3601 through 10.16.3659 reserved

#### **10.16.3660 EARLY ASSISTANCE PROGRAM**

(1) The office of public instruction shall provide an ongoing and systematic informal dispute resolution process referred to as the "early assistance program."

(2) A parent, guardian, adult student, school district, or their representative may request early assistance in any issue related to a student's free appropriate public education. The early assistance program does not require formal, written application, however, request for early assistance may be made in writing to the Office of Public Instruction, Legal Services, P.O. Box 202501, Helena, MT 59620-2501. There is no pre-established procedure that must be followed.

(3) The early assistance program focuses on substance -- the quick resolution of problems of mutual concern to all parties. It is not based on the model of an impartial third party resolving a legal dispute between parties with conflicting goals or interests. It is, however, based on the goal of ensuring the delivery of a free appropriate public education. The early assistance program draws on the traditional model of parents and schools working cooperatively to achieve their shared goal of meeting the educational needs of the student with disabilities.

(4) As stated in ARM 10.16.3662, prior to or immediately following the filing of a formal administrative complaint as that term is defined in 34 CFR 300.662 (as distinguished from a request for due process), a parent or guardian must allow the office of public instruction 15 business days from the day it receives written notification of the intent to file a complaint to contact the school district and the parent or guardian to attempt to resolve the problem through the early assistance program.

(5) After the expiration of 15 business days, the parent or guardian may file a formal complaint at any time using a form provided by the office of public instruction. If a complaint has already been filed, there is no need for a new complaint on an office of public instruction form. All procedural rights apply. If the parent or guardian chooses not to file a formal complaint, the office of public instruction, the school district and the parent or guardian will continue to attempt to resolve the problem through the early assistance program.

(6) The services offered under this program are available in all circumstances where there is a possibility for mutual resolution. If the office of public instruction decides that any attempt to mutually resolve the complaint would be futile, the compliance officer shall proceed as if 15 business days had expired without resolution of the dispute.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3661 OPPORTUNITY TO PRESENT COMPLAINTS**

(1) The superintendent of public instruction has established state complaint procedures to comply with 34 CFR 300.660 through 300.662. Individuals or organizations alleging that a Montana local educational or public agency has failed to provide a student with disabilities a free appropriate public education may use ARM 10.16.3662 to file a complaint.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## **10.16.3662 STATE COMPLAINT PROCEDURES**

(1) An organization or individual may file a written signed complaint that the local educational or public agency is violating the Individuals with Disabilities Education Act (20 U.S.C., sections 1401 through 1485) or its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) or the administrative rules promulgated by the superintendent of public instruction governing special education (ARM Title 10, chapter 16).

(2) The complaint must:

(a) allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR 300.662 unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under 34 CFR 300.660;

(b) contain a specific statement of what requirement of a federal or state statute, regulation, or rule that applies to a student with disabilities or special education the local educational or public agency has allegedly violated; and

(c) include a statement of facts on which the allegation is based.

(3) The complaint must be filed with the Compliance Officer, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501. The compliance officer may return the complaint for a more complete statement of the issue. The compliance officer may contact the complainant orally or in writing to discuss the details of the complaint.

(4) Within 10 calendar days of receipt of the final written complaint, the compliance officer shall send written notification to the complainant and the local educational or public agency that a complaint has been filed.

(a) The compliance officer shall include a copy of the complaint with the notice to the local educational or public agency.

(b) If the complaint addresses matters listed in 34 CFR 300.503(a)(1) and (2) relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a free appropriate public education to the student, the compliance officer shall inform the complainant of the right to request a due process hearing under 34 CFR 300.507 and ARM 10.16.3507 through 10.16.3523.

(c) The written notice shall inform the local educational or public agency and the complainant that the office of public instruction will contact both parties to implement its early assistance program pursuant to ARM 10.16.3660. The early assistance program requires that prior to conducting an investigation of the allegations and preparation of a final report, the office of public instruction shall actively facilitate resolution of the written complaint for a maximum of 15 business days.

(5) If the local educational or public agency and the complainant are successful in resolving the dispute within 15 business days, the complaint will be dismissed. If resolution within 15 business days is not possible, the compliance officer shall immediately request the local educational or public agency to prepare and submit its written response to the complaint within 10 calendar days of receiving the notice that the early assistance program has been unsuccessful. An extension may be granted to the local educational or public agency by the compliance officer based on merits. An extension shall not be granted that will result in findings issued past the 60 day timeline. The local educational or public agency shall send its response to the compliance officer and a copy to the complainant.

(6) Upon receipt of the local educational or public agency's response, the compliance officer shall begin an appropriate investigation.

(7) The complainant will have 10 calendar days to submit to the compliance officer additional information, either orally or in writing, about the allegations in the complaint and the local educational or public agency's written response to the complaint. The 10 days will be counted from the day after the complainant receives a copy of the local educational or public agency's response.

