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Appendix A – Interagency Agreements

Appendix B – Supporting Documents

*State Statutes (Montana Code Annotated)

**FEDERAL REGULATIONS, STATE ADMINISTRATIVE RULES,
APPLICABLE STATE STATUTES, and POLICIES AND PROCEDURES**

| FEDERAL REGULATIONS (34 CFR 300) | MONTANA ADMINISTRATIVE RULES (ARM) and/or STATE STATUTES | POLICIES AND PROCEDURES |
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| <p align="center">Subpart A—General <u>Purposes, Applicability, and Regulations That Apply to This Program</u></p> <p>Sec. 300.1 Purposes. The purposes of this part are-- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; (b) To ensure that the rights of children with disabilities and their parents are protected; (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and (d) To assess and ensure the effectiveness of efforts to educate children with disabilities. (Authority: 20 U.S.C. 1400 note)</p> | | |
| <p>Sec. 300.2 Applicability of this part to State, local, and private agencies. (a) States. This part applies to each State that receives payments under Part B of the Act. (b) Public agencies within the State. The provisions of this part-- (1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including-- (i) The State educational agency (SEA); (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA; (iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness); and (iv) State and local juvenile and adult correctional facilities; and (2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B. (c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities--</p> | | <p>For purposes of implementing the definition in 34 CFR 300.450, Montana's nonpublic schools and home schools are considered to be private schools.</p> |

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| <p>(1) Referred to or placed in private schools and facilities by that public agency; or</p> <p>(2) Placed in private schools by their parents under the provisions of Sec. 300.403(c). (Authority: 20 U.S.C. 1412)</p> | | |
| <p>Sec. 300.3 Regulations that apply.</p> <p>The following regulations apply to this program:</p> <p>(a) 34 CFR part 76 (State-Administered Programs) except for Secs. 76.125-76.137 and 76.650-76.662.</p> <p>(b) 34 CFR part 77 (Definitions).</p> <p>(c) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).</p> <p>(d) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).</p> <p>(e) 34 CFR part 81 (General Education Provisions Act--Enforcement).</p> <p>(f) 34 CFR part 82 (New Restrictions on Lobbying).</p> <p>(g) 34 CFR part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).</p> <p>(h) The regulations in this part--34 CFR part 300 (Assistance for Education of Children with Disabilities). (Authority: 20 U.S.C. 1221e-3(a)(1))</p> | | |
| <p style="text-align: center;"><u>Definitions Used in This Part</u></p> <p>Sec. 300.4 Act. As used in this part, Act means the Individuals with Disabilities Education Act (IDEA), as amended. (Authority: 20 U.S.C. 1400(a))</p> <p>Sec. 300.5 Assistive technology device. As used in this part, Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. (Authority: 20 U.S.C. 1401(1))</p> <p>Sec. 300.6 Assistive technology service. As used in this part, 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--</p> | <p><i>*20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:</i></p> <p>(1) <i>"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.</i></p> <p>(2) <i>"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:</i></p> <p>(a) <i>the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;</i></p> <p>(b) <i>purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with a disability;</i></p> | |

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| <p>(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;</p> <p>(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;</p> <p>(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;</p> <p>(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;</p> <p>(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and</p> <p>(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. (Authority: 20 U.S.C. 1401(2))</p> | <p>(c) <i>selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;</i></p> <p>(d) <i>coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;</i></p> <p>(e) <i>training or technical assistance for a child with a disability or, if appropriate, training or technical assistance for that child's family; and</i></p> <p>(f) <i>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.</i></p> <p>(3) <i>"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.</i></p> <p>(4) <i>"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.</i></p> | |

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| | <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(9) "Free appropriate public education" means special education and related services that:</p> <p>(a) are provided at public expense under public supervision and direction and without charge;</p> <p>(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;</p> | |

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| | <p>(c) include preschool, elementary school, and high school education in Montana; and</p> <p>(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.</p> <p>(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.</p> <p>(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).</p> <p>(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.</p> <p>(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.</p> <p>(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,</p> | |

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| | <p><i>including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness.</i></p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>(a) General. (1) As used in this part, the term child with a disability means a child evaluated in accordance with Secs. 300.530-300.536 as having mental retardation, a hearing impairment including deafness, a</p> | <p><u>10.16.3007 ELIGIBLE STUDENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT</u></p> <p>(1) To be eligible for special education and related services under the Individuals with Disabilities Education</p> | |

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| <p>speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.</p> <p>(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under Secs. 300.530-300.536, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.</p> <p>(ii) If, consistent with Sec. 300.26(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.</p> | <p>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.</p> <p>(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.</p> <p><u>10.16.3008 ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE</u></p> <p>(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.</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(b) Children aged 3 through 9 experiencing developmental delays. The term child with a disability for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with Sec. 300.313, include a child--</p> <p>(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and</p> <p>(2) Who, by reason thereof, needs special education and related services.</p> <p>(See also Fed Reg Sec. 300.313, Children Experiencing Developmental Delays)</p> | <p>(See also 20-7-401(4), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3010 CRITERIA FOR IDENTIFICATION OF A CHILD WITH DISABILITIES AGES 3 THROUGH 5</u></p> <p>(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.</p> <p>(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:</p> <p>(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;</p> | |

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| | <p>and</p> <p>(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.</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.</p> <p>(ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in paragraph (c)(1)(i) of this section are satisfied.</p> | <p>(See also 20-7-401(3), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3011 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM</u></p> <p>(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.</p> <p>(2) Assessments shall document the presence of significant delays in verbal and nonverbal communication and social interaction.</p> <p>(a) Significant delays in verbal communication are manifested by at least one of the following:</p> <p>(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);</p> <p>(ii) in students with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others.</p> <p>(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.</p> <p>(c) Significant delays in social interaction are manifested by at least one of the following:</p> <p>(i) failure to develop peer relationships appropriate to</p> | |

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| | <p>developmental levels;</p> <p>(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);</p> <p>(iii) lack of social or emotional reciprocity;</p> <p>(iv) lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level.</p> <p>(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:</p> <p>(a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;</p> <p>(b) Apparently inflexible adherence to specific nonfunctional routines or rituals;</p> <p>(c) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements);</p> <p>(d) Persistent preoccupation with parts of objects.</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.</p> | <p>(See also 20-7-401(6), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3013 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAF-BLINDNESS</u> (1) The student may be identified as having deaf-blindness if documentation supports that the student:</p> <p>(a) Meets the criteria in ARM 10.16.3022 for visual impairment;</p> <p>(b) Meets the criteria in ARM 10.16.3020 for speech-language impairment;</p> <p>(c) Meets the criteria in ARM 10.16.3016 for hearing</p> | |

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| | 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. | |
| <p>Sec. 300.7 Child with a disability. ... (c) Definitions of disability terms. The terms used in this definition are defined as follows: ... (3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.</p> | <p>(See also 20-7-401(7), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3014 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAFNESS</u> (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.</p> | |
| <p>Sec. 300.7 Child with a disability. ... (c) Definitions of disability terms. The terms used in this definition are defined as follows: ... (4) Emotional disturbance is defined as follows: (i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances.</p> | <p>(See also 20-7-401(8), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3015 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING EMOTIONAL DISTURBANCE</u> (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</p> | |

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| <p>(D) A general pervasive mood of unhappiness or depression.</p> <p>(E) A tendency to develop physical symptoms or fears associated with personal or school problems.</p> <p>(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.</p> | <p>depression including major depression and dysthymia but excluding normal grief reactions;</p> <p>(d) A tendency to develop physical symptoms or fears associated with personal or school problems including separation anxiety, avoidant disorder and overanxious disorder;</p> <p>(e) Schizophrenia.</p> <p>(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.</p> <p>(3) The student may be identified as having emotional disturbance when:</p> <p>(a) The student has been observed in more than one setting within the educational environment; and</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> | <p>(See also 20-7-401(10), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3016 CRITERIA FOR IDENTIFICATION OF</u></p> | |

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| <p>...</p> <p>(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.</p> | <p><u>STUDENT AS HAVING HEARING IMPAIRMENT</u></p> <p>(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.</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.</p> | <p>(See also 20-7-401(5), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3012 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING COGNITIVE DELAY</u></p> <p>(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.</p> <p>(2) "General intellectual functioning" means performance on a standardized intelligence test that measures general cognitive ability rather than one limited facet of ability.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | |

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| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.</p> | | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., 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).</p> | <p>(See also 20-7-401(11), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3017 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING ORTHOPEDIC IMPAIRMENT</u></p> <p>(1) The student may be identified as having orthopedic impairment if:</p> <p>(a) The student is diagnosed by a qualified medical practitioner as having an orthopedic impairment;</p> <p>(b) The impairment is severe; and</p> <p>(c) The impairment adversely affects the student's educational performance.</p> <p>(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).</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(9) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that-</p> <p>(i) Is due to chronic or acute health problems such as asthma,</p> | <p>(See also 20-7-401(12), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3018 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT</u></p> <p>(1) The student may be identified as having other health impairment if:</p> <p>(a) The student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness</p> | |

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| <p>attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and</p> <p>(ii) Adversely affects a child's educational performance.</p> | <p>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</p> <p>(b) The condition adversely affects the student's educational performance.</p> <p>(2) A medical diagnosis of a chronic or acute health problem is required.</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(10) Specific learning disability is defined as follows:</p> <p>(i) General. The term 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 to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.</p> <p>(ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.</p> <p>(See also Fed Reg Secs. 300.540 through 300.543, Additional Procedures for Evaluating Children with Specific Learning Disabilities)</p> | <p>(See also 20-7-401(15), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3019 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY</u> (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:</p> <p>(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</p> <p>(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.</p> <p>(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</p> | |

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| | <p>severe discrepancy.</p> <p>(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).</p> <p>(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.</p> <p>(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.</p> <p>(3) Documentation of the learning disability determination shall:</p> <p>(a) Meet the requirements for a written report found in 34 CFR 300.543;</p> <p>(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;</p> <p>(c) Include educationally relevant medical findings, if any, that have been considered; and</p> <p>(d) Include a report of one or more intervention techniques specific to the individual student. Interventions shall not unnecessarily delay appropriate identification.</p> <p>(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.</p> | |
| Sec. 300.7 Child with a disability. | (See also 20-7-401(16), MCA, found at Fed Reg Sec. | |

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| <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.</p> | <p>300.4.)</p> <p><u>10.16.3020 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPEECH-LANGUAGE IMPAIRMENT</u> (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.</p> <p>(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.</p> <p>(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.</p> <p>(c) If norm referenced procedures are not used, alternative assessment procedures shall substantiate a significant deviation from the norm.</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> | <p>(See also 20-7-401(18), MCA, found at Fed Reg Sec. 300.4.)</p> | |

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| <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.</p> | <p><u>10.16.3021 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING TRAUMATIC BRAIN INJURY</u></p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.7 Child with a disability.</p> <p>...</p> <p>(c) Definitions of disability terms. The terms used in this definition are defined as follows:</p> <p>...</p> <p>(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (Authority: 20 U.S.C. 1401(3)(A) and (B); 1401(26))</p> | <p>(See also 20-7-401(19), MCA, found at Fed Reg Sec. 300.4.)</p> <p><u>10.16.3022 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT</u></p> <p>(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.</p> | |
| <p>Sec. 300.8 Consent.</p> <p>As used in this part, the term consent has the meaning given that term in Sec. 300.500(b)(1). (Authority: 20 U.S.C. 1415(a))</p> | | |
| <p>Sec. 300.9 Day; business day; school day.</p> <p>As used in this part, the term--</p> <p>(a) Day means calendar day unless otherwise indicated as business day or school day;</p> <p>(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in</p> | | |

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| <p>the designation of business day, as in Sec. 300.403(d)(1)(ii)); and (c)(1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes. (2) The term school day has the same meaning for all children in school, including children with and without disabilities. (Authority: 20 U.S.C. 1221e-3)</p> | | |
| <p>Sec. 300.10 Educational service agency. As used in this part, the term educational service agency-- (a) Means a regional public multiservice agency-- (1) Authorized by State law to develop, manage, and provide services or programs to LEAs; and (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; (b) Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school; and (c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of IDEA as in effect prior to June 4, 1997. (Authority: 20 U.S.C. 1401(4))</p> | | |
| <p>Sec. 300.11 Equipment. As used in this part, the term equipment means-- (a) Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials. (Authority: 20 U.S.C. 1401(6))</p> | | |
| <p>Sec. 300.12 Evaluation. As used in this part, the term evaluation has the meaning given that term in Sec. 300.500(b)(2). (Authority: 20 U.S.C. 1415(a))</p> | | |
| <p>Sec. 300.13 Free appropriate public education. As used in this part, the term free appropriate public education or FAPE means special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge;</p> | | |

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| <p>(b) Meet the standards of the SEA, including the requirements of this part;</p> <p>(c) Include preschool, elementary school, or secondary school education in the State; and</p> <p>(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Secs. 300.340-300.350. (Authority: 20 U.S.C. 1401(8))</p> | | |
| <p>Sec. 300.14 Include. As used in this part, the term include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. (Authority: 20 U.S.C. 1221e-3)</p> | | |
| <p>Sec. 300.15 Individualized education program. As used in this part, the term individualized education program or IEP has the meaning given the term in Sec. 300.340(a). (Authority: 20 U.S.C. 1401(11))</p> | | |
| <p>Sec. 300.16 Individualized education program team. As used in this part, the term individualized education program team or IEP team means a group of individuals described in Sec. 300.344 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (Authority: 20 U.S.C. 1221e-3)</p> | | |
| <p>Sec. 300.17 Individualized family service plan. As used in this part, the term individualized family service plan or IFSP has the meaning given the term in 34 CFR 303.340(b). (Authority: 20 U.S.C. 1401(12))</p> | | |
| <p>Sec. 300.18 Local educational agency.</p> <p>(a) As used in this part, the term local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.</p> <p>(b) The term includes--</p> <ol style="list-style-type: none"> (1) An educational service agency, as defined in Sec. 300.10; (2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under State law; and (3) An elementary or secondary school funded by the Bureau of | | |

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| <p>Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under this Act with the smallest student population. (Authority: 20 U.S.C. 1401(15))</p> | | |
| <p>Sec. 300.19 Native language. (a) As used in this part, the term native language, if used with reference to an individual of limited English proficiency, means the following: (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section. (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication). (Authority: 20 U.S.C. 1401(16))</p> | | |
| <p>Sec. 300.20 Parent. (a) General. As used in this part, the term parent means-- (1) A natural or adoptive parent of a child; (2) A guardian but not the State if the child is a ward of the State; (3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or (4) A surrogate parent who has been appointed in accordance with Sec. 300.515. (b) Foster parent. Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the Act if-- (1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and (2) The foster parent-- (i) Has an ongoing, long-term parental relationship with the child; (ii) Is willing to make the educational decisions required of parents under the Act; and (iii) Has no interest that would conflict with the interests of the child. (Authority: 20 U.S.C. 1401(19))</p> | | |

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| <p>Sec. 300.21 Personally identifiable. As used in this part, the term personally identifiable has the meaning given that term in Sec. 300.500(b)(3). (Authority: 20 U.S.C. 1415(a))</p> | | |
| <p>Sec. 300.22 Public agency. As used in this part, the term public agency includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (Authority: 20 U.S.C. 1412(a)(1)(A), (a)(11))</p> | | |
| <p>Sec. 300.23 Qualified personnel. As used in this part, the term qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services. (Authority: 20 U.S.C. 1221e-3)</p> | | |
| <p>Sec. 300.24 Related services.</p> <p>(a) General. As used in this part, the term related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.</p> <p>(b) Individual terms defined. The terms used in this definition are defined as follows:</p> <p>(1) Audiology includes--</p> <p>(i) Identification of children with hearing loss;</p> <p>(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;</p> <p>(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;</p> <p>(iv) Creation and administration of programs for prevention of hearing loss;</p> | | |

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| <p>(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and</p> <p>(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.</p> <p>(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.</p> <p>(3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.</p> <p>(4) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.</p> <p>(5) Occupational therapy--</p> <p>(i) Means services provided by a qualified occupational therapist; and</p> <p>(ii) Includes--</p> <p>(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;</p> <p>(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and</p> <p>(C) Preventing, through early intervention, initial or further impairment or loss of function.</p> <p>(6) Orientation and mobility services--</p> <p>(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and</p> <p>(ii) Includes teaching students the following, as appropriate:</p> <p>(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);</p> <p>(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;</p> <p>(C) To understand and use remaining vision and distance low vision aids; and</p> <p>(D) Other concepts, techniques, and tools.</p> <p>(7) Parent counseling and training means--</p> | | |