(8) During the investigation neither the complainant nor the local educational or public agency or others representing either party shall contact the compliance officer without notifying the other party. Following an appropriate investigation, the compliance officer shall review all relevant information and make an independent determination as to whether the local educational or public agency is violating a requirement of federal or state statute, regulation or rule concerning the provision of a free appropriate public education to a student with disabilities. The compliance officer shall write a final report within 60 days of receipt of the complaint unless an extension of the 60 day period is required by exceptional circumstances which exist with respect to the particular complaint.

(9) The final report will address each allegation in the complaint and state findings of fact and legal conclusions, if required. The written decision will contain the reasons for the office of public instruction's decision. If the compliance officer concludes that an allegation is true and that corrective action is required to comply with federal or state law, the compliance officer will order the corrective action and shall include timelines for implementation of such action. The office of public instruction will provide technical assistance at the request of the local educational or public agency. The complaint, investigative records, and the final report shall be filed in a confidential file retained by the compliance officer.

(10) At any time during this process, if the compliance officer determines that the complaint has been resolved and compliance is achieved, the compliance officer shall inform the complainant and the local educational or public agency of that fact in writing.

(11) If within 60 days of issuance of the final report, the local educational or public agency has not implemented the corrective action required by the final report, the office of public instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include:

(a) recommending to the board of public education withholding state education funds;

(b) denial in whole or part IDEA, Part B federal funds; or

(c) recommending to the board of public education a change in accreditation status.

(12) If the local educational or public agency alleges that the office of public instruction has violated a state or federal special education statute, regulation or rule in ordering the corrective action required by the final report, the office of public instruction shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401, and the Montana Administrative Procedure Act, 2-4-601 through 2-4-711, MCA, prior to implementing sanctions.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1984 MAR p. 817, Eff. 5/18/84; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## Sub-Chapter 37

### Allocation of Funds – Reports

10.16.3701 through 10.16.3750 reserved

#### **10.16.3751 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR CHILD COUNT**

(1) The office of public instruction shall annually direct local educational agencies and other state operated educational programs to count the number of students with disabilities receiving special education and related services on December 1.

(2) In notifying local educational agencies and state operated programs of their responsibility, the office of public instruction shall identify:

- (a) procedures to follow in completing, submitting and verifying the count;
- (b) personally identifiable information required and statement of maintenance of confidentiality;
- (c) a statement of a local educational agency's and state operated program's obligation to ensure an accurate count; and
- (d) an offer of technical assistance from the office of public instruction.

(3) The office of public instruction shall provide written assurance to the U.S. department of education that an unduplicated and accurate count has been made and that students with disabilities counted on December 1 had an individualized education program implemented on the date the count was taken.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3752 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT**

(1) Each local educational agency shall count the number of students with disabilities receiving special education and related services on December 1 of each year and submit the count to the office of public instruction by December 10 of that year.

- (a) The count shall include only those students with disabilities who:
  - (i) are identified in accordance with ARM 10.16.3010 through 10.16.3022 and have an individualized education program or services plan in effect on the date the count is taken;
  - (ii) are enrolled in public or private school within the jurisdiction of the local educational agency boundaries; and
  - (iii) are not receiving special education and related services funded solely by other federal agencies.

(b) Students with disabilities shall be identified on the count by:

- (i) student initials;
- (ii) gender;
- (iii) birthdate;
- (iv) category of disability; and
- (v) any other information the office of public instruction requires to ensure an unduplicated count.

(2) The child count shall be submitted on forms provided by the office of public instruction and shall include written assurance that students with disabilities counted on December 1 had an individualized education program or services plan implemented on the day the count was taken.

(3) If December 1 falls on a Saturday or Sunday, the count shall be taken on the first Monday following December 1.

(4) Each local educational agency shall report any corrections in child count to the office of public instruction on or before February 25 of the year following the date of the count.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## Sub-Chapter 38

### Special Education Funding

10.16.3801 and 10.16.3802 reserved

#### **10.16.3803 DEFINITIONS**

The following definitions apply to rules affecting the funding of special education programs:

(1) "Advance reimbursement on special education allowable cost payments" means a loan to a district to offset a severe economic hardship caused by exceptional special education costs to the district. This advance on a district's ensuing fiscal year's special education allowable cost payment must be repaid in the ensuing fiscal year.

(2) "Average number belonging" or "ANB" means a student count for each school district that is used for school funding purposes. The count is performed according to ARM 10.20.102, et seq.

(3) "Certified local match" means the local matching funds that a district is required to contribute toward special education costs to avoid any reversions against its special education allowable cost payments. This number is certified by the superintendent of public instruction.

(4) "Child count" means the number of students with disabilities receiving special education and related services per a current individualized education program on December 1 of each fiscal year. This number is reported in accordance with ARM 10.16.3752.

(5) "Cooperative" and "special education cooperative" means a full service education cooperative or joint board established under 20-7-451, MCA, to provide special education services.

(6) "Cooperative administrative costs" means the costs cooperatives incur for operations, maintenance, travel, support services, recruitment and administration.

(7) "Current fiscal year" means the period between July 1 and June 30 during which calculations for the ensuing fiscal year are made.

(8) "Ensuing fiscal year" means the fiscal year for which a calculation is being made.

(9) "Instructional block grant" means the portion of the special education allowable cost payment based on statewide special education instructional expenditures and calculated as a per student rate times the number of students per district.

(10) "Minimum special education expenditure to avoid reversions" means a district's instructional block grant plus a district's related services block grant plus the district's certified required local match. If the district is a participating member of a cooperative, the related services block grant is not included in the minimum special education expenditure to avoid reversions.

(11) "Reimbursement" and "reimbursement for disproportionate costs" mean the portion of the special education allowable cost payment that is calculated based on district's prior special education expenditures to offset disproportionately high special education expenditures.

(12) "Related services block grant" means the portion of the special education allowable cost payment based on statewide special education related services expenditures and calculated as a per student rate times the number of students per district. If a district is a special education cooperative member, this portion of the special education allowable cost payment is awarded to the cooperative.

(13) "Special education allowable cost payment" and "allowable cost payment" means the amount of the state special education appropriation distributed to districts or special education cooperatives for special education programs.

(14) "Special education allowable cost expenditures" means expenditures for certain allowable costs associated with the provision of special education services to a child with disabilities as defined in 20-7-401, MCA.

(History: Sec. 20-7-402, 20-7-431, 20-7-457, MCA; IMP, Sec. 20-7-414, 20-7-431, 20-7-457, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3804 GENERAL PRINCIPLES OF SPECIAL EDUCATION FUNDING**

(1) Legislative appropriations for special education are administered by the superintendent of public instruction. Expenditures of funds received from the legislative appropriations are limited to certain allowable costs associated with the provision of educational services to children with disabilities. The following general provisions apply to these funds:

(a) Through the block grant system, districts are allowed flexibility in methods of providing special education programs within allowable cost guidelines.

(b) The distribution of the funds is based primarily on ANB and prior fiscal year expenditure reports.

(c) Expenditures of the funds are limited to services to students with disabilities ages 3-21.

(d) Local district contributions, referred to as local match, are required.

(e) Instructional and related services block grants and local matching funds may only be spent for special education allowable costs as approved by the superintendent of public instruction. Instructional block grant funds plus the corresponding local matching funds may be expended for instructional and/or related services. Related services block grant funds plus corresponding local matching funds may be expended for instructional services and/or related services subject to matching requirements for schools that are participating members of a cooperative.

(f) Expenditure of special education allowable costs must be reported using specific accounting codes.

(2) Special education allowable cost expenditures must be reported annually in the trustees' financial summary on forms prescribed and furnished by the superintendent of public instruction.

(3) The superintendent of public instruction will use the trustees' financial summary to determine the special education allowable cost payments to districts and cooperatives.

(History: Sec. 20-7-431, 20-9-321, MCA; IMP, Sec. 20-7-431, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3805 SPECIAL EDUCATION ALLOWABLE COST LIMITATIONS**

(1) Allowable costs for public school districts for purposes of determining payments are limited to instructional and related service costs and do not include the entire cost of operating a special education program. Allowable costs specifically do not include:

(a) the cost of the teachers' retirement system, the public employees' retirement system, or the federal social security system;

(b) the cost for unemployment compensation insurance;

(c) the cost of any administrative, instructional or teacher aide personnel necessary to meet Montana school accreditation standards;

(d) salaries and benefits for transportation aides employed for assisting students with disabilities;

(e) the on-schedule and over-schedule costs of transportation for special education purposes;

(f) the cost of administrative support personnel, such as clerks and clerical personnel, with the exception of ARM 10.16.3807(1)(c) and 10.16.3808(1)(a); and

(g) any overhead costs of operations and maintenance. Examples of overhead costs include, but are not limited to, heat, electricity, repairs and maintenance of building and equipment, minor remodeling, service contracts on equipment, and security services.

(2) Allowable costs for expenditures for salaries and benefits of personnel who serve both regular and special education must be directly proportionate to the time dedicated to special education allowable costs outlined in ARM 10.16.3806 and 10.16.3807. To support the proportion of time charged to special education, districts and cooperatives must maintain documentation such as time and effort reports, class schedules, job descriptions or other support information that will verify the time each person devotes to activities associated with special education allowable costs.

(History: Sec. 20-7-431, MCA; IMP, Sec. 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3806 SPECIAL EDUCATION ALLOWABLE COSTS--INSTRUCTIONAL BLOCK GRANT**

(1) Allowable costs associated with instruction of students with disabilities include:

(a) Salaries and benefits, not excluded in ARM 10.16.3805, for qualified special education teachers and special education teacher aides for the proportion of time spent providing services to students with disabilities. This includes time spent:

(i) in activities associated with structured support and assistance to regular education teachers to identify and meet diverse student needs; and

(ii) providing or receiving inservice training on the provision of special education services;

(b) Teaching supplies and text books necessary to implement an IEP for a student with disabilities;

(c) The purchase, rental, repair and maintenance of instructional equipment and assistive technology required to implement an IEP for a student with disabilities;

(d) Contracted services, including fees paid for professional advice, training and consultation regarding students with disabilities or their programs and the delivery of special education instructional services by public or private agencies;

(e) Payments made to a cooperative for the instructional services;

(f) Transportation costs for:

(i) special education instructional personnel who travel on an itinerant basis from school to school or district to district for the provision of instructional services;

(ii) travel to in-state child study team meetings or in-state IEP meetings;

(iii) in-state travel related to activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and

(iv) travel for providing or receiving inservice training on the provision of special education services.