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| <p>(i) Assisting parents in understanding the special needs of their child;</p> <p>(ii) Providing parents with information about child development; and</p> <p>(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.</p> <p>(8) Physical therapy means services provided by a qualified physical therapist.</p> <p>(9) Psychological services includes--</p> <p>(i) Administering psychological and educational tests, and other assessment procedures;</p> <p>(ii) Interpreting assessment results;</p> <p>(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;</p> <p>(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;</p> <p>(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and</p> <p>(vi) Assisting in developing positive behavioral intervention strategies.</p> <p>(10) Recreation includes--</p> <p>(i) Assessment of leisure function;</p> <p>(ii) Therapeutic recreation services;</p> <p>(iii) Recreation programs in schools and community agencies; and</p> <p>(iv) Leisure education.</p> <p>(11) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.</p> <p>(12) School health services means services provided by a qualified school nurse or other qualified person.</p> <p>(13) Social work services in schools includes--</p> <p>(i) Preparing a social or developmental history on a child with a disability;</p> <p>(ii) Group and individual counseling with the child and family;</p> <p>(iii) Working in partnership with parents and others on those</p> | | |

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| <p>problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;</p> <p>(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and</p> <p>(v) Assisting in developing positive behavioral intervention strategies.</p> <p>(14) Speech-language pathology services includes--</p> <p>(i) Identification of children with speech or language impairments;</p> <p>(ii) Diagnosis and appraisal of specific speech or language impairments;</p> <p>(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;</p> <p>(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and</p> <p>(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.</p> <p>(15) Transportation includes--</p> <p>(i) Travel to and from school and between schools;</p> <p>(ii) Travel in and around school buildings; and</p> <p>(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. (Authority: 20 U.S.C. 1401(22))</p> | | |
| <p>Sec. 300.25 Secondary school.</p> <p>As used in this part, the term secondary school means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12. (Authority: 20 U.S.C. 1401(23))</p> | | |
| <p>Sec. 300.26 Special education.</p> <p>(a) General. (1) As used in this part, the term special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--</p> <p>(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and</p> <p>(ii) Instruction in physical education.</p> <p>(2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section:</p> <p>(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;</p> | | |

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| <p>(ii) Travel training; and (iii) Vocational education. (b) Individual terms defined. The terms in this definition are defined as follows:</p> <p>(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.</p> <p>(2) Physical education-- (i) Means the development of-- (A) Physical and motor fitness; (B) Fundamental motor skills and patterns; and (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and (ii) Includes special physical education, adapted physical education, movement education, and motor development.</p> <p>(3) Specially-designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction-- (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.</p> <p>(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to-- (i) Develop an awareness of the environment in which they live; and (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).</p> <p>(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. (Authority: 20 U.S.C. 1401(25))</p> | | |
| <p>Sec. 300.27 State. As used in this part, the term State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. (Authority: 20 U.S.C. 1401(27))</p> | | |
| <p>Sec. 300.28 Supplementary aids and services.</p> | | |

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| <p>As used in this part, the term supplementary aids and services means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Secs. 300.550-300.556. (Authority: 20 U.S.C. 1401(29))</p> | | |
| <p>Sec. 300.29 Transition services.</p> <p>(a) As used in this part, transition services means a coordinated set of activities for a student with a disability that--</p> <p>(1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;</p> <p>(2) Is based on the individual student's needs, taking into account the student's preferences and interests; and</p> <p>(3) Includes--</p> <p>(i) Instruction;</p> <p>(ii) Related services;</p> <p>(iii) Community experiences;</p> <p>(iv) The development of employment and other post-school adult living objectives; and</p> <p>(v) If appropriate, acquisition of daily living skills and functional vocational evaluation.</p> <p>(b) Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education. (Authority: 20 U.S.C. 1401(30))</p> | | |
| <p>Sec. 300.30 Definitions in EDGAR.</p> <p>The following terms used in this part are defined in 34 CFR 77.1:</p> <ul style="list-style-type: none"> Application Award Contract Department EDGAR Elementary school Fiscal year Grant Nonprofit Project Secretary | | |

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| Subgrant State educational agency (Authority: 20 U.S.C. 1221e-3(a)(1)) | | |
| <p align="center">Subpart B--State and Local Eligibility</p> <p align="center"><u>State Eligibility—General</u></p> <p>Sec. 300.110 Condition of assistance. (a) A State is eligible for assistance under Part B of the Act for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the conditions in Secs. 300.121-300.156. (b) To meet the requirement of paragraph (a) of this section, the State must have on file with the Secretary-- (1) The information specified in Secs. 300.121-300.156 that the State uses to implement the requirements of this part; and (2) Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information. (Authority: 20 U.S.C. 1412(a))</p> | | |
| <p>Sec. 300.111 Exception for prior State policies and procedures on file with the Secretary. If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of Sec. 300.110, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act. (Authority: 20 U.S.C. 1412(c)(1))</p> | | |
| <p>Sec. 300.112 Amendments to State policies and procedures. (a) Modifications made by a State. (1) Subject to paragraph (b) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State decides are necessary. (2) The provisions of this subpart apply to a modification to a State's policies and procedures in the same manner and to the same extent that they apply to the State's original policies and procedures. (b) Modifications required by the Secretary. The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if-- (1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended; (2) There is a new interpretation of this Act or regulations by a</p> | | |

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| Federal court or a State's highest court; or (3) There is an official finding of noncompliance with Federal law or regulations. (Authority: 20 U.S.C. 1412(c)(2) and (3)) | | |
| <p>Sec. 300.113 Approval by the Secretary.</p> <p>(a) General. If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.</p> <p>(b) Notice and hearing before determining a State is not eligible. The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until after providing the State reasonable notice and an opportunity for a hearing in accordance with the procedures in Secs. 300.581-300.586. (Authority: 20 U.S.C. 1412(d))</p> | | |
| <p style="text-align: center;">State Eligibility--Specific Conditions</p> <p>Sec. 300.121 Free appropriate public education (FAPE).</p> <p>(a) General. Each State must have on file with the Secretary information that shows that, subject to Sec. 300.122, the State has in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school.</p> <p>(b) Required information. The information described in paragraph (a) of this section must--</p> <p>(1) Include a copy of each State statute, court order, State Attorney General opinion, and other State documents that show the source of the State's policy relating to FAPE; and</p> <p>(2) Show that the policy--(i)(A) Applies to all public agencies in the State; and</p> <p>(B) Is consistent with the requirements of Secs. 300.300-300.313; and</p> <p>(ii) Applies to all children with disabilities, including children who have been suspended or expelled from school.</p> <p>(c) FAPE for children beginning at age 3. (1) Each State shall ensure that--</p> <p>(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and</p> <p>(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with Sec. 300.342(c).</p> <p>(2) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or</p> | <p><i>*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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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</i></p> | <p>The Office of Public Instruction (OPI) ensures that all students with disabilities between the ages of 3 and 18, inclusive, including students with disabilities who have been suspended or expelled from school, are provided a free appropriate public education (FAPE) consistent with the requirements of 34 CFR 300.300 through 300.313. This policy applies to all public agencies.</p> <p>The OPI has established interagency agreements with other state and private agencies to ensure the right to education and the provision of FAPE to eligible students with disabilities who are placed in state-operated or state-supported programs.</p> <p>Monitoring Procedures The OPI monitors special education services through an</p> |

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| <p>IFSP will begin.</p> <p>(d) FAPE for children suspended or expelled from school. (1) A public agency need not provide services during periods of removal under Sec. 300.520(a)(1) to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.</p> <p>(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must-</p> <p>(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is--</p> <p>(A) Under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under Sec. 300.519(b) (Sec. 300.520((a)(1))); or</p> <p>(B) For behavior that is not a manifestation of the child's disability, consistent with Sec. 300.524; and</p> <p>(ii) Provide services consistent with Sec. 300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is--</p> <p>(A) For drug or weapons offenses under Sec. 300.520(a)(2); or</p> <p>(B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with Sec. 300.521.</p> <p>(3)(i) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under Sec. 300.519 (Sec. 300.520(a)(1)).</p> <p>(ii) The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of</p> | <p><i>by participating in a regional services program.</i></p> <p><i>(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.</i></p> <p><i><u>*20-7-412. Establishment of individual district special education program.</u> (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:</i></p> <p><i>(a) there are sufficient numbers of children with disabilities in the district to justify the establishment of a program; or</i></p> <p><i>(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.</i></p> <p><i>(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:</i></p> <p><i>(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;</i></p> <p><i>(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</i></p> <p><i>(c) provide other demonstrated educational advantages that will materially benefit the person.</i></p> <p><i>(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.</i></p> <p><i>(4) When an agency that has responsibility for a</i></p> | <p>ongoing process which includes review of:</p> <ol style="list-style-type: none"> 1. Local education agency (LEA) policies and procedures; 2. Monitoring of LEAs and special education cooperatives on a five-year cycle, or more frequently if conditions warrant, to ensure compliance with applicable federal and state laws, rules and regulations. state-operated and state-supported programs are monitored on a three-year cycle. <p>The OPI has interagency agreements with other state agencies, which define responsibilities for ensuring FAPE for students with disabilities served or placed by those state agencies.</p> <p>The OPI annually reviews LEA child count and Part B project reports.</p> <p>The OPI has complaint and due process procedures in place which parents and advocates can use if they believe a student is not able to exercise his/her right to FAPE.</p> |

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| <p>behavior that has been determined not to be a manifestation of the child's disability, consistent with Sec. 300.524.</p> <p>(e) Children advancing from grade to grade. (1) Each State shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade.</p> <p>(2) The determination that a child described in paragraph (a)(1) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making those determinations. (Authority: 20 U.S.C. 1412(a)(1))</p> | <p><i>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.</i></p> <p><u>10.16.3121 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR FREE APPROPRIATE PUBLIC EDUCATION (FAPE)</u></p> <p>(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).</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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:</p> <ul style="list-style-type: none"> (i) provide FAPE directly; (ii) contract for services to provide FAPE; (iii) provide an out-of-district placement in | |

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| | <p>accordance with least restrictive environment regulations of IDEA;</p> <p>(iv) recommend to the board of public education withholding of state education funds;</p> <p>(v) deny in whole or part IDEA-B federal funds; or</p> <p>(vi) recommend to the board of public education a change in accreditation status.</p> <p>(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.</p> <p><u>10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES</u> (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.</p> <p>(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</p> | |

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| | <p>appropriate public education in accordance with IDEA.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.122 Exception to FAPE for certain ages.</p> <p>(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:</p> <p>(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in one or more of those age groups.</p> <p>(2)(i) Students aged 18 through 21 to the extent that State law does not require that special education and related services under Part</p> | | <p>Services for students, ages 19 through 21, inclusive, are permissive.</p> |

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| <p>B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--</p> <p>(A) Were not actually identified as being a child with a disability under Sec. 300.7; and</p> <p>(B) Did not have an IEP under Part B of the Act.</p> <p>(ii) The exception in paragraph (a)(2)(i) of this section does not apply to students with disabilities, aged 18 through 21, who--</p> <p>(A) Had been identified as a child with disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or</p> <p>(B) Did not have an IEP in their last educational setting, but who had actually been identified as a "child with a disability" under Sec. 300.7.</p> <p>(3)(i) Students with disabilities who have graduated from high school with a regular high school diploma.</p> <p>(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.</p> <p>(iii) Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with Sec. 300.503.</p> <p>(b) Documents relating to exceptions. The State must have on file with the Secretary--</p> <p>(1)(i) Information that describes in detail the extent to which the exception in paragraph (a)(1) of this section applies to the State; and</p> <p>(ii) A copy of each State law, court order, and other documents that provide a basis for the exception; and</p> <p>(2) With respect to paragraph (a)(2) of this section, a copy of the State law that excludes from services under Part B of the Act certain students who are incarcerated in an adult correctional facility.</p> <p>(Authority: 20 U.S.C. 1412(a)(1)(B))</p> | | |
| <p>Sec. 300.123 Full educational opportunity goal (FEOG).</p> <p>The State must have on file with the Secretary detailed policies and procedures through which the State has established a goal of providing full educational opportunity to all children with disabilities aged birth through 21. (Authority: 20 U.S.C. 1412(a)(2))</p> | | <p>It is the goal of the OPI that all students with disabilities, birth through 21, have available full educational opportunity. The OPI shall work collaboratively with LEAs and state agencies to achieve this goal.</p> <p>Services to eligible infants and</p> |

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| | | <p>toddlers are provided through Child and Family Service Provider Agencies (CFSPAs) under contract with the Disabilities Services Division of the Department of Public Health and Human Services (DPHHS).</p> <p>The OPI works closely with professional organizations, other state agencies, advocacy groups, and parent support groups to provide a coordinated, comprehensive and seamless system of services to students with disabilities, birth through 18. These same groups will continue to work together in the planning of services for students with disabilities in the 19 through 21 age group.</p> |
| <p>Sec. 300.124 FEOG--timetable. The State must have on file with the Secretary a detailed timetable for accomplishing the goal of providing full educational opportunity for all children with disabilities. (Authority: 20 U.S.C. 1412(a)(2))</p> | | <p>It is the goal of the OPI to achieve full educational opportunity for children with disabilities birth through 21 by the year 2015.</p> |
| <p>Sec. 300.125 Child find. (a) General requirement. (1) The State must have in effect policies and procedures to ensure that-- (i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services. (2) The requirements of paragraph (a)(1) of this section apply to-- (i) Highly mobile children with disabilities (such as migrant and homeless children); and (ii) Children who are suspected of being a child with a disability under Sec. 300.7 and in need of special education, even though they</p> | <p>(See also 20-7-403(4), MCA, found at Fed Reg Sec. 300.600.)</p> <p><i>*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.</i></p> <p><u>10.16.3125 LOCAL EDUCATIONAL AGENCY CHILD FIND RESPONSIBILITIES</u> (1) Each local educational</p> | <p>The OPI provides support to LEAs in their child find efforts by contracting for the delivery of audiological services on a statewide basis and by providing for a deaf-blind specialist to assist LEAs in the identification of students, birth through 21, who have deaf-blind disabilities.</p> <p>LEAs coordinate child find efforts for infants and toddlers, birth through 2, with CFSPAs.</p> <p>LEA procedures must ensure all</p> |

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| <p>are advancing from grade to grade.</p> <p>(b) Documents relating to child find. The State must have on file with the Secretary the policies and procedures described in paragraph (a) of this section, including--</p> <p>(1) The name of the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;</p> <p>(2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;</p> <p>(3) A description of how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains--</p> <p>(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and</p> <p>(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and</p> <p>(4) A description of the method the State uses to determine which children are currently receiving special education and related services.</p> <p>(c) Child find for children from birth through age 2 when the SEA and lead agency for the Part C program are different.</p> <p>(1) In States where the SEA and the State's lead agency for the Part C program are different and the Part C lead agency will be participating in the child find activities described in paragraph (a) of this section, a description of the nature and extent of the Part C lead agency's participation must be included under paragraph (b)(2) of this section.</p> <p>(2) With the SEA's agreement, the Part C lead agency's participation may include the actual implementation of child find activities for infants and toddlers with disabilities.</p> <p>(3) The use of an interagency agreement or other mechanism for providing for the Part C lead agency's participation does not alter or diminish the responsibility of the SEA to ensure compliance with the requirements of this section.</p> <p>(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability listed in Sec. 300.7 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.</p> <p>(e) Confidentiality of child find data. The collection and use of data to meet the requirements of this section are subject to the</p> | <p>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.</p> <p>(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.</p> <p>(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:</p> <p>(i) name the title of the person responsible for the coordination, implementation, and documentation of the procedures;</p> <p>(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);</p> <p>(iii) describe the role and responsibilities, if any, of other public or private agencies; and</p> <p>(iv) ensure the collection and use of data are in accordance with the confidentiality requirements of 34 CFR 300.560 through 300.577.</p> <p>(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.</p> | <p>students with disabilities, birth through 21, are located, identified and evaluated, including highly mobile students with disabilities, and those students suspected of having a disability and in need of special education and related services, even though they are advancing from grade to grade.</p> <p>Monitoring Procedures LEAs are required to submit child identification procedures to the OPI as part of their application for funds under IDEA. The OPI specialists review the procedures to ensure that the procedures address all of the requirements under applicable state and federal regulations. If the procedures are not in compliance, the LEA must amend the procedures and implement the amended procedures immediately.</p> <p>The OPI has established a data management system which gathers child count data from each LEA. The OPI reviews child count data to evaluate the effectiveness of child identification procedures and to determine which students are currently receiving special education and related services. Data includes the number of students with disabilities within each category of disability who have been identified, located, and evaluated.</p> |