(History: Sec. 20-7-431, MCA; IMP, Sec. 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

**10.16.3807 SPECIAL EDUCATION ALLOWABLE COSTS--RELATED SERVICES BLOCK GRANT**

(1) Allowable costs associated with the provision of related services to students with disabilities include:

(a) Salaries and benefits, not excluded in ARM 10.16.3805, for licensed or certified professional support personnel who meet the qualifications in ARM 10.16.3136, for supervisors of special education, speech language pathologists, audiologists, counselors, social workers, school psychologists, physicians, nurses, physical and occupational therapists and other professional persons meeting the requirements for the profession or discipline responsible for delivery of a special education related service for the proportion of time spent:

- (i) in providing services for students with disabilities;
- (ii) providing supervision of special education programs;
- (iii) activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and
- (iv) providing or receiving inservice training on the provision of special education services;

(b) Salaries and benefits, not excluded in ARM 10.16.3805, for support personnel aides for the proportion of time spent:

- (i) in providing services for students with disabilities;
- (ii) activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and
- (iii) providing or receiving inservice training on the provision of special education services;

(c) Salaries and benefits, not excluded in ARM 10.16.3805, for clerical personnel who assist professional support personnel, corresponding to the proportion of time spent providing assistance to professional support personnel;

(d) The cost of supplies for professional support personnel;

(e) Contracted services of public or private agencies, including fees paid for professional advice, training and consultation regarding students with disabilities or their program, and the delivery of special education services;

(f) Payments made to a cooperative for the provision of related services;

(g) Transportation costs for professional support personnel who:

(i) travel on an itinerant basis from school to school or district to district for the provision of related services;

(ii) travel to in-state child study team meetings or in-state individualized education program meetings;

(iii) in-state travel related to activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and

(iv) travel for providing or receiving inservice training on the provision of special education services;

(h) Equipment purchase, rental, repair, and maintenance required to:

(i) implement the related service portion of a student's individualized education program; and

(ii) fulfill reporting and record keeping requirements of evaluation and the provision of related services.

(History: Sec. 20-7-431, MCA; IMP, Sec. 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3808 SPECIAL EDUCATION ALLOWABLE COSTS--COOPERATIVES**

(1) Special education allowable costs for cooperatives include all allowable costs in ARM 10.16.3806 and 10.16.3807 and the additional cost of the operation of the cooperative. These additional costs allowed exclusively for a cooperative are:

(a) Costs associated with support services including, but not limited to, administration, advertising, recruitment, communication such as postage, telephone, printing, clerk services, audit services and liability insurance;

(b) Costs associated with operation and maintenance including, but not limited to, custodial salaries and benefits, heat, utilities, supplies and expenses, replacement parts, rent, purchase of real property, labor negotiations/representations, omissions and errors insurance, fire insurance and property insurance.

(History: Sec. 20-7-431, MCA; IMP, Sec. 20-7-431, 20-7-451, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3809 COOPERATIVE BOUNDARIES**

(1) Boundary lines of cooperatives established for the provision of special education services are defined by the superintendent of public instruction based on consultation with regional representatives.

(a) No more than 23 special education cooperatives may be established.

(b) All districts are included within the boundaries of a special education cooperative but are not required to be a participating member of that cooperative.

(c) The special education cooperative boundaries must be drawn so that the districts included within the boundaries are contiguous.

(d) A district may become a member only of the cooperative within which boundaries it lies.

(2) The superintendent of public instruction will maintain the official Montana school district boundary line map indicating the boundaries for cooperatives.

(3) Districts or cooperatives requesting a change to the boundary lines must provide a written request to the superintendent to change the boundary lines. The written request must clearly describe the proposed boundary line and the reasons for the requested change.

(4) After June 1, 1995, request for change must be provided to the superintendent of public instruction no later than October 1 to be in effect for the ensuing fiscal year.

(5) Prior to making the change, the superintendent will notify and request comment from all districts within the boundaries of each affected cooperative.

(6) After June 1, 1995, the superintendent must approve any boundary changes prior to January 1 in order to be in effect for the ensuing fiscal year.

(7) All changes must comply with the conditions in (1).

(8) Unless boundary line changes result in the creation of a new cooperative, the merging of existing cooperatives, or are approved by a majority of the trustees in each school district directly affected and the majority of the management board of each affected cooperative, boundary changes for districts already participating in a cooperative must occur on timelines consistent with the district's commitment for participation in the cooperative as specified in the interlocal agreement.