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| confidentiality requirements of Secs. 300.560-300.577. (Authority: 20 U.S.C. 1412 (a)(3)(A) and (B)) | 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. | The LEAs' implementation of child find procedures is reviewed as part of the OPI's monitoring activities. |
| <p>Sec. 300.126 Procedures for evaluation and determination of eligibility. The State must have on file with the Secretary policies and procedures that ensure that the requirements of Secs. 300.530-300.536 are met. (Authority: 20 U.S.C. 1412(a)(6)(B), (7))</p> | | |
| <p>Sec. 300.127 Confidentiality of personally identifiable information. (a) The State must have on file in detail the policies and procedures that the State has undertaken to ensure protection of the confidentiality of any personally identifiable information, collected, used, or maintained under Part B of the Act. (b) The Secretary uses the criteria in Secs. 300.560-300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section. (Authority: 20 U.S.C. 1412(a)(8))</p> | | <p>The OPI provides training and materials to administrators and special education personnel on the management of special education records, state rules, and federal regulations pertaining to confidentiality.</p> <p>Monitoring Procedures LEAs are required to submit a program narrative as partial completion of the application requirements for receipt of Part B funds under IDEA. In the program narrative, LEAs provide their policies for addressing the requirements of 34 CFR 300.560 through 300.576. The OPI monitors compliance with these regulations by:</p> <ol style="list-style-type: none"> 1. Reviewing district policies in the program narrative for compliance with 34 CFR 300.560 through 300.576; 2. Reviewing LEAs' implementation of policies as part of monitoring reviews; and 3. Requiring LEAs to submit proposed policy changes to OPI for review and approval prior to implementation of the new policy. |

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| | | If LEA policies or the implementation of the policies are not in compliance with regulations, the LEA is required to take corrective actions. |
| <p>Sec. 300.128 Individualized education programs.</p> <p>(a) General. The State must have on file with the Secretary information that shows that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with Secs. 300.340-300.350.</p> <p>(b) Required information. The information described in paragraph (a) of this section must include-</p> <p>(1) A copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed, and revised; and</p> <p>(2) The procedures that the SEA follows in monitoring and evaluating those IEPs or IFSPs. (Authority: 20 U.S.C. 1412(a)(4))</p> | | |
| <p>Sec. 300.129 Procedural safeguards.</p> <p>(a) The State must have on file with the Secretary procedural safeguards that ensure that the requirements of Secs. 300.500-300.529 are met.</p> <p>(b) Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section. (Authority: 20 U.S.C. 1412(a)(6)(A))</p> | <p><u>10.16.3129 PARENTAL INVOLVEMENT</u></p> <p>(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.</p> <p>(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.</p> <p><u>10.60.102 DUE PROCESS IN SERVICES</u> (1) Special education services shall include the provision of due process to ensure the rights of children with disabilities. The goal of due process is to prevent harm to children, parents and society. Due process shall include protection regarding the following:</p> <p>(a) identification of disability;</p> <p>(b) development of education program;</p> <p>(c) placement with the education program; and</p> <p>(d) annual review of education program and</p> | |

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| <p>Sec. 300.130 Least restrictive environment.</p> <p>(a) General. The State must have on file with the Secretary procedures that ensure that the requirements of Secs. 300.550-300.556 are met, including the provision in Sec. 300.551 requiring a continuum of alternative placements to meet the unique needs of each child with a disability.</p> <p>(b) Additional requirement. (1) If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting where a child is served, the funding mechanism may not result in placements that violate the requirements of paragraph (a) of this section.</p> <p>(2) If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph. (Authority: 20 U.S.C. 1412(a)(5))</p> | <p>placement.</p> <p><u>10.16.3804 GENERAL PRINCIPLES OF SPECIAL EDUCATION FUNDING</u> (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:</p> <p>(a) Through the block grant system, districts are allowed flexibility in methods of providing special education programs within allowable cost guidelines.</p> <p>(b) The distribution of the funds is based primarily on ANB and prior fiscal year expenditure reports.</p> <p>(c) Expenditures of the funds are limited to services to students with disabilities ages 3-21.</p> <p>(d) Local district contributions, referred to as local match, are required.</p> <p>(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.</p> <p>(f) Expenditure of special education allowable costs must be reported using specific accounting codes.</p> <p>(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.</p> <p>(3) The superintendent of public instruction will use the trustees' financial summary to determine the special education allowable cost payments to districts and cooperatives.</p> | |
| <p>Sec. 300.132 Transition of children from Part C to</p> | <p><u>10.16.3132 INTERAGENCY COORDINATION FOR</u></p> | <p>Each LEA will participate in</p> |

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| <p>preschool programs. The State must have on file with the Secretary policies and procedures to ensure that--</p> <p>(a) Children participating in early-intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8) of the Act;</p> <p>(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with Sec. 300.342(c) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with Sec. 300.121(c); and</p> <p>(c) Each LEA will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8) of the Act. (Authority: 20 U.S.C. 1412(a)(9))</p> | <p><u>PART C, IDEA</u> (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.</p> <p>(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:</p> <p>(a) determining financial responsibilities of agencies;</p> <p>(b) identifying responsibilities for performing evaluations;</p> <p>(c) developing and implementing educational programs;</p> <p>(d) coordinating communication between agencies;</p> <p>(e) participating in transition planning conferences; and</p> <p>(f) ensuring an individualized education program has been developed and implemented by the student's third birthday.</p> | <p>transition planning conferences arranged by Part C, Child and Family Service Provider Agencies.</p> |
| <p>Sec. 300.133 Children in private schools. The State must have on file with the Secretary policies and procedures that ensure that the requirements of Secs. 300.400-300.403 and Secs. 300.450-300.462 are met. (Authority: 20 U.S.C. 1413(a)(4))</p> | | |
| <p>Sec. 300.135 Comprehensive system of personnel development.</p> <p>(a) General. The State must have in effect, consistent with the purposes of this part and with section 635(a)(8) of the Act, a comprehensive system of personnel development that--</p> <p>(1) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and</p> <p>(2) Meets the requirements for a State improvement plan relating to personnel development in section 653(b)(2)(B) and (c)(3)(D) of the Act.</p> <p>(b) Information. The State must have on file with the Secretary information that shows that the requirements of paragraph (a) of this section are met. (Authority: 20 U.S.C. 1412(a)(14))</p> | <p><u>10.16.3135 COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT</u> (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:</p> <p>(a) Analysis of state and local needs for professional development for personnel to serve students with disabilities that includes at a minimum:</p> <p>(i) the number of personnel providing special education and related services;</p> <p>(ii) relevant information on current and anticipated personnel vacancies and shortages including the number of individuals described in (1)(a)(i) with</p> | |

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| | <p>provisional certification; and</p> <p>(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.</p> <p>(b) An annual statewide needs assessment to be conducted before June 1 of each year to determine if:</p> <p>(i) a sufficient number of qualified personnel are available in the state;</p> <p>(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</p> <p>(iii) preservice preparation of new personnel is needed.</p> <p>(c) A detailed structure for personnel planning that focuses on preservice and in-service education needs and that describes procedures for:</p> <p>(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;</p> <p>(ii) providing technical assistance to local educational agencies, educational cooperatives, state operated programs and private programs serving state agency placed students with disabilities; and</p> <p>(iii) identifying state, local and regional resources which will assist in meeting the state's personnel preparation needs.</p> <p>(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</p> | |

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| | <p>council shall:</p> <p>(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;</p> <p>(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</p> <p>(c) prepare a written report on recommendations regarding personnel preparation to the superintendent of public instruction and the state special education advisory panel.</p> | |
| <p>Sec. 300.136 Personnel standards.</p> <p>(a) Definitions. As used in this part--</p> <p>(1) Appropriate professional requirements in the State means entry level requirements that--</p> <p>(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and</p> <p>(ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children with disabilities who are served by State, local, and private agencies (see Sec. 300.2);</p> <p>(2) Highest requirements in the State applicable to a specific profession or discipline means the highest entry-level academic degree needed for any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline;</p> <p>(3) Profession or discipline means a specific occupational category that--</p> <p>(i) Provides special education and related services to children with disabilities under Part B of the Act;</p> <p>(ii) Has been established or designated by the State;</p> <p>(iii) Has a required scope of responsibility and degree of supervision; and</p> <p>(iv) Is not limited to traditional occupational categories; and</p> <p>(4) State-approved or -recognized certification, licensing,</p> | <p><i>*37-15-103. (Temporary) Exemptions. (1) Nothing in this chapter prevents a person licensed in this state under any other law from engaging in the profession or business for which the person is licensed.</i></p> <p><i>(2) (a) Nothing in this chapter restricts or prevents activities of a speech-language pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech-language pathologist or audiologist employed by federal agencies.</i></p> <p><i>(b) Nothing in this chapter restricts an elementary or high school district or a special education cooperative organized under the provisions of Title 20 from hiring on an annual basis a person to provide to students speech-language pathology-related services who does not meet the licensing requirements of this chapter if the elementary or high school district or the special education cooperative has:</i></p> <p><i>(i) made an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel to provide services to students with disabilities and has not received an application that resulted in the offer and acceptance of employment from any licensed person in the course of attempting to fill a position requiring a licensed person;</i></p> | <p>The OPI does not have temporary or emergency certification for personnel providing special education and related services to children with disabilities. However, Board of Public Education standards permit certified teachers who are working on their special education endorsement to teach special education under a specific supervision plan.</p> <p>The OPI, in concert with the institutions for higher education (IHE), offers a special education teacher training project to assist certified teachers in completing the requirements for an endorsement in special education.</p> <p>Traineeships are announced through mailings to all LEAs and professional organizations in the</p> |

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| <p>registration, or other comparable requirements means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.</p> <p>(b) Policies and procedures. (1)(i) The State must have on file with the Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.</p> <p>(ii) The policies and procedures required in paragraph (b)(1)(i) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.</p> <p>(2) Each State may--(i) Determine the specific occupational categories required to provide special education and related services within the State; and</p> <p>(ii) Revise or expand those categories as needed.</p> <p>(3) Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the Act.</p> <p>(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard as necessary to ensure the provision of FAPE to all children with disabilities in the State without violating the requirements of this section.</p> <p>(c) Steps for retraining or hiring personnel. To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State must provide the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.</p> <p>(d) Status of personnel standards in the State. (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which</p> | <p>(ii) <i>hired the most qualified unlicensed applicant, who must have completed at least a 4-year program in speech-language pathology or communication disorders and who can show written proof of ongoing enrollment in a program of study that would meet the licensing requirements of this chapter within 3 years of the date of hire; and</i></p> <p>(iii) <i>contracted with a licensed person to provide the person hired consultation and training in the subjects and in the manner that the licensed person considers necessary or appropriate for not less than 20 hours within the first 6 months of the unlicensed person's period of service.</i></p> <p>(c) <i>For the purposes of subsection (2)(b), an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel is presumed to be met if the school district or special education cooperative has advertised its vacant position in a newspaper of general circulation in the county in which the district or cooperative is located at least once each week for 3 consecutive weeks and has also advertised the vacancy during that same period with the state job service, the Montana university system placement service, the American speech-language-hearing association employment placement service, and the Montana speech-language-hearing association employment placement service.</i></p> <p>(d) <i>A school district or special education cooperative hiring an unlicensed person under subsection (2)(b) shall readvertise the vacancy upon the completion of each school fiscal year and may continue to employ the unlicensed person only upon compliance with the requirements of subsection (2) each year. The maximum length of time that an unlicensed individual may be employed in the state under subsection (2)(b) is 3 years from the date of initial hire.</i></p> <p>(3) <i>Those persons performing activities described in subsection (2) who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology</i></p> | <p>state. Additionally, an announcement is made through the OPI newspaper, <i>Montana Schools</i>.</p> <p>Monitoring Procedures The OPI monitors staff qualifications through review of:</p> <ol style="list-style-type: none"> 1. Data submitted by the LEA in accord with the OPI reporting requirements; and 2. Personnel qualifications (folio numbers, license numbers). <p>If it is determined that personnel are not qualified in the area for which they are providing services, the LEA is required to take corrective actions.</p> <p>Information on the status of personnel standards and descriptions for each profession is maintained on file with the OPI and available to the public.</p> <p>The OPI works closely with IHEs and licensing boards to ensure there is a mechanism for provision of services to students with disabilities when instructional needs exceed available personnel who meet appropriate professional requirements. Strategies for addressing shortages are included in the state CSPD plan.</p> |

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| <p>personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.</p> <p>(2) The information required in paragraph (d)(1) of this section must be on file in the SEA and available to the public.</p> <p>(e) Applicability of State statutes and agency rules. In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children with disabilities must be considered.</p> <p>(f) Use of paraprofessionals and assistants. A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of the Act.</p> <p>(g) Policy to address shortage of personnel. (1) In implementing this section, a State may adopt a policy that includes a requirement that LEAs in the State make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law and the steps described in paragraph (c) of this section, within three years.</p> <p>(2) If a State has reached its established date under paragraph (c) of this section, the State may still exercise the option under paragraph (g)(1) of this section for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State.</p> <p>(3)(i) Each State must have a mechanism for serving children with disabilities if instructional needs exceed available personnel who meet appropriate professional requirements in the State for a specific profession or discipline.</p> <p>(ii) A State that continues to experience shortages of qualified personnel must address those shortages in its comprehensive system of personnel development under Sec. 300.135. (Authority: 20 U.S.C. 1412(a)(15))</p> | <p><i>or audiology services to the public for compensation over and above the salary that they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.</i></p> <p><i>(4) Nothing in this chapter restricts activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of the student's supervised course of study, and a fee may not accrue directly or indirectly to the student. These persons must be designated by the title "speech-language pathology (or audiology) intern", "speech-language pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to the person's level of training.</i></p> <p><i>(5) Nothing in this chapter restricts a person from another state from offering speech-language pathology or audiology services in this state if these services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent may offer speech-language pathology or audiology services in this state for no more than 30 days in any calendar year</i></p> | |

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| | <p><i>if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.</i></p> <p><i>(6) Nothing in this chapter restricts any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person's qualifies.</i></p> <p><i>(7) Nothing in this chapter restricts any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which the person's qualifies and that are described in Title 37, chapter 16.</i></p> <p><i>(8) Nothing in this chapter exempts an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16. (Terminates June 30, 2003--sec. 5, Ch. 367, L. 1999.)</i></p> <p><u>10.16.3136 SPECIAL EDUCATION PROFESSIONAL STAFF QUALIFICATIONS</u> (1) Any teacher providing special education and related services to students with disabilities shall hold a current Montana teaching certificate with appropriate endorsements.</p> <p>(a) A special education teacher must hold a current Montana teaching certificate with an endorsement in special education.</p> <p>(b) A teacher of homebound or hospitalized students must hold a current Montana teaching certificate.</p> <p>(c) A school psychologist must hold a current Montana Class 6 teaching certificate.</p> <p>(d) Supervisors of special education teaching personnel must have a Class III administrator's certificate with a principal's endorsement or a supervisor's endorsement in special education.</p> <p>(2) All special education and related services for students with disabilities shall be provided under the direction of qualified personnel.</p> <p>(3) Each local educational agency must require that each administrator which provides or supervises the</p> | |

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| | <p>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.</p> <p>(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.</p> <p>(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.</p> <p>(6) Paraprofessional personnel (e.g., teacher aide or instructional assistant) shall meet current office of public instruction accreditation standards under ARM 10.55.707.</p> | |
| <p>Sec. 300.137 Performance goals and indicators.</p> <p>The State must have on file with the Secretary information to demonstrate that the State--</p> <p>(a) Has established goals for the performance of children with disabilities in the State that--</p> <p>(1) Will promote the purposes of this part, as stated in Sec. 300.1; and</p> <p>(2) Are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the State;</p> <p>(b) Has established performance indicators that the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;</p> <p>(c) Every two years, will report to the Secretary and the public on the progress of the State, and of children with disabilities in the State,</p> | | <p>Montana has established the following goals and indicators for the performance of students with disabilities in the state. The goals and indicators are consistent with the goals and indicators established for all students in Montana and are designed as an integral part of Montana's Standards.</p> <p>Framework.</p> <p><u>Goal #1:</u> Students with disabilities will demonstrate measurable, continuous progress in development of academic</p> |

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| <p>toward meeting the goals established under paragraph (a) of this section; and</p> <p>(d) Based on its assessment of that progress, will revise its State improvement plan under subpart 1 of Part D of the Act as may be needed to improve its performance, if the State receives assistance under that subpart. (Authority: 20 U.S.C. 1412(a)(16))</p> | | <p>skills targeted by the Montana Performance Standards System for all students.</p> <p><u>Indicators:</u></p> <ul style="list-style-type: none"> • There will be an increase in student performance as measured by the state's large-scale assessment system. <p><u>Goal #2:</u> Students with disabilities will demonstrate continuous, successful participation in school, resulting in increased graduation rates and decreased drop-out rates.</p> <p><u>Indicators:</u></p> <ul style="list-style-type: none"> • Increased graduation rates for students with disabilities. • Decreased drop-out rates for students with disabilities. <p><u>Goal # 3:</u> Students with disabilities will be included, to the maximum extent possible, in statewide assessment systems.</p> <p><u>Indicators:</u></p> <ul style="list-style-type: none"> • The statewide assessment will include accommodations that allow for a greater participation rate of students with disabilities. • An increase in the percentage of students with disabilities participating in the statewide assessment at each grade level. • All students with disabilities will participate in the statewide assessment system. <p><u>Goal #4:</u> Students with disabilities will demonstrate the ability to make successful school- to- adult transitions.</p> |

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| | | <p><u>Indicators:</u></p> <ul style="list-style-type: none"> • There will be an increased number of transition services provided which reflect a coordinated set of transition activities provided. <p><u>Goal # 5:</u> Students with disabilities will demonstrate self-awareness and interpersonal skills that facilitate success with peers, school personnel, family members, and the community.</p> <p><u>Indicators:</u></p> <ul style="list-style-type: none"> • Decrease in suspensions. • Decrease in expulsions. <p><u>Goal #6:</u> Students with disabilities, parents, early intervention personnel, and school personnel will report confidence and satisfaction with special education and early intervention services planning, implementation, and outcomes.</p> <p><u>Indicators:</u></p> <ul style="list-style-type: none"> • Increase in the number of parents reporting confidence and satisfaction based on biennial survey results. • Maintain a frequency in the rate of complaints per student with disabilities of less than one fourth of one percent (.25%) annually to OPI by parents, teachers, etc., regarding services to students with disabilities (beginning at age 3). • Maintain a number of less than 10 due process hearing requests per year regarding services to students with disabilities (beginning at age 3). |

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| | | <p>Every two years, the OPI will report to the U.S. Department of Education and the public on the progress of children with disabilities toward meeting the goals. Based on its review of progress made, the OPI will revise its state improvement plan as may be needed to improve its performance.</p> |
| <p>Sec. 300.138 Participation in assessments. The State must have on file with the Secretary information to demonstrate that--</p> <p>(a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary;</p> <p>(b) As appropriate, the State or LEA--</p> <p>(1) Develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs;</p> <p>(2) Develops alternate assessments in accordance with paragraph (b)(1) of this section; and</p> <p>(3) Beginning not later than, July 1, 2000, conducts the alternate assessments described in paragraph (b)(2) of this section. (Authority: 20 U.S.C. 1412(a)(17)(A))</p> | <p><u>10.56.101 STUDENT ASSESSMENT</u> (1) By the authority of 20-2-121(12), MCA, the board of public education adopts rules for state-level assessment in the public schools and those private schools seeking accreditation.</p> <p>(2) The board recognizes that the primary purpose of assessment is to serve learning. Classroom assessment is the primary means through which assessment impacts instruction and learning for individuals. State-level and large-scale assessment affect learning through assisting policy decisions and assuring program quality for all students. To meet both classroom and state-level needs, state-level assessments will provide information about the proficiency level of student achievement relative to established content standards, as well as the status of Montana's schools in relation to other groups of students, states, and nations. The school and district responsibilities for assessment are identified in ARM 10.55.603.</p> <p>(3) In order to obtain state-level achievement information, all accredited schools shall annually administer a single system of state-level assessments approved by the board.</p> <p>(a) State-level assessments shall be administered to all students in grades four, eight and eleven in reading, communication arts, mathematics, science, and social studies. For planning purposes, state-level assessments shall be given during a week in the spring of the year, identified by the office of public instruction a</p> | <p>Students with disabilities shall be included in general and district-wide assessment programs in accord with the requirements of 34 CFR 300.138. If an IEP team determines that the student is unable to participate in the general and district wide assessments, even with accommodations, the student must participate in an alternate assessment.</p> <p>The OPI provides training and guidance to LEAs , directors of special education, cooperative and Part B project directors on state and district wide assessments.</p> <p>The training addresses state and federal rules and regulations governing assessment and provides guidance on including students with disabilities in the general state and district wide assessment with and without the use of accommodations. Additional information is provided on alternate assessment.</p> |

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| | <p>year prior to the assessment date.</p> <p>(b) All state-level assessment results shall be provided to the office of public instruction and school districts in a format specified by the office of public instruction and approved by the board of public education.</p> <p>(4) State-level assessment results are a part of each student's permanent records as described in ARM 10.55.2002.</p> <p>(5) The office of public instruction shall provide a report of the results to the board, the legislature, and the public. Schools are encouraged to compare their results with the state results and share state-level assessment information with parents and local communities.</p> <p>(6) The superintendent of public instruction is authorized to make available the reported student assessment data in compliance with confidentiality requirements of federal and state law. State-level assessment results released to the public shall be accompanied by a clear statement of the purposes of the assessments, subject areas assessed, level of measurement of the content standards, and the percent of students who participated in the assessments. The release shall include additional information to provide a fair and useful context for assessment reporting (e.g., dropout rates, mobility rates, poverty levels, district size) that will assist districts to examine their educational programs to assure effectiveness.</p> <p>(7) All students shall participate in the state-level assessments. Students with disabilities or limited English proficiency (LEP) shall participate using the approved assessments, unless it is determined that a student's progress toward the content standards cannot be adequately measured with the approved assessments even when provided accommodations.</p> <p>(a) For students with disabilities, the individualized education program (IEP) teams have the authority to specify accommodations to be provided, as defined in (8), for participation by the student in the state-level assessments.</p> | |

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| | <p>(i) When an IEP team determines that an accommodation for a student's disability would still not allow for adequate measurement of the student's progress toward the content standards, the IEP team may waive using the approved state-level assessments by providing alternate assessments that are appropriate to determine the student's progress toward the content standards.</p> <p>(b) For students who have been identified by a team of educators as LEP, those teams have the authority to specify accommodations to be provided, as defined in (8), for participation by the student in the state-level assessments.</p> <p>(i) When the team of educators determines that an accommodation for an LEP student who has had fewer than three years of instruction in English would still not allow for adequate measurement of the student's progress toward the content standards, the team of educators may waive using the approved state-level assessments by providing alternate assessments that are appropriate to determine the student's progress toward the content standards.</p> <p>(c) The office of public instruction shall provide guidance to schools concerning alternate state-level assessments.</p> <p>(8) Accommodations allow students to demonstrate competence in subject matter so that state-level assessment results accurately reflect the students' achievement levels rather than limited English language development or impaired sensory or manual skills, except where those skills are the factors which the assessment purports to measure.</p> <p>(a) Accommodation for state-level assessment purposes is defined as modifications similar to those used to support and accommodate the student in the instructional setting.</p> <p>(b) Accommodations may include, but are not limited to extended time, small group administration, facilitator reading directions, native language support, student responding orally, or using required assistive technology.</p> | |

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| | (c) The office of public instruction shall provide guidance to schools concerning appropriate accommodations. | |
| <p>Sec. 300.139 Reports relating to assessments.</p> <p>(a) General. In implementing the requirements of Sec. 300.138, the SEA shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:</p> <p>(1) The number of children with disabilities participating--</p> <p>(i) In regular assessments; and</p> <p>(ii) In alternate assessments.</p> <p>(2) The performance results of the children described in paragraph (a)(1) of this section if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children--</p> <p>(i) On regular assessments (beginning not later than July 1, 1998); and</p> <p>(ii) On alternate assessments (not later than July 1, 2000).</p> <p>(b) Combined reports. Reports to the public under paragraph (a) of this section must include--</p> <p>(1) Aggregated data that include the performance of children with disabilities together with all other children; and</p> <p>(2) Disaggregated data on the performance of children with disabilities.</p> <p>(c) Timeline for disaggregation of data. Data relating to the performance of children described under paragraph (a)(2) of this section must be disaggregated--</p> <p>(1) For assessments conducted after July 1, 1998; and</p> <p>(2) For assessments conducted before July 1, 1998, if the State is required to disaggregate the data prior to July 1, 1998. (Authority: 20 U.S.C. 612(a)(17)(B))</p> | | The OPI shall report to the public information on the participation and performance of students with disabilities on assessments in accordance with the requirements of 34 CFR 300.139. |
| <p>Sec. 300.141 SEA responsibility for general supervision.</p> <p>(a) The State must have on file with the Secretary information that shows that the requirements of Sec. 300.600 are met.</p> <p>(b) The information described under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with that paragraph. (Authority: 20 U.S.C. 1412(a)(11))</p> | <p>(See also 20-7-403, MCA, found at Fed Reg Sec. 300.600.)</p> <p><u>10.16.3141 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR MONITORING</u> (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</p> | |

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| | <p>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.</p> <p>(a) The procedures shall include:</p> <p>(i) review of local educational agency policies, procedures, programs, and program data;</p> <p>(ii) determination of the need for further information, on-site visitation, training, or technical assistance;</p> <p>(iii) development of strategies to enable the local educational agency to improve programs for students with disabilities;</p> <p>(iv) office of public instruction review of the effectiveness of the improvement plan and implementation strategies; and</p> <p>(v) procedures for identification of noncompliance and its correction including:</p> <p>(A) the local educational agency's response to the findings;</p> <p>(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</p> <p>(C) verification of compliance by the office of public instruction.</p> <p>(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.</p> <p>(a) The notice shall include a statement of the actions the office of public instruction intends to take,</p> | |

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| | <p>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.</p> <p>(b) The office of public instruction may initiate one or more of the options under ARM 10.16.3121 to ensure compliance.</p> | |
| <p>Sec. 300.142 Methods of ensuring services.</p> <p>(a) Establishing responsibility for services. The Chief Executive Officer or designee of that officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:</p> <p>(1) Agency financial responsibility. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).</p> <p>(2) Conditions and terms of reimbursement. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.</p> <p>(3) Interagency disputes. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.</p> <p>(4) Coordination of services procedures. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.</p> <p>(b) Obligation of noneducational public agencies. (1) General. (i) If any public agency other than an educational agency is otherwise</p> | <p><u>10.16.3142 INTERAGENCY AGREEMENTS</u> (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.</p> <p>(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.</p> <p>(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.</p> | <p>The OPI has established interagency agreements with non-educational public agencies which address all of the requirements of 34 CFR 300.142 and ARM 10.16.3142.</p> <p>LEAs shall comply with the requirements of 34 CFR 300.142(e) through (g).</p> <p>The OPI does not include the proceeds from public or private insurance in its calculation of maintenance of fiscal effort.</p> |

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| <p>obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in Sec. 300.5 relating to assistive technology devices, Sec. 300.6 relating to assistive technology services, Sec. 300.24 relating to related services, Sec. 300.28 relating to supplementary aids and services, and Sec. 300.29 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.</p> <p>(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.</p> <p>(2) Reimbursement for services by noneducational public agency. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a)(1) of this section, and the agreement described in paragraph (a)(2) of this section.</p> <p>(c) Special rule. The requirements of paragraph (a) of this section may be met through--</p> <p>(1) State statute or regulation;</p> <p>(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or</p> <p>(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer.</p> <p>(d) Information. The State must have on file with the Secretary information to demonstrate that the requirements of paragraphs (a) through (c) of this section are met.</p> <p>(e) Children with disabilities who are covered by public insurance.</p> <p>(1) A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public</p> | | |

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| <p>insurance program, except as provided in paragraph (e)(2) of this section.</p> <p>(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency--</p> <p>(i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;</p> <p>(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay; and</p> <p>(iii) May not use a child's benefits under a public insurance program if that use would--</p> <p>(A) Decrease available lifetime coverage or any other insured benefit;</p> <p>(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;</p> <p>(C) Increase premiums or lead to the discontinuation of insurance;</p> <p>or</p> <p>(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.</p> <p>(f) Children with disabilities who are covered by private insurance.</p> <p>(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with Sec. 300.500(b)(1)</p> <p>(2) Each time the public agency proposes to access the parent's private insurance proceeds, it must--</p> <p>(i) Obtain parent consent in accordance with paragraph (f)(1) of this section; and</p> <p>(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.</p> <p>(g) Use of Part B funds. (1) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.</p> | | |

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| <p>(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).</p> <p>(h) Proceeds from public or private insurance. (1) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.</p> <p>(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in Secs. 300.154 and 300.231.</p> <p>(i) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program. (Authority: 20 U.S.C. 1412(a)(12)(A), (B), and (C); 1401(8))</p> | | |
| <p>Sec. 300.143 SEA implementation of procedural safeguards. The State must have on file with the Secretary the procedures that the SEA (and any agency assigned responsibility pursuant to Sec. 300.600(d)) follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency. (Authority: 20 U.S.C. 1412(a)(11); 1415(a))</p> | | <p>The OPI informs each public agency of its responsibility for ensuring effective implementation of procedural safeguards for children with disabilities served by the public agency through ongoing training activities for administrators, directors of special education, cooperative and Part B project directors.</p> <p>LEAs shall establish and implement procedural safeguards which meet the requirements of federal regulations 34 CFR 300.500 through 300.529 and state laws and administrative rules.</p> |
| <p>Sec. 300.144 Hearings relating to LEA eligibility. The State must have on file with the Secretary procedures to ensure that the SEA does not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR</p> | | <p>See ARM 10.16.3194, Office of Public Instruction Approval/ Disapproval of Applications for Federal Funds, and 10.16.3196, Office of Public Instruction</p> |

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| 76.401(d). (Authority: 20 U.S.C. 1412(a)(13)) | | Disapproval of Federal Funds: Opportunity for Hearing |
| <p>Sec. 300.145 Recovery of funds for misclassified children. The State must have on file with the Secretary policies and procedures that ensure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act. (Authority: 20 U.S.C. 1221e-3(a)(1))</p> | <p><u>10.16.3145 PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN</u></p> <p>(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.</p> <p>(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.</p> <p>(b) The notice must also include a statement of the local educational agency's right to a hearing.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p><u>10.16.3146 FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN</u></p> <p>(1) If the local educational agency fails to reimburse</p> | |

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| | 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. | |
| <p>Sec. 300.146 Suspension and expulsion rates. The State must have on file with the Secretary information to demonstrate that the following requirements are met:</p> <p>(a) General. The SEA examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--</p> <p>(1) Among LEAs in the State; or</p> <p>(2) Compared to the rates for nondisabled children within the agencies.</p> <p>(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 612(a)(22))</p> | | <p>The OPI annually collects data on long-term suspensions and expulsions of students. The data is reviewed to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities among LEAs in the state or compared to the rates for nondisabled students within the agencies. If discrepancies are occurring, the OPI reviews and, if appropriate, revises (or requires the affected state agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of individualized educational programs (IEP), the use of positive behavioral interventions, and procedural safeguards to ensure that these policies, procedures, and practices comply with IDEA.</p> |
| <p>Sec. 300.147 Additional information if SEA provides direct services.</p> <p>(a) If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency--</p> <p>(1) Shall comply with any additional requirements of Secs. 300.220-300.230(a) and 300.234-300.250 as if the agency were an LEA; and</p> <p>(2) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to Sec. 300.184 (relating to excess costs).</p> | | <p>When providing direct services, the OPI complies with any additional requirements of 34 CFR 300.220 through 300.230(a) and 300.234 through 300.250 as if the OPI was an LEA.</p> |