(History: Sec. 20-7-457, MCA; IMP, Sec. 20-7-457, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3810 ELIGIBILITY TO RECEIVE PAYMENT**

(1) A district is eligible to receive a special education allowable cost payment for the ensuing fiscal year if it has a special education program. A school district has a special education program if it:

- (a) has a resident student reported on the current fiscal year December 1 special education child count;
- (b) is participating in a cooperative; or
- (c) has a written agreement with another public school district or cooperative to provide a special education program in the event a student in need of special education enrolls in the district.

(2) A cooperative meeting the requirements of 20-7-457, MCA, is eligible to receive the related services block grants for member districts and an additional amount for cooperative administrative costs.

(History: Sec. 20-9-321, MCA; IMP, Sec. 20-7-414, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3811 GENERAL PRINCIPLES OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT CALCULATION**

(1) The superintendent of public instruction will use ensuing fiscal year ANB and other school district and special education cooperative information available on February 1 of the current fiscal year as the basis for calculating the special education allowable cost payments for the ensuing fiscal year. ANB will be used in the payment calculation for the purpose of reflecting relative district and program size. Use of ANB does not limit the age range for fund expenditures.

(2) The special education allowable cost payments consist of instructional block grants, related services block grants, reimbursements for disproportionate costs and cooperative administrative amounts.

(3) The statewide special education allowable cost payments to districts and cooperatives may not exceed the legislative appropriation available for special education allowable costs. Thus, the payments allocated to each district and cooperative is a pro-rata share of the available appropriation if necessary.

(4) The special education allowable cost payment calculation consists of four steps:

- (a) Calculate preliminary figures. These figures are the basis for the final block grant, reimbursement and cooperative administrative amount calculations;
- (b) Calculate a pro-rata percentage as stated in ARM 10.16.3812(5) to ensure that the statewide special education allowable cost payments do not exceed the available special education appropriation;
- (c) Calculate final block grant, reimbursement and cooperative administrative amounts by multiplying the pro-rata percentage by the preliminary amounts;
- (d) Calculate a special education allowable cost payment for each district and cooperative that is eligible to receive the funding.

(History: Sec. 20-9-321, MCA; IMP, Sec. 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## **10.16.3812 CALCULATION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS**

(1) The preliminary state instructional block grant rate for the ensuing fiscal year is calculated as follows:

(a) Sum the prior fiscal year statewide allowable cost expenditures for instruction, as reported on the trustees' financial summary by cooperatives, elementary, high school and K-12 districts;

(b) Divide the sum of the statewide instructional expenditures from (1)(a) by the prior fiscal year's ANB to arrive at the statewide special education allowable cost expenditures per ANB for instruction;

(c) Multiply the statewide expenditure per ANB for instruction from (1)(b) by a factor to ensure that the districts will pay a minimum of one dollar for every three dollars of state special education funds.

(2) Calculate the preliminary state related services block grant rate for the ensuing fiscal year as follows:

(a) Sum the prior fiscal year statewide allowable cost expenditures for related services, as reported on the trustees' financial summary by cooperatives, elementary, high school and K-12 districts;

(b) Divide the sum of the statewide related services expenditures from (2)(a) by the prior fiscal year's ANB to arrive at the total statewide special education allowable cost expenditure per ANB for related services;

(c) Multiply the statewide expenditure per ANB for related services from (2)(b) by a factor to ensure that the districts will pay a minimum of one dollar for every three dollars of state special education funds.

(3) The preliminary calculation to determine a district's eligibility to receive reimbursement for disproportionate costs for the ensuing fiscal year is calculated per district as follows:

(a) Sum the district's prior fiscal year special education state allowable cost expenditures for instruction and related services;

(b) Subtract the district's prior fiscal year minimum special education expenditure to avoid reversions multiplied by 1.10 from the expenditure total in (3)(a);

(c) If the figure from (3)(b) is less than or equal to zero, a district did not reach the threshold amount and is not eligible for reimbursement.

(d) If the figure from (3)(b) is greater than zero, a district reached the threshold amount and its preliminary reimbursement for disproportionate costs is the amount which exceeds 0 multiplied by .65.

(4) Preliminary cooperative administration and travel payments must be calculated to provide cooperatives an additional amount for administrative costs.

(a) The maximum statewide amount for cooperative administrative costs is the sum of all cooperatives' special education allowable cost expenditures reported on the prior fiscal year trustees' financial summary minus instructional and related service expenditures reported by the same cooperatives.

(b) Determination of the cooperatives' administration and travel amounts is based on consideration of the current number of member districts, ANB, staff, road mileage and any other factors considered appropriate. The superintendent of public instruction will annually review use of these factors and their weighted application.

(i) Cooperatives must report to the superintendent of public instruction on the cooperative fall report staff and membership information and any additional information needed to administer the provisions of 20-9-321, MCA. Cooperatives must notify the superintendent of public instruction of any revisions to the fall report information by February 1.