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| (b) The SEA must have on file with the Secretary information to demonstrate that it meets the requirements of paragraph (a)(1) of this section. (Authority: 20 U.S.C. 1412(b)) | | |
| <p>Sec. 300.148 Public participation.</p> <p>(a) General; exception. (1) Subject to paragraph (a)(2) of this section, each State must ensure that, prior to the adoption of any policies and procedures needed to comply with this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities consistent with Secs. 300.280-300.284.</p> <p>(2) A State will be considered to have met paragraph (a)(1) of this section with regard to a policy or procedure needed to comply with this part if it can demonstrate that prior to the adoption of that policy or procedure, the policy or procedure was subjected to a public review and comment process that is required by the State for other purposes and is comparable to and consistent with the requirements of Secs. 300.280-300.284.</p> <p>(b) Documentation. The State must have on file with the Secretary information to demonstrate that the requirements of paragraph (a) of this section are met. (Authority: 20 U.S.C. 1412(a)(20))</p> | | |
| <p>Sec. 300.150 State advisory panel.</p> <p>The State must have on file with the Secretary information to demonstrate that the State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State in accordance with the requirements of Secs. 300.650-300.653. (Authority: 20 U.S.C. 1412(a)(21)(A))</p> | <p><u>10.16.3150 STATE ADVISORY PANEL</u> (1) The superintendent of public instruction shall establish and maintain the state advisory panel in accordance with 34 CFR 300.650 through 300.653.</p> | |
| <p>Sec. 300.152 Prohibition against commingling.</p> <p>(a) The State must have on file with the Secretary an assurance satisfactory to the Secretary that the funds under Part B of the Act are not commingled with State funds.</p> <p>(b) The assurance in paragraph (a) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the Part B funds. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures). (Authority: 20 U.S.C. 1412(a)(18)(B))</p> | | |
| <p>Sec. 300.153 State-level nonsupplanting.</p> <p>(a) General. (1) Except as provided in Sec. 300.230, funds paid to a State under Part B of the Act must be used to supplement the level</p> | | <p>The OPI assures that it complies with the requirements of 34 CFR 300.153.</p> |

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| <p>of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant these Federal, State, and local funds.</p> <p>(2) The State must have on file with the Secretary information to demonstrate to the satisfaction of the Secretary that the requirements of paragraph (a)(1) of this section are met.</p> <p>(b) Waiver. If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (a) of this section if the Secretary concurs with the evidence provided by the State under Sec. 300.589. (Authority: 20 U.S.C. 1412(a)(18)(c))</p> | | 300.153. |
| <p>Sec. 300.154 Maintenance of State financial support.</p> <p>(a) General. The State must have on file with the Secretary information to demonstrate, on either a total or per-capita basis, that the State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.</p> <p>(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.</p> <p>(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--</p> <p>(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or</p> <p>(2) The State meets the standard in Sec. 300.589 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.</p> <p>(d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under</p> | | The OPI maintains state financial support documentation in accord with the requirements of 34 CFR 300.154 and consistent with state legislative appropriations. |

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| paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support. (Authority: 20 U.S.C. 1412(a)(19)) | | |
| <p>Sec. 300.155 Policies and procedures for use of Part B funds.</p> <p>The State must have on file with the Secretary policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B. (Authority: 20 U.S.C. 1412(a)(18)(A))</p> | | |
| <p>Sec. 300.156 Annual description of use of Part B funds.</p> <p>(a) In order to receive a grant in any fiscal year a State must annually describe--</p> <p>(1) How amounts retained for State-level activities under Sec. 300.602 will be used to meet the requirements of this part;</p> <p>(2) How those amounts will be allocated among the activities described in Secs. 300.621 and 300.370 to meet State priorities based on input from LEAs; and</p> <p>(3) The percentage of those amounts, if any, that will be distributed to LEAs by formula.</p> <p>(b) If a State's plans for use of its funds under Secs. 300.370 and 300.620 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section. (Authority: 20 U.S.C. 1411(f)(5))</p> | | |
| <p><u>LEA and State Agency Eligibility--General</u></p> <p>Sec. 300.180 Condition of assistance.</p> <p>An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in Secs. 300.220-300.250. (Authority: 20 U.S.C. 1413(a))</p> | <p><u>10.16.3180 NOTICE OF AVAILABILITY OF FEDERAL FUNDS</u> (1) The office of public instruction shall annually provide written notice of the availability of federal funds under IDEA.</p> <p>(2) The notice shall include:</p> <p>(a) procedures for applicants to follow in completing and submitting application for federal funds under IDEA;</p> <p>(b) amount of the federal funds and the period during which the local educational agency may obligate funds;</p> <p>(c) goals and objectives for use of the funds;</p> <p>(d) description of state and federal requirements to which the local educational agency must comply to receive funds;</p> <p>(e) office of public instruction's procedure for approving applications;</p> | <p>An LEA is eligible for assistance under IDEA Part B if it meets all of the conditions in 34 CFR 300.220 through 300.250 and state administrative rules.</p> |

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| | <p>(f) requirements for project reports;</p> <p>(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</p> <p>(h) an application form and an offer of technical assistance from the office of public instruction.</p> | |
| <p>Sec. 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.</p> <p>If an LEA or a State agency described in Sec. 300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of Sec. 300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act. (Authority: 20 U.S.C. 1413(b)(1))</p> | <p><u>10.16.3181 LOCAL EDUCATIONAL AGENCY FEDERAL FUNDS APPLICATIONS</u> (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.</p> <p>(a) A local educational agency may submit a single district application if it has:</p> <p>(i) an entitlement of \$7500 or more; and</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(2) A consolidated application must meet the same requirements as a single district application.</p> <p>(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.</p> <p>(3) If a local educational agency makes a significant</p> | |

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| | 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. | |
| <p>Sec. 300.182 Amendments to LEA policies and procedures.</p> <p>(a) Modification made by an LEA or a State agency. (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary.</p> <p>(2) The provisions of this subpart apply to a modification to an LEA's or State agency's policies and procedures in the same manner and to the same extent that they apply to the LEA's or State agency's original policies and procedures.</p> <p>(b) Modifications required by the SEA. The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with this part, if--</p> <p>(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;</p> <p>(2) There is a new interpretation of the Act by Federal or State courts; or</p> <p>(3) There is an official finding of noncompliance with Federal or State law or regulations. (Authority: 20 U.S.C. 1413(b))</p> | | |
| <p>Sec. 300.184 Excess cost requirement.</p> <p>(a) General. Amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities.</p> <p>(b) Definition. As used in this part, the term excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary or secondary school student, as may be appropriate. Excess costs must be computed after deducting--</p> <p>(1) Amounts received--</p> <p>(i) Under Part B of the Act;</p> <p>(ii) Under Part A of title I of the Elementary and Secondary Education Act of 1965; or</p> <p>(iii) Under Part A of title VII of that Act; and</p> <p>(2) Any State or local funds expended for programs that would qualify for assistance under any of those parts.</p> | | |

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| <p>(c) Limitation on use of Part B funds. (1) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (c)(2) of this section.</p> <p>(2) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children. (Authority: 20 U.S.C. 1401(7), 1413(a)(2)(A))</p> | | |
| <p>Sec. 300.185 Meeting the excess cost requirement.</p> <p>(a)(1) General. An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.</p> <p>(2) The amount described in paragraph (a)(1) of this section is determined using the formula in Sec. 300.184(b). This amount may not include capital outlay or debt service.</p> <p>(b) Joint establishment of eligibility. If two or more LEAs jointly establish eligibility in accordance with Sec. 300.190, the minimum average amount is the average of the combined minimum average amounts determined under Sec. 300.184 in those agencies for elementary or secondary school students, as the case may be. (Authority: 20 U.S.C. 1413(a)(2)(A))</p> | | |
| <p>Sec. 300.190 Joint establishment of eligibility.</p> <p>(a) General. An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.</p> <p>(b) Charter school exception. An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless it is explicitly permitted to do so under the State's charter school statute.</p> <p>(c) Amount of payments. If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under Secs. 300.711-300.714 if the agencies were eligible for these payments.</p> | | |

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| (Authority: 20 U.S.C. 1413(e)(1), and (2)) | | |
| <p>Sec. 300.192 Requirements for establishing eligibility.</p> <p>(a) Requirements for LEAs in general. LEAs that establish joint eligibility under this section must-</p> <p>(1) Adopt policies and procedures that are consistent with the State's policies and procedures under Secs. 300.121-300.156; and</p> <p>(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.</p> <p>(b) Requirements for educational service agencies in general. If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act-</p> <p>(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and</p> <p>(2) Must be carried out only by that educational service agency.</p> <p>(c) Additional requirement. Notwithstanding any other provision of Secs. 300.190-300.192, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by Sec. 300.130. (Authority: 20 U.S.C. 1413(e)(3), and (4))</p> | | |
| <p>Sec. 300.194 State agency eligibility.</p> <p>Any State agency that desires to receive a subgrant for any fiscal year under Secs. 300.711-300.714 must demonstrate to the satisfaction of the SEA that-</p> <p>(a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and</p> <p>(b) The agency meets the other conditions of this subpart that apply to LEAs. (Authority: 20 U.S.C. 1413(i))</p> | <p><u>10.16.3194 OFFICE OF PUBLIC INSTRUCTION APPROVAL/DISAPPROVAL OF APPLICATIONS FOR FEDERAL FUNDS</u> (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.</p> <p>(2) The office of public instruction approval procedures shall include:</p> <p>(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;</p> <p>(b) consideration of any previous office of public instruction or board of public education decisions resulting in withholding of funds;</p> <p>(c) determination of maintenance of fiscal effort; and</p> <p>(d) consideration of an approved program narrative.</p> <p>(3) The office of public instruction shall provide</p> | |

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| | <p>written notice of approval of the application and federal funds award which shall include:</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.196 Notification of LEA or State agency in case of ineligibility. If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, the SEA shall--</p> <ul style="list-style-type: none"> (a) Notify the LEA or State agency of that determination; and (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing. (Authority: 20 U.S.C. 1413(c)) | <p><u>10.16.3196 OFFICE OF PUBLIC INSTRUCTION DISAPPROVAL OF FEDERAL FUNDS: OPPORTUNITY FOR HEARING</u> (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.</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <ul style="list-style-type: none"> (a) At least 5 days prior to the hearing, the office of public instruction shall make available at reasonable | |

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| | <p>times and places all records of the agency pertaining to the appeal of the local educational agency including records of other local educational agencies.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.197 LEA and State agency compliance.</p> <p>(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in Secs. 300.220-300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.</p> <p>(b) Notice requirement. Any State agency or LEA in receipt of a notice described in paragraph (a) of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.</p> <p>(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under Secs. 300.507-300.528 that is adverse to the LEA or State agency involved in the decision. (Authority: 20 U.S.C. 1413(d))</p> | | |
| <p><u>LEA and State Agency Eligibility -- Specific Conditions</u> Sec. 300.220 Consistency with State policies.</p> <p>(a) General. The LEA, in providing for the education of children with</p> | <p><u>10.16.3220 PROGRAM NARRATIVE</u> (1) Each local educational agency or education cooperative must have</p> | |

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| <p>disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under Secs. 300.121-300.156.</p> <p>(b) Policies on file with SEA. The LEA must have on file with the SEA the policies and procedures described in paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(1))</p> | <p>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.</p> <p>(2) The program narrative shall include a copy of the local educational agency or education cooperative special education forms.</p> <p>(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.</p> | |
| <p>Sec. 300.221 Implementation of CSPD. The LEA must have on file with the SEA information to demonstrate that--</p> <p>(a) All personnel necessary to carry out Part B of the Act within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of Secs. 300.380-300.382; and</p> <p>(b) To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the State established under Sec. 300.135. (Authority: 20 U.S.C. 1413(a)(3))</p> | | |
| <p>Sec. 300.230 Use of amounts. The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of the Act--</p> <p>(a) Will be expended in accordance with the applicable provisions of this part;</p> <p>(b) Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with Secs. 300.184-300.185; and</p> <p>(c) Will be used to supplement State, local, and other Federal funds and not to supplant those funds. (Authority: 20 U.S.C. 1413(a)(2)(A))</p> | | |
| <p>Sec. 300.231 Maintenance of effort. (a) General. Except as provided in Secs. 300.232 and 300.233, funds provided to an LEA under Part B of the Act may not be used to reduce the level of expenditures for the education of children with</p> | | |

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| <p>disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.</p> <p>(b) Information. The LEA must have on file with the SEA information to demonstrate that the requirements of paragraph (a) of this section are met.</p> <p>(c) Standard. (1) Except as provided in paragraph (c)(2) of this section, the SEA determines that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:</p> <p>(i) Local funds only.</p> <p>(ii) The combination of State and local funds.</p> <p>(2) An LEA that relies on paragraph (c)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in--</p> <p>(i) The most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997; or</p> <p>(ii) If later, the most recent fiscal year for which information is available and the standard in paragraph (c)(1)(i) of this section was used to establish its compliance with this section.</p> <p>(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(A))</p> | | |
| <p>Sec. 300.232 Exception to maintenance of effort.</p> <p>An LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to the following:</p> <p>(a)(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff.</p> <p>(2) In order for an LEA to invoke the exception in paragraph (a)(1) of this section, the LEA must ensure that those voluntary retirements or</p> | | |

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| <p>resignations and replacements are in full conformity with:</p> <ul style="list-style-type: none"> (i) Existing school board policies in the agency; (ii) The applicable collective bargaining agreement in effect at that time; and (iii) Applicable State statutes. <p>(b) A decrease in the enrollment of children with disabilities.</p> <p>(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child--</p> <ul style="list-style-type: none"> (1) Has left the jurisdiction of the agency; (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or (3) No longer needs the program of special education. <p>(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities. (Authority: 20 U.S.C. 1413(a)(2)(B))</p> | | |
| <p>Sec. 300.233 Treatment of Federal funds in certain fiscal years.</p> <p>(a)(1) Subject to paragraphs (a)(2) and (b) of this section, for any fiscal year for which amounts appropriated to carry out section 611 of the Act exceeds \$4,100,000,000, an LEA may treat as local funds up to 20 percent of the amount of funds it receives under Part B of the Act that exceeds the amount it received under Part B of the Act for the previous fiscal year.</p> <p>(2) The requirements of Secs. 300.230(c) and 300.231 do not apply with respect to the amount that may be treated as local funds under paragraph (a)(1) of this section.</p> <p>(b) If an SEA determines that an LEA is not meeting the requirements of this part, the SEA may prohibit the LEA from treating funds received under Part B of the Act as local funds under paragraph (a)(1) of this section for any fiscal year, but only if it is authorized to do so by the State constitution or a State statute. (Authority: 20 U.S.C. 1413(a)(2)(C))</p> | | |
| <p>Sec. 300.234 Schoolwide programs under title I of the ESEA.</p> <p>(a) General; limitation on amount of Part B funds used. An LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any schoolwide program may not exceed--</p> | | |

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| <p>(1)(i) The amount received by the LEA under Part B for that fiscal year; divided by</p> <p>(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by</p> <p>(2) The number of children with disabilities participating in the schoolwide program.</p> <p>(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:</p> <p>(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by Secs. 300.230(b) and (c).</p> <p>(2) The funds may be used without regard to the requirements of Sec. 300.230(a).</p> <p>(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools--</p> <p>(1) Receive services in accordance with a properly developed IEP; and</p> <p>(2) Are afforded all of the rights and services guaranteed to children with disabilities under the IDEA. (Authority: 20 U.S.C. 1413(a)(2)(D))</p> | | |
| <p>Sec. 300.235 Permissive use of funds.</p> <p>(a) General. Subject to paragraph (b) of this section, funds provided to an LEA under Part B of the Act may be used for the following activities:</p> <p>(1) Services and aids that also benefit nondisabled children. For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.</p> <p>(2) Integrated and coordinated services system. To develop and implement a fully integrated and coordinated services system in accordance with Sec. 300.244.</p> <p>(b) Non-applicability of certain provisions. An LEA does not violate Secs. 300.152, 300.230, and 300.231 based on its use of funds provided under Part B of the Act in accordance with paragraphs (a)(1) and (a)(2) of this section. (Authority: 20 U.S.C. 1413(a)(4))</p> | | |
| <p>Sec. 300.240 Information for SEA.</p> <p>(a) The LEA shall provide the SEA with information necessary to</p> | | |

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| <p>enable the SEA to carry out its duties under Part B of the Act, including, with respect to Secs. 300.137 and 300.138, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.</p> <p>(b) The LEA must have on file with the SEA an assurance satisfactory to the SEA that the LEA will comply with the requirements of paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(6))</p> | | |
| <p>Sec. 300.241 Treatment of charter schools and their students.</p> <p>The LEA must have on file with the SEA information to demonstrate that in carrying out this part with respect to charter schools that are public schools of the LEA, the LEA will--</p> <p>(a) Serve children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and</p> <p>(b) Provide funds under Part B of the Act to those schools in the same manner as it provides those funds to its other schools.</p> <p>(Authority: 20 U.S.C. 1413(a)(5))</p> | | |
| <p>Sec. 300.242 Public information.</p> <p>The LEA must have on file with the SEA information to demonstrate to the satisfaction of the SEA that it will make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.</p> <p>(Authority: 20 U.S.C. 1413(a)(7))</p> | | |
| <p>Sec. 300.244 Coordinated services system.</p> <p>(a) General. An LEA may not use more than 5 percent of the amount the agency receives under Part B of the Act for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.</p> <p>(b) Activities. In implementing a coordinated services system under this section, an LEA may carry out activities that include--</p> <p>(1) Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;</p> <p>(2) Service coordination and case management that facilitate the linkage of IEPs under Part B of the Act and IFSPs under Part C of the Act with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title</p> | | |

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| <p>XVI of the Social Security Act (supplemental security income);</p> <p>(3) Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under the Act; and</p> <p>(4) Interagency personnel development for individuals working on coordinated services.</p> <p>(c) Coordination with certain projects under Elementary and Secondary Education Act of 1965. If an LEA is carrying out a coordinated services project under title XI of the Elementary and Secondary Education Act of 1965 and a coordinated services project under Part B of the Act in the same schools, the agency shall use the amounts under Sec. 300.244 in accordance with the requirements of that title. (Authority: 20 U.S.C. 1413(f))</p> | | |
| <p><u>School-Based Improvement Plan</u></p> <p>Sec. 300.245 School-based improvement plan.</p> <p>(a) General. Each LEA may, in accordance with paragraph (b) of this section, use funds made available under Part B of the Act to permit a public school within the jurisdiction of the LEA to design, implement, and evaluate a school-based improvement plan that--</p> <p>(1) Is consistent with the purposes described in section 651(b) of the Act; and</p> <p>(2) Is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with Sec. 300.235(a) and (b) in that public school.</p> <p>(b) Authority. (1) General. An SEA may grant authority to an LEA to permit a public school described in Sec. 300.245 (through a school-based standing panel established under Sec. 300.247(b)) to design, implement, and evaluate a school-based improvement plan described in Sec. 300.245 for a period not to exceed 3 years.</p> <p>(2) Responsibility of LEA. If an SEA grants the authority described in paragraph (b)(1) of this section, an LEA that is granted this authority must have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this section. (Authority: 20 U.S.C. 1413(g)(1) and (g)(2)).</p> | | |
| <p>Sec. 300.246 Plan requirements.</p> <p>A school-based improvement plan described in Sec. 300.245 must--</p> <p>(a) Be designed to be consistent with the purposes described in section 651(b) of the Act and to improve educational and transitional results for all children with disabilities and, as appropriate, for other</p> | | |

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| <p>children consistent with Sec. 300.235(a) and (b), who attend the school for which the plan is designed and implemented;</p> <p>(b) Be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with Sec. 300.247(b);</p> <p>(c) Include goals and measurable indicators to assess the progress of the public school in meeting these goals; and</p> <p>(d) Ensure that all children with disabilities receive the services described in their IEPs. (Authority: 20 U.S.C. 1413(g)(3))</p> | | |
| <p>Sec. 300.247 Responsibilities of the LEA.</p> <p>An LEA that is granted authority under Sec. 300.245(b) to permit a public school to design, implement, and evaluate a school-based improvement plan shall--</p> <p>(a) Select each school under the jurisdiction of the agency that is eligible to design, implement, and evaluate the plan;</p> <p>(b) Require each school selected under paragraph (a) of this section, in accordance with criteria established by the LEA under paragraph (c) of this section, to establish a school-based standing panel to carry out the duties described in Sec. 300.246(b);</p> <p>(c) Establish--</p> <p>(1) Criteria that must be used by the LEA in the selection of an eligible school under paragraph (a) of this section;</p> <p>(2) Criteria that must be used by a public school selected under paragraph (a) of this section in the establishment of a school-based standing panel to carry out the duties described in Sec. 300.246(b) and that ensure that the membership of the panel reflects the diversity of the community in which the public school is located and includes, at a minimum--</p> <p>(i) Parents of children with disabilities who attend a public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;</p> <p>(ii) Special education and general education teachers of public schools;</p> <p>(iii) Special education and general education administrators, or the designee of those administrators, of those public schools; and</p> <p>(iv) Related services providers who are responsible for providing services to the children with disabilities who attend those public schools; and</p> <p>(3) Criteria that must be used by the LEA with respect to the distribution of funds under Part B of the Act to carry out this section;</p> <p>(d) Disseminate the criteria established under paragraph (c) of this</p> | | |

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| <p>section to local school district personnel and local parent organizations within the jurisdiction of the LEA;</p> <p>(e) Require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at the time, in the manner and accompanied by the information, that the LEA shall reasonably require; and</p> <p>(f) Establish procedures for approval by the LEA of a school-based improvement plan designed under Part B of the Act. (Authority:1413(g)(4))</p> | | |
| <p>Sec. 300.248 Limitation. A school-based improvement plan described in Sec. 300.245(a) may be submitted to an LEA for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of the plan is reached by the school-based standing panel that designed the plan. (Authority: 20 U.S.C. 1413(g)(5))</p> | | |
| <p>Sec. 300.249 Additional requirements.</p> <p>(a) Parental involvement. In carrying out the requirements of Secs. 300.245-300.250, an LEA shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, if appropriate, implementation of school-based improvement plans in accordance with this section.</p> <p>(b) Plan approval. An LEA may approve a school-based improvement plan of a public school within the jurisdiction of the agency for a period of 3 years, if--</p> <p>(1) The approval is consistent with the policies, procedures, and practices established by the LEA and in accordance with Secs. 300.245-300.250; and</p> <p>(2) A majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel that designed the plan, agree in writing to the plan. (Authority: 20 U.S.C. 1413(g)(6))</p> | | |
| <p>Sec. 300.250 Extension of plan. If a public school within the jurisdiction of an LEA meets the applicable requirements and criteria described in Secs. 300.246 and 300.247 at the expiration of the 3-year approval period described Sec. 300.249(b), the agency may approve a school-based improvement plan of the school for an additional 3-year period. (Authority: 20 U.S.C. 1413(g)(7))</p> | | |
| <p>Secretary of the Interior--Eligibility Secs. 300.260 through 300.267</p> | | |

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| <p align="center"><u>Public Participation</u></p> <p>Sec. 300.280 Public hearings before adopting State policies and procedures. Prior to its adoption of State policies and procedures related to this part, the SEA shall--</p> <p>(a) Make the policies and procedures available to the general public;</p> <p>(b) Hold public hearings; and</p> <p>(c) Provide an opportunity for comment by the general public on the policies and procedures. (Authority: 20 U.S.C. 1412(a)(20))</p> | | |
| <p>Sec. 300.281 Notice.</p> <p>(a) The SEA shall provide adequate notice to the general public of the public hearings.</p> <p>(b) The notice must be in sufficient detail to inform the general public about-</p> <p>(1) The purpose and scope of the State policies and procedures and their relation to Part B of the Act;</p> <p>(2) The availability of the State policies and procedures;</p> <p>(3) The date, time, and location of each public hearing;</p> <p>(4) The procedures for submitting written comments about the policies and procedures; and</p> <p>(5) The timetable for submitting the policies and procedures to the Secretary for approval.</p> <p>(c) The notice must be published or announced--</p> <p>(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and</p> <p>(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate. (Authority: 20 U.S.C. 1412(a)(20))</p> | | |
| <p>Sec. 300.282 Opportunity to participate; comment period.</p> <p>(a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.</p> <p>(b) The policies and procedures must be available for comment for a period of at least 30 days following the date of the notice under Sec. 300.281. (Authority: 20 U.S.C. 1412(a)(20))</p> | | |
| <p>Sec. 300.283 Review of public comments before adopting policies and procedures.</p> <p>Before adopting the policies and procedures, the SEA shall--</p> <p>(a) Review and consider all public comments; and</p> | | |

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| (b) Make any necessary modifications in those policies and procedures. (Authority: 20 U.S.C. 1412(a)(20)) | | |
| <p>Sec. 300.284 Publication and availability of approved policies and procedures. After the Secretary approves a State's policies and procedures, the SEA shall give notice in newspapers or other media, or both, that the policies and procedures are approved. The notice must name places throughout the State where the policies and procedures are available for access by any interested person. (Authority: 20 U.S.C. 1412(a)(20))</p> | | |
| <p style="text-align: center;">Subpart C -- Services <u>Free Appropriate Public Education</u></p> <p>Sec. 300.300 Provision of FAPE</p> <p>(a) General. (1) Subject to paragraphs (b) and (c) of this section and Sec. 300.311, each State receiving assistance under this part shall ensure that FAPE is available to all children with disabilities, aged 3 through 21, residing in the State, including children with disabilities who have been suspended or expelled from school.</p> <p>(2) As a part of its obligation under paragraph (a)(1) of this section, each State must ensure that the requirements of Sec. 300.125 (to identify, locate, and evaluate all children with disabilities) are implemented by public agencies throughout the State.</p> <p>(3)(i) The services provided to the child under this part address all of the child's identified special education and related services needs described in paragraph (a) of this section.</p> <p>(ii) The services and placement needed by each child with a disability to receive FAPE must be based on the child's unique needs and not on the child's disability.</p> <p>(b) Exception for age ranges 3-5 and 18-21. This paragraph provides the rules for applying the requirements in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21 within the State:</p> <p>(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.</p> <p>(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.</p> <p>(3) If a public agency provides education to 50 percent or more of</p> | | |

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| <p>its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.</p> <p>(4) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.</p> <p>(5) A State is not required to make FAPE available to a child with a disability in one of these age groups if--</p> <p>(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group; or</p> <p>(ii) The requirement is inconsistent with a court order that governs the provision of free public education to children with disabilities in that State.</p> <p>(c) Children aged 3 through 21 on Indian reservations. With the exception of children identified in Sec. 300.715(b) and (c), the SEA shall ensure that all of the requirements of Part B of the Act are implemented for all children with disabilities aged 3 through 21 on reservations. (Authority: 20 U.S.C. 1412(a)(1), 1411(i)(1)(C), S. Rep. No. 94--168, p. 19 (1975))</p> | | |
| <p>Sec. 300.301 FAPE--methods and payments.</p> <p>(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.</p> <p>(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.</p> <p>(c) Consistent with Secs. 300.342(b)(2) and 300.343(b), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined. (Authority: 20 U.S.C. 1401(8), 1412(a)(1))</p> | | |
| <p>Sec. 300.302 Residential placement.</p> <p>If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and</p> | <p><i>*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</i></p> | |

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| <p>board, must be at no cost to the parents of the child. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))</p> | <p><i>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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> | |
| <p>Sec. 300.303 Proper functioning of hearing aids. Each public agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (Authority: 20 U.S.C. 1412(a)(1))</p> | | |
| <p>Sec. 300.304 Full educational opportunity goal. Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency. (Authority: 20 U.S.C. 1412(a)(2))</p> | | |
| <p>Sec. 300.305 Program options. Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))</p> | | |
| <p>Sec. 300.306 Nonacademic services. (a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in</p> | | |

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| <p>those services and activities.</p> <p>(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. (Authority: 20 U.S.C. 1412(a)(1))</p> | | |
| <p>Sec. 300.307 Physical education.</p> <p>(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.</p> <p>(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--</p> <ol style="list-style-type: none"> (1) The child is enrolled full time in a separate facility; or (2) The child needs specially designed physical education, as prescribed in the child's IEP. <p>(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.</p> <p>(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section. (Authority: 20 U.S.C. 1412(a)(25), 1412(a)(5)(A))</p> | | |
| <p>Sec. 300.308 Assistive technology.</p> <p>(a) Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in Secs. 300.5-300.6, are made available to a child with a disability if required as a part of the child's--</p> <ol style="list-style-type: none"> (1) Special education under Sec. 300.26; (2) Related services under Sec. 300.24; or (3) Supplementary aids and services under Secs. 300.28 and 300.550(b)(2). <p>(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE. (Authority: 20 U.S.C.</p> | | |

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| 1412(a)(12)(B)(i)) | | |
| <p>Sec. 300.309 Extended school year services.</p> <p>(a) General. (1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.</p> <p>(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Secs. 300.340-300.350, that the services are necessary for the provision of FAPE to the child.</p> <p>(3) In implementing the requirements of this section, a public agency may not--</p> <p>(i) Limit extended school year services to particular categories of disability; or</p> <p>(ii) Unilaterally limit the type, amount, or duration of those services.</p> <p>(b) Definition. As used in this section, the term extended school year services means special education and related services that--</p> <p>(1) Are provided to a child with a disability--</p> <p>(i) Beyond the normal school year of the public agency;</p> <p>(ii) In accordance with the child's IEP; and</p> <p>(iii) At no cost to the parents of the child; and</p> <p>(2) Meet the standards of the SEA. (Authority: 20 U.S.C. 1412(a)(1))</p> | | |
| <p>Sec. 300.311 FAPE requirements for students with disabilities in adult prisons.</p> <p>(a) Exception to FAPE for certain students. Except as provided in Sec. 300.122(a)(2)(ii), the obligation to make FAPE available to all children with disabilities does not apply with respect to students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--</p> <p>(1) Were not actually identified as being a child with a disability under Sec. 300.7; and</p> <p>(2) Did not have an IEP under Part B of the Act.</p> <p>(b) Requirements that do not apply. The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:</p> <p>(1) The requirements contained in Sec. 300.138 and Sec. 300.347(a)(5)(i) (relating to participation of children with disabilities in general assessments).</p> | <p><i>*41-5-206. Filing in district court prior to formal proceedings in youth court.</i></p> <p>. . .</p> <p><i>(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.</i></p> | |

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| <p>(2) The requirements in Sec. 300.347(b) (relating to transition planning and transition services), with respect to the students whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.</p> <p>(c) Modifications of IEP or placement. (1) Subject to paragraph (c)(2) of this section, the IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.</p> <p>(2) The requirements of Secs. 300.340(a) and 300.347(a) relating to IEPs, and 300.550(b) relating to LRE, do not apply with respect to the modifications described in paragraph (c)(1) of this section. (Authority: 20 U.S.C. 1412(a)(1), 1414(d)(6))</p> | | |
| <p>Sec. 300.312 Children with disabilities in public charter schools.</p> <p>(a) Children with disabilities who attend public charter schools and their parents retain all rights under this part.</p> <p>(b) If the public charter school is an LEA, consistent with Sec. 300.17, that receives funding under Secs. 300.711-300.714, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.</p> <p>(c) If the public charter school is a school of an LEA that receives funding under Secs. 300.711-300.714 and includes other public schools--</p> <p>(1) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and</p> <p>(2) The LEA must meet the requirements of Sec. 300.241.</p> <p>(d)(1) If the public charter school is not an LEA receiving funding under Secs. 300.711-300.714, or a school that is part of an LEA receiving funding under Secs. 300.711-300.714, the SEA is responsible for ensuring that the requirements of this part are met.</p> <p>(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity; however, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with Sec. 300.600. (Authority: 20 U.S.C. 1413(a)(5))</p> | | |
| <p>Sec. 300.313 Children experiencing developmental delays.</p> | | <p>Montana has not adopted the</p> |