(5) The pro-rata percentage is calculated as follows:

(a) Determine the statewide total preliminary special education allowable cost payment level for the ensuing fiscal year by summing:

- ANB;
- (i) preliminary statewide instructional block grant rate times current statewide ANB;
  - (ii) preliminary statewide related services block grant rate times current statewide ANB;
  - (iii) total statewide preliminary reimbursements for disproportionate costs; and
  - (iv) total cooperative preliminary administration and travel amounts.
- (b) The pro-rata percentage equals the available special education appropriation divided by the statewide total preliminary special education allowable cost payment level.
- (6) The pro-rata percentage is multiplied by the preliminary block grant rates, preliminary cooperative administration and travel amounts and the sum of districts' preliminary reimbursement figures for disproportionate costs to determine the final allowable cost payment factors.
- (7) The superintendent of public instruction calculates an eligible district's special education allowable cost payment for the ensuing fiscal year by multiplying the final instructional block grant rate by the district's ensuing fiscal year ANB, adding the final related services block grant rate multiplied by the district's ensuing fiscal year ANB, adding a district's final reimbursement for disproportionate costs, if applicable, and rounding to the nearest whole dollar. If the district is a participating member of a cooperative, the special education allowable cost payment will not include the related services block grant.
- (8) A cooperative's special education allowable cost payment for the ensuing fiscal year consists of the final cooperative travel and administration amounts plus the related services block grants of districts who are participating members of the cooperative, rounded to the nearest whole dollar.

(History: Sec. 20-9-321, MCA; IMP, Sec. 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3813 LOCAL MATCHING FUNDS**

- (1) Districts must provide local matching funds for special education to ensure that the districts pay at least one dollar for every three dollars of state special education allowable cost funds distributed in the form of instructional and related services block grants. The superintendent of public instruction will provide to districts certified reports of required local match amounts.
- (2) The superintendent of public instruction will determine from district prior fiscal year trustees' financial summary reports if local match has been met.
- (a) Demonstration that local match contributions have been made is determined by totaling the prior fiscal year special education allowable cost expenditures, defined in ARM 10.16.3806 and 10.16.3807, as reported on the annual trustees' financial summary for the general fund, the impact aid fund, the metal mines tax reserve fund and state mining impact fund. Those prior fiscal year expenditures must equal or exceed the district's minimum special education expenditures to avoid reversion for the prior fiscal year.
- (3) Districts that are participating members of a cooperative must provide the required local related services block grant match, as certified by the superintendent, to their cooperative. This amount ensures that the districts pay at least one dollar for every three dollars of the districts' share of the related services block grant funds. The cooperatives' allowable cost expenditures from these funds is not limited to related services.
- (a) A district's local related services block grant match for cooperative use may be demonstrated by:
- (i) transfer of at least the required amount from the district general fund or impact aid fund to the cooperative; or

(ii) completion of a written agreement between the district and the cooperative that states the manner in which the contribution will be made, if different from (i). This written agreement must be on file with the cooperative.

(b) At the close of each fiscal year, cooperatives must certify to the superintendent of public instruction that each member district provided its required related services block grant match to the cooperative.

(History: Sec. 20-9-321, MCA; IMP, Sec. 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3814 ADVANCE ON SPECIAL EDUCATION ALLOWABLE COST PAYMENTS**

(1) A district may be eligible for an advance on its special education allowable cost payment if it experiences severe economic hardship because of exceptional special education costs.

(2) Application for an advance on a special education allowable cost payment must be made to the superintendent of public instruction in writing and include requested documentation.

(3) The superintendent of public instruction will determine eligibility for an advance on a district's special education allowable cost payment based upon the following requirements:

(a) The superintendent of public instruction has funds available to meet the advance request.

(b) The exceptional special education costs are an unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the ability to provide a free appropriate public education to its students with disabilities.

(c) The district adopts a budget amendment under 20-9-161(6), MCA.

(d) Other revenues are not available to the district that could address the unforeseen cost, including:

(i) district reserves;

(ii) available cooperative funds;

(iii) Individuals with Disabilities Education Act, Part B funds; and

(iv) cash available in other funds of the district.

(e) The exceptional special education costs combined with budgeted special education allowable cost expenditures exceed 110 percent of the current fiscal year minimum special education budget to avoid reversion.

(4) Payments are for the fiscal year in which the actual costs are incurred.

(5) The amount of the advance will reduce the ensuing fiscal year's special education allowable cost payment by a like amount. If the district's special education allowable cost payment in the ensuing fiscal year is not sufficient to repay the advance, the district will repay the advance to the state by warrant no later than December 31 in the fiscal year following the advance.

(History: Sec. 20-9-321, MCA; IMP, Sec. 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3815 SPECIAL EDUCATION TRANSFERS AND PAYMENTS TO OTHER DISTRICTS AND COOPERATIVES**

(1) To meet its obligation to provide services for students with disabilities, a district may establish its own special education program, participate in a full service cooperative for special education services established under 20-7-451, MCA, or enter into an interlocal agreement, as defined in Title 7, chapter 11, part 1, MCA, with another district.