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| <p>(a) Use of term developmental delay. (1) A State that adopts the term developmental delay under Sec. 300.7(b) determines whether it applies to children aged 3 through 9, or to a subset of that age range (e.g., ages 3 through 5).</p> <p>(2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.</p> <p>(3) If an LEA uses the term developmental delay for children described in Sec. 300.7(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.</p> <p>(4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.</p> <p>(b) Use of individual disability categories. (1) Any State or LEA that elects to use the term developmental delay for children aged 3 through 9 may also use one or more of the disability categories described in Sec. 300.7 for any child within that age range if it is determined, through the evaluation conducted under Secs. 300.530-300.536, that the child has an impairment described in Sec. 300.7, and because of that impairment needs special education and related services.</p> <p>(2) The State or LEA shall ensure that all of the child's special education and related services needs that have been identified through the evaluation described in paragraph (b)(1) of this section are appropriately addressed.</p> <p>(c) Common definition of developmental delay. A State may adopt a common definition of developmental delay for use in programs under Parts B and C of the Act. (Authority: 20 U.S.C. 1401(3)(A) and (B))</p> | | <p>term "developmental delay" as a disability category.</p> <p>LEAs shall identify students with disabilities in accord with ARM 10.16.3321 and 10.16.3322 (found at Fed Reg Sec. 300.320).</p> |
| <p><u>Evaluations and Reevaluations</u></p> <p>Sec. 300.320 Initial evaluations.</p> <p>(a) Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services under Part B of the Act--</p> <p>(1) To determine if the child is a "child with a disability" under Sec. 300.7; and</p> <p>(2) To determine the educational needs of the child.</p> <p>(b) In implementing the requirements of paragraph (a) of this section, the public agency shall ensure that--</p> <p>(1) The evaluation is conducted in accordance with the procedures described in Secs. 300.530-300.535; and</p> <p>(2) The results of the evaluation are used by the child's IEP team in meeting the requirements of Secs. 300.340-300.350. (Authority: 20</p> | <p>(See also Fed Reg Sec. 300.530 through 300.543.)</p> <p><u>10.60.103 IDENTIFICATION OF CHILDREN WITH DISABILITIES</u> (1) In order that a free, appropriate, public education be provided to all children, all persons who can assist in identifying the disability and determine services to meet the needs of a child shall participate in the placement process.</p> <p>(2) Child study teams shall be used to identify children with disabilities, and instructional teams shall be used to plan individual education programs. Parents shall be involved in the child study team process and shall be included in the development of the individualized</p> | |

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| <p>U.S.C. 1414(a), (b), and (c))</p> <p>Sec. 300.321 Reevaluations. Each public agency shall ensure that--</p> <p>(a) A reevaluation of each child with a disability is conducted in accordance with Sec. 300.536; and</p> <p>(b) The results of any reevaluations are addressed by the child's IEP team under Secs. 300.340-300.349 in reviewing and, as appropriate, revising the child's IEP. (Authority: 20 U.S.C. 1414(a)(2))</p> | <p>education plan.</p> <p>(3) To assure correct identification of disabilities and proper educational placement, children shall have the opportunity for a comprehensive educational evaluation.</p> <p><u>10.16.3320 REFERRAL</u> (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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p><u>10.16.3321 COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS</u> (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.</p> <p>(2) For initial evaluations, the child study team</p> | |

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| | <p>report shall address:</p> <p>(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</p> <p>(b) The data necessary to address criteria established in ARM 10.16.3010 through 10.16.3022.</p> <p>(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:</p> <p>(a) Evaluations and information provided by the parents of the student;</p> <p>(b) Current classroom-based assessments and observations which include the student's involvement and progress in the general curriculum; and</p> <p>(c) Observations by teachers and related services providers.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p> | |

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| | <p>conclusions of the participant.</p> <p>(9) A copy of the report shall be provided to the parent.</p> <p><u>10.16.3322 COMPOSITION OF A CHILD STUDY TEAM</u></p> <p>(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:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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; | |

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| | <p>(f) At the discretion of the parent or the local educational agency, other individuals who have knowledge or special expertise regarding the student; and</p> <p>(g) The student, when appropriate.</p> <p>(2) The local educational agency shall invite other specialists when such specialists are needed to complete a comprehensive evaluation.</p> | |
| <p align="center">Individualized Education Programs</p> <p>Sec. 300.340 Definitions related to IEPs.</p> <p>(a) Individualized education program. As used in this part, the term individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with Secs. 300.341-300.350.</p> <p>(b) Participating agency. As used in Sec. 300.348, participating agency means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. (Authority: 20 U.S.C. 1401(11), 1412(a)(10)(B))</p> | <p><u>10.16.3340 INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT DECISIONS</u> (1) Local educational agencies shall develop, implement, review, and revise individualized education programs (IEP) in accordance with 34 CFR 300.340 through 300.350.</p> <p>(2) IEP teams shall make placement decisions in accordance with least restrictive environment provisions at 34 CFR 300.550 through 300.554.</p> | |
| <p>Sec. 300.341 Responsibility of SEA and other public agencies for IEPs.</p> <p>(a) The SEA shall ensure that each public agency--</p> <p>(1) Except as provided in Secs. 300.450-300.462, develops and implements an IEP for each child with a disability served by that agency; and</p> <p>(2) Ensures that an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the public agency.</p> <p>(b) Paragraph (a) of this section applies to--</p> <p>(1) The SEA, if it is involved in providing direct services to children with disabilities, in accordance with Sec. 300.370(a) and (b)(1); and</p> <p>(2) Except as provided in Sec. 300.600(d), the other public agencies described in Sec. 300.2, including LEAs and other State agencies that provide special education and related services either directly, by contract, or through other arrangements. (Authority: 20 U.S.C. 1412(a)(4), (a)(10)(B))</p> | <p><u>10.16.3341 RESIDENTIAL PLACEMENT BY PUBLIC AGENCY OTHER THAN LOCAL EDUCATIONAL AGENCY</u> (1) If a student with disabilities has been placed in a residential treatment facility or children's psychiatric hospital according to section 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.</p> <p>(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.</p> <p>(3) The facility or hospital shall notify the parents of</p> | <p>Monitoring Procedures</p> <p>The OPI implements the following procedures to ensure IEPs are developed, reviewed and revised in accord with IDEA requirements:</p> <ol style="list-style-type: none"> 1. state-level review of LEA policies and procedures for development, review, and revision of IEPs; 2. compliance review of a sampling of completed IEPs by LEAs, cooperatives, and state-supported and state-operated programs in accord with the monitoring cycle, or more frequently if conditions may warrant; 3. review of inquiries by |

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| | <p>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.</p> <p>(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.</p> <p><i>*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:</i></p> <p>(1) in a special education class or program operated by the district of such child's residence;</p> <p>(2) in a special education class or program operated by a Montana district other than the child's resident district;</p> <p>(3) under an approved tuition agreement in a special education class or program operated outside of the state of Montana; or</p> <p>(4) under an approved tuition agreement in a private institution.</p> <p><i>*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.</i></p> | <p>parents, complaints and due process requests.</p> <p>If LEA policies and/or practices do not comply with IDEA requirements, the LEA is required to take a corrective action and to immediately implement the change. The corrective action, timeline for implementing the action, and verification of the action to be taken is described in a written report given to the LEA.</p> <p>The OPI ensures that an IEP is developed, revised and implemented for each eligible student placed in or referred to a private school or facility by a public agency through its monitoring activities. Monitoring activities include, but are not limited to, a sampling review of IEPs, and on-site visits to in-state residential facilities which provide educational services.</p> |
| Sec. 300.342 When IEPs must be in effect. | 10.16.3342 TRANSFER STUDENTS: INTRASTATE | In accordance with ARM |

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| <p>(a) General. At the beginning of each school year, each public agency shall have an IEP in effect for each child with a disability within its jurisdiction.</p> <p>(b) Implementation of IEPs. Each public agency shall ensure that--</p> <p>(1) An IEP--</p> <p>(i) Is in effect before special education and related services are provided to an eligible child under this part; and</p> <p>(ii) Is implemented as soon as possible following the meetings described under Sec. 300.343;</p> <p>(2) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and</p> <p>(3) Each teacher and provider described in paragraph (b)(2) of this section is informed of--</p> <p>(i) His or her specific responsibilities related to implementing the child's IEP; and</p> <p>(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.</p> <p>(c) IEP or IFSP for children aged 3 through 5. (1) In the case of a child with a disability aged 3 through 5 (or, at the discretion of the SEA a 2-year-old child with a disability who will turn age 3 during the school year), an IFSP that contains the material described in section 636 of the Act, and that is developed in accordance with Secs. 300.341-300.346 and Secs. 300.349-300.350, may serve as the IEP of the child if using that plan as the IEP is--</p> <p>(i) Consistent with State policy; and</p> <p>(ii) Agreed to by the agency and the child's parents.</p> <p>(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall--</p> <p>(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and</p> <p>(ii) If the parents choose an IFSP, obtain written informed consent from the parents.</p> <p>(d) Effective date for new requirements. All IEPs developed, reviewed, or revised on or after July 1, 1998 must meet the requirements of Secs. 300.340-300.350. (Authority: 20 U.S.C. 1414(d)(2)(A) and (B), Pub. L. 105-17, sec. 201(a)(2)(A), (C))</p> | <p><u>AND INTERSTATE</u> (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 district must provide services that approximate, as closely as possible, the former IEP.</p> <p>(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.</p> <p>(a) If the former IEP is adopted by the new district and the parents agree to its use, it can be implemented.</p> <p>(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.</p> | <p>10.16.3122, the IEP team shall develop an IEP for an eligible student with disabilities beginning on the student's third birthday. An IFSP may not serve in place of an IEP.</p> |
| <p>Sec. 300.343 IEP meetings.</p> <p>(a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and</p> | | |

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| <p>revising the IEP of a child with a disability (or, if consistent with Sec. 300.342(c), an IFSP).</p> <p>(b) Initial IEPs; provision of services. (1) Each public agency shall ensure that within a reasonable period of time following the agency's receipt of parent consent to an initial evaluation of a child--</p> <p>(i) The child is evaluated; and</p> <p>(ii) If determined eligible under this part, special education and related services are made available to the child in accordance with an IEP.</p> <p>(2) In meeting the requirement in paragraph (b)(1) of this section, a meeting to develop an IEP for the child must be conducted within 30-days of a determination that the child needs special education and related services.</p> <p>(c) Review and revision of IEPs. Each public agency shall ensure that the IEP team--</p> <p>(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and</p> <p>(2) Revises the IEP as appropriate to address--</p> <p>(i) Any lack of expected progress toward the annual goals described in Sec. 300.347(a), and in the general curriculum, if appropriate;</p> <p>(ii) The results of any reevaluation conducted under Sec. 300.536;</p> <p>(iii) Information about the child provided to, or by, the parents, as described in Sec. 300.533(a)(1);</p> <p>(iv) The child's anticipated needs; or</p> <p>(v) Other matters. (Authority: 20 U.S.C. 1413(a)(1), 1414(d)(4)(A))</p> | | |
| <p>Sec. 300.344 IEP team.</p> <p>(a) General. The public agency shall ensure that the IEP team for each child with a disability includes--</p> <p>(1) The parents of the child;</p> <p>(2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);</p> <p>(3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;</p> <p>(4) A representative of the public agency who--</p> <p>(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;</p> <p>(ii) Is knowledgeable about the general curriculum; and</p> <p>(iii) Is knowledgeable about the availability of resources of the</p> | | |

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| <p>public agency;</p> <p>(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section;</p> <p>(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and</p> <p>(7) If appropriate, the child.</p> <p>(b) Transition services participants. (1) Under paragraph (a)(7) of this section, the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of--</p> <p>(i) The student's transition services needs under Sec. 300.347(b)(1);</p> <p>(ii) The needed transition services for the student under Sec. 300.347(b)(2); or</p> <p>(iii) Both.</p> <p>(2) If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.</p> <p>(3)(i) In implementing the requirements of Sec. 300.347(b)(2), the public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.</p> <p>(ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.</p> <p>(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP.</p> <p>(d) Designating a public agency representative. A public agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied. (Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7), (B))</p> | | |

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| <p>Sec. 300.345 Parent participation.</p> <p>(a) Public agency responsibility--general. Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including--</p> <p>(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and</p> <p>(2) Scheduling the meeting at a mutually agreed on time and place.</p> <p>(b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must--</p> <p>(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and</p> <p>(ii) Inform the parents of the provisions in Sec. 300.344(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child).</p> <p>(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also--</p> <p>(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in Sec. 300.347(b)(1); and</p> <p>(ii) Indicate that the agency will invite the student.</p> <p>(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must--</p> <p>(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in Sec. 300.347(b)(2);</p> <p>(ii) Indicate that the agency will invite the student; and</p> <p>(iii) Identify any other agency that will be invited to send a representative.</p> <p>(c) Other methods to ensure parent participation. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.</p> <p>(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as--</p> <p>(1) Detailed records of telephone calls made or attempted and the results of those calls;</p> <p>(2) Copies of correspondence sent to the parents and any responses received; and</p> | | |

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| <p>(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.</p> <p>(e) Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.</p> <p>(f) Parent copy of child's IEP. The public agency shall give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))</p> | | |
| <p>Sec. 300.346 Development, review, and revision of IEP.</p> <p>(a) Development of IEP. (1) General. In developing each child's IEP, the IEP team, shall consider--</p> <p>(i) The strengths of the child and the concerns of the parents for enhancing the education of their child;</p> <p>(ii) The results of the initial or most recent evaluation of the child; and</p> <p>(iii) As appropriate, the results of the child's performance on any general State or district-wide assessment programs.</p> <p>(2) Consideration of special factors. The IEP team also shall--</p> <p>(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;</p> <p>(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;</p> <p>(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;</p> <p>(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and</p> | <p><u>10.16.3345 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PROMOTION OF STUDENTS WITH DISABILITIES</u> (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.</p> <p>(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.</p> <p>(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.</p> <p>(4) A student with disabilities shall be promoted or retained according to local educational agency criteria unless waived in the student's IEP.</p> <p>(5) A student with disabilities who has completed a prescribed course of studies shall be eligible for graduation from high school.</p> <p>(a) A student who has successfully completed the goals on the IEP shall have completed a prescribed course of study.</p> | |

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| <p>(v) Consider whether the child requires assistive technology devices and services.</p> <p>(b) Review and Revision of IEP. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section.</p> <p>(c) Statement in IEP. If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.</p> <p>(d) Requirement with respect to regular education teacher. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of--</p> <p>(1) Appropriate positive behavioral interventions and strategies for the child; and</p> <p>(2) Supplementary aids and services, program modifications or supports for school personnel that will be provided for the child, consistent with Sec. 300.347(a)(3).</p> <p>(e) Construction. Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP. (Authority: 20 U.S.C. 1414(d)(3) and (4)(B) and (e))</p> | <p>(b) Documentation of completion of the annual goals shall be included in the periodic review of the IEP.</p> <p><u>10.16.3346 AVERSIVE TREATMENT PROCEDURES</u></p> <p>(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.</p> <p>(2) Aversive treatment procedures are defined as:</p> <p>(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</p> <p>(b) isolation time-out which results in the removal of a student to an isolation room under the following conditions:</p> <p>(i) the student is alone in the isolation room during the period of isolation;</p> <p>(ii) the student is prevented from exiting the isolation room during the period of isolation;</p> <p>(iii) the door to the isolation room remains closed during the period of isolation; and</p> <p>(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.</p> <p>(3) Any student in isolation timeout must be under the direct constant visual observation of a designated</p> | |

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| | <p>staff person throughout the entire period of isolation.</p> <p>(4) The following procedures are prohibited:</p> <p>(a) any procedure solely intended to cause physical pain;</p> <p>(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;</p> <p>(c) the withholding of a meal for a period of greater than one hour from its scheduled starting time; and</p> <p>(d) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation; and</p> <p>(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.</p> <p>(5) Exclusion timeout 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).</p> <p>(6) IEPs may include the use of aversive treatment procedures only when:</p> <p>(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;</p> <p>(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</p> <p>(c) a written behavioral intervention plan using aversive treatment procedures is developed and incorporated as a part of the IEP.</p> <p>(7) A behavioral intervention plan using aversive</p> | |

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| | <p>treatment procedures shall:</p> <ul style="list-style-type: none"> (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. <p>(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.</p> | |
| <p>Sec. 300.347 Content of IEP.</p> <ul style="list-style-type: none"> (a) General. The IEP for each child with a disability must include-- <ul style="list-style-type: none"> (1) A statement of the child's present levels of educational performance, including-- <ul style="list-style-type: none"> (i) How the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or | | |