(2) If a district chooses to enter into an interlocal agreement with another district to receive special education services, it may pay its state special education

allowable cost payment, required block grant match and additional costs of providing services to the providing district on a reimbursement basis.

(a) The payment must be deposited to the miscellaneous programs fund or the interlocal agreement fund of the district providing services.

(b) The receipt and expenditure of the money by the district providing special education services must be identified on the accounting records using a project reporter number.

(i) The accumulated balance in the project account must be zero by June 30th of each fiscal year. That is, receipts must equal total expenditures.

(ii) Any amounts received but not obligated must be returned to the paying district by June 30th and recorded as an expenditure abatement by the paying district and a revenue abatement by the district providing the service.

(3) When a full service cooperative for special education services established under 20-7-451, MCA, contracts with a district to provide special education instructional and related services:

(a) payment received by a district from a cooperative must be deposited in the district's miscellaneous programs fund; and

(b) the receipt and expenditure of the money must be identified on the accounting records using a project reporter number.

(i) The accumulated balance in the project account must be zero by June 30th of each fiscal year. That is, receipts must equal expenditures.

(ii) Any amounts received but not obligated must be returned to the paying cooperative by June 30th and recorded as an expenditure abatement by the cooperative and a revenue abatement for the district providing the service.

(4) Expenditures of special education money received as payment for services provided to other districts or cooperatives or transferred from another district or cooperative will not be considered in determining the reimbursement for disproportionate costs under 20-9-321, MCA.

(5) In accordance with 20-9-507, MCA, any special education resource transferred from a district or cooperative to another district and deposited in the miscellaneous program fund must be used for special education. In no event may the transfer from a cooperative to a district circumvent the match requirement.

(History: Sec. 20-7-431, MCA; IMP, Sec. 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD, 1998 MAR p. 1719, Eff. 6/26/98; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3816 DISTRIBUTION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS**

(1) The state will distribute the special education allowable cost payments to districts and cooperatives at the same time direct state aid payments are made under 20-9-344, MCA.

(2) A district's instructional and related services block grants are based on ANB.

(a) Except as provided in (2)(b), subsequent increases or decreases in ANB after the final budget is adopted will not increase or decrease the district's block grant funding.

(b) In cases of significant adjustments in ANB, the superintendent of public instruction may require adjustment of the block grant funding.

(History: Sec. 20-9-321, MCA; IMP, Sec. 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3817 SPECIAL EDUCATION FUNDING REVERSION**

(1) If at fiscal year end school district special education allowable cost expenditures do not equal or exceed the amount of special education instructional and related services block grant funds plus required local match, as indicated by the annual trustees' financial summary, the district is required to revert the unspent portion of the special education allowable cost payment in the ensuing fiscal year. The unspent balance of state special education allowable cost funding cannot be used to reduce local levies or to increase the operating reserves, but must be used to reduce the state special education allowable cost payment of the district for the ensuing fiscal year through the reversion calculation described in (3). If special education allowable cost payments are not received by that district in the ensuing fiscal year, the district must return the unspent portion by warrant by December 31.

(2) For purposes of determining the special education funding reversion required by 20-9-321, MCA, the expenditure information provided on the trustees' annual financial report will be used.

(3) The reversion will be calculated as follows:

(a) Calculate the district's total prior fiscal year expenditures of allowable costs in accordance with 20-7-431, MCA, and ARM 10.16.3806 and 10.16.3807.

(b) Subtract the district's total prior fiscal year expenditures calculated in (3)(a) from the district's prior fiscal year minimum special education expenditure to avoid reversion as defined in ARM 10.16.3803.

(c) If (b) is less than or equal to zero, no reversion is required.

(d) If (b) is greater than zero, the required reversion amount is calculated by multiplying (b) by a factor that ensures that the district has paid a minimum of one dollar for every three dollars of state special education funds.

(4) Revisions to the annual trustees' financial summary report must be made in accordance with ARM 10.10.504. Revisions to the annual trustees' financial summary report made by the district after December 20 of the ensuing fiscal year, will not be considered in calculating the reversion amount. The superintendent of public instruction may accept the adjustments after those dates for unusual circumstances.

(5) A district participating in a cooperative must provide to the cooperative the required related service matching funds as certified by the superintendent of public instruction. Failure to provide the match by June 30 of the fiscal year for which the related services block grant was established will cause the participating district to lose eligibility for future membership in the cooperative at the end of the three year participation cycle as defined in ARM 10.16.3901 and may affect the terms of the cooperative's interlocal agreement.

(History: Sec. 20-9-321, MCA; IMP, Sec. 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD, 1998 MAR p. 1719, Eff. 6/26/98; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3818 SPECIAL EDUCATION TUITION RATES**

(1) To be eligible to charge tuition for special education services, a district must provide a special education program that complies with board of public education policies and is approved by the superintendent of public instruction.

(2) The maximum tuition rate for students with disabilities is the general education tuition rate established in ARM 10.10.301, reduced by any waivers that a district must apply equally to all students, plus the additional charges as calculated in (3), that apply to districts only.

(3) A responsible school official of the receiving school district shall use one of the options defined below to determine the maximum amount which may be charged to the resident district for students with disabilities in addition to the general education tuition rate:

(a) Option A: The additional charge shall be calculated by determining the number of hours during which direct special education and related services are being provided each week, as established on the student's individualized education program (IEP). If the total hours are less than 15 (seven and one half for kindergarten), tuition may not exceed the general education tuition rate. If the total hours per week are 15 (seven and one half for kindergarten) or more, the total hours will be divided by 30 (the average number of school hours per week, 15 for kindergarten), and multiplied by the maximum general education tuition rate in ARM 10.10.301 to determine the amount which may be added to the rate in ARM 10.10.301.

(b) Option B: The actual unique costs of services provided to the student ages 3 to 21 as per the individualized education program (IEP), minus the state's share of the maximum per ANB entitlement and per ANB special education block grants received by the district, may be added to the rate in ARM 10.10.301 if the county superintendent determines all of the following factors are present:

(i) the allowable special education costs for that student exceed the rate determined under Option A;

(ii) the costs are for special education and related services unique to the student, excluding the costs for removal of architectural barriers.

(4) The special education tuition rate calculation should be adjusted for the portion of the year the student is enrolled in special education services in the receiving school district, based on the percentage of the number of days the student was enrolled divided by 180.

(5) Districts may not charge a parent or guardian more than the regular education tuition rate calculated in ARM 10.10.301 for a student with disabilities under discretionary out-of-district attendance agreements.

(6) Districts may not discriminate on the basis of disability in their approval or disapproval of discretionary out-of-district attendance agreements.

(7) When a student's IEP requires special education or related services beyond the 180 day school year, the school district providing services may initiate an attendance agreement or amend an existing agreement to provide tuition that covers the additional extended year period by prorating the actual cost on a daily or hourly basis.

(History: Sec. 20-5-323, MCA; IMP, Sec. 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-306, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; AMD, 1990 MAR p. 717, Eff. 4/13/90; AMD, 1992 MAR p. 211, Eff. 2/14/92; AMD, 1992 MAR p. 1365, Eff. 6/26/92; AMD, 1994 MAR p. 1824, Eff. 7/8/94; AMD, 1998 MAR p. 1719, Eff. 6/26/98; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3819 CONTESTED CASES**

(1) Contested cases regarding tuition calculation will be addressed through the procedures for all school controversy contested cases before the county superintendents of the state of Montana.

(History: Sec. 20-3-107, MCA; IMP, Sec. 20-3-210, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

### **10.16.3820 TRANSPORTATION FOR SPECIAL EDUCATION STUDENTS WITH DISABILITIES**

(1) Specialized student transportation, for students with disabilities, to and from school is not a special education allowable cost. Budget authority for transportation of students with disabilities must be established in the transportation fund of the local school district and must follow the budgeting procedures established in the Montana School Accounting Manual.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-10-145, MCA; NEW, 1977 MAR p. 315, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1992 MAR p. 213, Eff. 2/14/92; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

## Sub-Chapter 39

### Special Education Cooperatives

#### **10.16.3901 DURATION OF COOPERATIVE**

(1) The interlocal agreement creating a special education cooperative must require participating districts to remain members for a term of at least three state fiscal years which have an effective date of July 1.

(2) Notification of intent to withdraw from a cooperative shall be provided no later than October 1 of every third fiscal year of the district's commitment of participation.

(History: Sec. 20-7-457, MCA; IMP, Sec. 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3902 MANAGEMENT BOARD**

(1) The management board is responsible for administering the cooperative and is comprised of trustees of the participating districts or their authorized representatives.

(2) Designation of the representative shall be by formal action taken annually. Formal action shall be in the form of a resolution of the trustees of a participating district which names one of the trustees or an authorized representative to serve on the management board. The same person may be the authorized representative of more than one board of trustees.

(3) The interlocal agreement shall specify the voting powers of the member districts.

(History: Sec. 20-7-457, MCA; IMP, Sec. 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3903 NON-PARTICIPATING DISTRICTS**

(1) The interlocal agreement shall require annual notification of opportunity to join to nonparticipating districts within the geographic boundary of the cooperative. This annual notification must be provided to non-participating districts no later than October 1 of each fiscal year and must require response within 60 days from those districts who wish to join.

(History: Sec. 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

#### **10.16.3904 PROCEDURES FOR APPROVAL**

(1) A draft of a new or amended interlocal agreement shall be submitted to the superintendent of public instruction for initial review and comment on or before January 1. In order for the new or amended agreement to be effective for the ensuing fiscal year, upon completion of initial review and comment by the superintendent, the agreement shall be submitted to the attorney general. Within 10 days of the attorney general's approval, the agreement shall be submitted to the superintendent for final approval. Upon final approval, the cooperative contract shall be filed with the county clerk and recorder of the county or counties in which the school districts involved are located and with the secretary of state.

(History: Sec. 20-7-457, MCA; IMP, Sec. 20-7-453, 20-7-454, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)