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| <p>(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;</p> <p>(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to--</p> <p>(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities; and</p> <p>(ii) Meeting each of the child's other educational needs that result from the child's disability;</p> <p>(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--</p> <p>(i) To advance appropriately toward attaining the annual goals;</p> <p>(ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and</p> <p>(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;</p> <p>(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section;</p> <p>(5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and</p> <p>(ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of--</p> <p>(A) Why that assessment is not appropriate for the child; and</p> <p>(B) How the child will be assessed;</p> <p>(6) The projected date for the beginning of the services and modifications described in paragraph (a)(3) of this section, and the anticipated frequency, location, and duration of those services and modifications; and</p> <p>(7) A statement of--</p> <p>(i) How the child's progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and</p> | | |

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| <p>(ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of--</p> <p>(A) Their child's progress toward the annual goals; and</p> <p>(B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.</p> <p>(b) Transition services. The IEP must include--</p> <p>(1) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program); and</p> <p>(2) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.</p> <p>(c) Transfer of rights. In a State that transfers rights at the age majority, beginning at least one year before a student reaches the age of majority under State law, the student's IEP must include a statement that the student has been informed of his or her rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority, consistent with Sec. 300.517.</p> <p>(d) Students with disabilities convicted as adults and incarcerated in adult prisons. Special rules concerning the content of IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in Sec. 300.311(b) and (c). (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)(A)(ii))</p> | | |
| <p>Sec. 300.348 Agency responsibilities for transition services.</p> <p>(a) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with Sec. 300.347(b)(1), the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.</p> <p>(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency. (Authority: 20 U.S.C. 1414(d)(5); 1414(d)(1)(A)(vii))</p> | | |

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| <p>Sec. 300.349 Private school placements by public agencies.</p> <p>(a) Developing IEPs. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with Secs. 300.346 and 300.347.</p> <p>(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.</p> <p>(b) Reviewing and revising IEPs. (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.</p> <p>(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative--</p> <p>(i) Are involved in any decision about the child's IEP; and</p> <p>(ii) Agree to any proposed changes in the IEP before those changes are implemented.</p> <p>(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA. (Authority: 20 U.S.C. 1412(a)(10)(B))</p> | | |
| <p>Sec. 300.350 IEP--accountability.</p> <p>(a) Provision of services. Subject to paragraph (b) of this section, each public agency must--</p> <p>(1) Provide special education and related services to a child with a disability in accordance with the child's IEP; and</p> <p>(2) Make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.</p> <p>(b) Accountability. Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the Act does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school, or agency performance.</p> <p>(c) Construction--parent rights. Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in paragraph (a) of this section are not being made. (Authority: 20 U.S.C.</p> | | |

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| 1414(d)); Cong. Rec. at H7152 (daily ed., July 21, 1975)) | | |
| <p style="text-align: center;"><u>Direct Services by the SEA</u></p> <p>Sec. 300.360 Use of LEA allocation for direct services.</p> <p>(a) General. An SEA shall use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency--</p> <p>(1) Has not provided the information needed to establish the eligibility of the agency under Part B of the Act;</p> <p>(2) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;</p> <p>(3) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or</p> <p>(4) Has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of these children.</p> <p>(b) SEA responsibility if an LEA does not apply for Part B funds.</p> <p>(1) If an LEA elects not to apply for its Part B allotment, the SEA must use those funds to ensure that FAPE is available to all eligible children residing in the jurisdiction of the LEA.</p> <p>(2)(i) If the local allotment is not sufficient to meet the purpose described in paragraph (b)(1) of this section, the SEA must ensure compliance with Secs. 300.121(a) and 300.300(a).</p> <p>(ii) Consistent with Sec. 300.301(a), the [State; SEA] may use whatever funding sources are available in the State to implement paragraph (b)(2)(i) of this section.</p> <p>(c) SEA administrative procedures. (1) In meeting the requirements in paragraph (a) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.</p> <p>(2) The excess cost requirements of Secs. 300.184 and 300.185 do not apply to the SEA. (Authority: 20 U.S.C. 1413(h)(1))</p> | | |
| <p>Sec. 300.361 Nature and location of services.</p> <p>The SEA may provide special education and related services under Sec. 300.360(a) in the manner and at the location it considers appropriate (including regional and State centers). However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE</p> | | |

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| provisions of Secs. 300.550-300.556). (Authority: 20 U.S.C. 1413(h)(2)) | | |
| <p>Sec. 300.370 Use of SEA allocations.</p> <p>(a) Each State shall use any funds it retains under Sec. 300.602 and does not use for administration under Sec. 300.620 for any of the following:</p> <p>(1) Support and direct services, including technical assistance and personnel development and training.</p> <p>(2) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.</p> <p>(3) To establish and implement the mediation process required by Sec. 300.506, including providing for the costs of mediators and support personnel.</p> <p>(4) To assist LEAs in meeting personnel shortages.</p> <p>(5) To develop a State Improvement Plan under subpart 1 of Part D of the Act.</p> <p>(6) Activities at the State and local levels to meet the performance goals established by the State under Sec. 300.137 and to support implementation of the State Improvement Plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.</p> <p>(7) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 611 of the Act. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under Part C of the Act.</p> <p>(8) For subgrants to LEAs for the purposes described in Sec. 300.622 (local capacity building).</p> <p>(b) For the purposes of paragraph (a) of this section--(1) Direct services means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and (2) Support services includes implementing the comprehensive system of personnel development under Secs. 300.380-300.382, recruitment and training of mediators, hearing officers, and surrogate parents, and public information and parent training activities relating to FAPE for children with disabilities.</p> <p>(c) Of the funds an SEA retains under paragraph (a) of this section, the SEA may use the funds directly, or distribute them to LEAs on a</p> | | <p>State-level Activities</p> <p>1. Support and direct services, including technical assistance and personnel development and training. Activities include training/ assistance for policy development and implementation, addressing improvement activities related to monitoring/complaint investigation and other training activities determined appropriate by the OPI.</p> <p>2. Administrative costs of monitoring and complaint investigation, to the extent that those costs exceed the FY '85 costs of \$103,751.</p> <p>3. Maintain and implement the mediation process required by 34 CFR 300.506, including providing for the costs of mediators and support personnel.</p> <p>4. Assist LEAs in meeting personnel shortages. Stipend and traineeships will be provided to personnel to assist them in meeting appropriate qualifications (e.g., Master's level for speech/language pathologists).</p> <p>5. Development of a State Improvement Plan</p> <p>6. Activities at the state and local levels to meet the performance goals established by the State under 34 CFR 300.137 and to support</p> |

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| <p>competitive, targeted, or formula basis. (Authority: 20 U.S.C. 1411(f)(3))</p> | | <p>implementation of the State Improvement Plan under subpart 1 of Part D of IDEA, if the OPI receives such funds.</p> <p>7. Allocations to LEAs for the purposes described in 34 CFR 300.622 (local capacity building).</p> <p>8. Support services include implementing the comprehensive system of personnel development under 34 CFR 300.380 through 300.382, recruitment and training of mediators, hearing officers, and surrogate parents, and public information and parent training activities relating to FAPE for students with disabilities.</p> <p>9. Supplemental flow-thru to assist LEAs in meeting the needs of students with disabilities.</p> <p>10. Parent Training: Support for information and training activities for parents of children with disabilities.</p> <p>11. Professional Group Support: Assistance for training activities provided by professional organizations to enhance the skills of their memberships to address the needs of students with disabilities.</p> <p>12. Projects for the purpose of meeting special instructional needs of students.</p> |
| <p>Sec. 300.372 Nonapplicability of requirements that prohibit commingling and supplanting of funds. A State may use funds it retains under Sec. 300.602 without regard to-</p> <p>(a) The prohibition on commingling of funds in Sec. 300.152; and (b) The prohibition on supplanting other funds in Sec. 300.153.</p> | | |

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| (Authority: 20 U.S.C. 1411(f)(1)(C)) | | |
| <p>Comprehensive System of Personnel Development (CSPD) Sec. 300.380 General CSPD requirements. (a) Each State shall develop and implement a comprehensive system of personnel development that-- (1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act; (2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; (3) Meets the requirements of Secs. 300.381 and 300.382; and (4) Is updated at least every five years. (b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section. (Authority: 20 U.S.C. 1412(a)(14))</p> | <p>(See ARM 10.16.3135, Comprehensive System Of Personnel Development, found at Fed Reg Sec. 300.135.)</p> | <p>The OPI has developed and implemented a comprehensive system of personnel development that is consistent with the requirements of 34 CFR 300.380 through 300.382. The plan is updated at least every five years and is designed to ensure an adequate supply of qualified special education, regular education and related services personnel. To ensure coordination of CSPD activities with the Part C program, the coordinator of the Early Intervention Program and a member of the Part C, CSPD Committee, serve as members on the Part B, CSPD Council.</p> <p>The statewide CSPD Council is the foundation for professional development in the state. It supports a structure of five regional councils that deliver inservice training based on a regional needs assessment and needs of the LEAs within each region. The regional councils also support statewide initiatives and priorities. The councils are a replication of the statewide council. This structure promotes statewide networking and provides a vehicle to meet the requirements of the continuum of professional development (preservice-inservice, technical assistance and evaluation).</p> |

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| <p>Sec. 300.381 Adequate supply of qualified personnel. Each State must include, at least, an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum--</p> <p>(a) The number of personnel providing special education and related services; and</p> <p>(b) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (a) of this section with temporary certification), and on 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. (Authority: 20 U.S.C. 1453(b)(2)(B))</p> | | <p>Analysis of data shows that Montana is experiencing significant shortages in the following personnel areas: speech/language pathologists, skilled interpreters, occupational and physical therapists, special education teachers, and early intervention personnel. The personnel shortages in Montana reflect the shortages that are also occurring on the national level. It is anticipated that these shortages may increase as current personnel begin to retire.</p> <p>Montana does not have “temporary” certification of special education teachers, nor do licensing standards provide “temporary” licensing.</p> <p>Planned strategies to address these shortages include, but are not limited to:</p> <ol style="list-style-type: none"> 1. Provision of stipends to assist bachelor-level individuals to acquire graduate-level training necessary to meet the “highest” requirement standard. 2. Provision of educational interpreter training to provide interpreters with the skills needed in an instructional setting. 3. Collaboration with IHEs within the state and within selected Mountain Plains states for purposes of planning and implementing preservice and graduate training programs to |

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| | | <p>address areas of personnel shortages.</p> <p>4. Coordinated recruitment activities among the OPI, IHEs, LEAs and professional organizations.</p> <p>5. Provision of a special education endorsement project which assists certified teachers in obtaining the necessary coursework to meet Montana requirements as a special education teacher.</p> <p>Other strategies include collaboration with Disabilities Services Division to address preservice training and ongoing professional development for personnel who work within the early intervention system, and address barriers to the recruitment of special education teachers (e.g., certification requirements).</p> |
| <p>Sec. 300.382 Improvement strategies. Each State must describe the strategies the State will use to address the needs identified under Sec. 300.381. These strategies must include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities. The plan must include a description of how the State will--</p> <p>(a) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities including how the State will work with other States on common certification criteria;</p> <p>(b) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed</p> | | <p>Improvement Strategies</p> <p>Personnel Preparation and Continuing Education: The CSPD Council, with input from the Special Education Advisory Panel, reviews data from the annual statewide needs assessment and monitoring activities and develops a comprehensive continuing education plan to ensure that all personnel providing services to students with disabilities under IDEA are appropriately and adequately prepared.</p> |

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| <p>to meet the needs of infants and toddlers with disabilities;</p> <p>(c) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;</p> <p>(d) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;</p> <p>(e) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel;</p> <p>(f) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;</p> <p>(g) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, if appropriate, adopt promising practices, materials, and technology;</p> <p>(h) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under-represented in the fields of regular education, special education, and related services;</p> <p>(i) Insure that the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and</p> <p>(j) Provide for the joint training of parents and special education, related services, and general education personnel. (Authority: 20 U.S.C. 1453 (c)(3)(D))</p> | | <p>Continuing education is provided for regular and special education personnel to enable them to meet the needs of students with disabilities under IDEA. Personnel training includes addressing the training needs of public and private providers, primary referral sources, paraprofessionals, and other individuals involved in serving eligible students under IDEA. Activities are planned in coordination with:</p> <ol style="list-style-type: none"> 1. Professional organizations such as the Council for Exceptional Children, Montana Federation of Teachers, Montana Education Association, Montana Association of School Psychologists, Montana Speech Language and Hearing Association, School-Based OT/PT Organization, and appropriate others. 2. Other state agencies such as the DPHHS (lead agency for Part C) and Corrections. 3. Public and private institutions of higher education. <p>Target populations identified through the needs assessment are provided training through the use of qualified staff from LEAs, special education cooperatives, specialists from the OPI and Mountain Plains Regional Resource Center (MPRRC). In addition, faculty and training</p> |

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| | | <p>specialists from IHEs, and other training facilities located in state and out of state, deliver training on-site and through the use of telecommunications.</p> <p>Statewide inservice training is scheduled throughout the year. Workshops are held in conjunction with the many statewide meetings and conferences. Summer workshops are held to address specific topics (e.g., Montana Behavior Initiative, severe disabilities, emotional disturbance, assistive technology, secondary transition).</p> <p>LEA inservice programs are planned and implemented with extensive involvement of local staff. In some cases where local staff are not available to serve as primary trainers for other staff members or local staff are unable to locate qualified trainers, OPI staff members provide technical assistance.</p> <p>Inservice training opportunities have focused on topics such as strategies on meeting the needs of students with disabilities in the regular classroom, positive behavioral supports, development of IEPs , transition from Part C to Part B, secondary transition, etc.</p> <p>The OPI's Deaf/Blind Specialist,</p> |

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| | | <p>funded through VI-C (Services for Children with Deafness and Blindness [Dual Sensory Impairments]), and the CSPD Coordinator work collaboratively in establishing inservice training opportunities for personnel serving students who have a deaf/blind disability.</p> <p>The OPI maintains a database of training activities to assist personnel in locating specific topics of training in which they have an interest.</p> <p>Disseminating Promising Practices</p> <p>The OPI has procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from educational research and other sources. Model program development, staff training, curriculum support materials and information are reviewed and modified as necessary to address the needs of local programs.</p> <ol style="list-style-type: none"> 1. The OPI subscribes to a variety of educational research journals. The information is reviewed by OPI staff and shared with special education personnel through workshops, conferences, etc. 2. The OPI staff and other consultants provide workshop and convention presentations |

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| | | <p>during the year to acquaint LEAs with promising practices.</p> <p>3. The OPI maintains an extensive collection of educational materials. Materials include print and non-print information derived from educational research, demonstration projects, and position papers from educational leaders and professional organizations.</p> <p>4. Training is provided to educational personnel and parents throughout the calendar year. On-site training is scheduled in cooperation with Pupil-Instruction-Related (PIR) days in local districts. Special training seminars and workshops are sponsored by the OPI and IHEs during regional and statewide meetings and conferences, as well as during special education monitoring reviews of local school district special education programs.</p> <p>5. The OPI and the CSPD Council work collaboratively with the following groups to disseminate materials and information on research and promising practices: Regional CSPD Councils, Montana Conference on Developmental Disabilities, The Council for Exceptional Children, Statewide Training Committee for Developmental Disabilities, Planning Committee for the Annual Conference on Services</p> |

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| | | <p>to Children and Adolescents with Emotional Disturbance and their Families, Montana Developmental Disabilities Planning and Advisory Council, Montana University Affiliated Rural Institute on Disabilities, Parents, Let's Unite for Kids (PLUK), Montana Association of School Psychologists, Montana. Speech/Language and Hearing Association, School Administrators of Montana, Montana Behavior Initiative, etc.</p> <p>6. The OPI provides technical assistance to LEAs as part of scheduled local program reviews and in response to individual district requests.</p> <p>The council evaluates the effectiveness of personnel development activities to determine if revisions need to be made to its plan. The shifts in program emphasis and priorities are determined through the use of surveys, program reviews, and recommendations from educational organizations.</p> <p>Personnel Development Data</p> <p>IHEs within the state that are preparing special education and related services personnel, including leadership personnel, provide a data report to the CSPD Council and OPI. The report includes:</p> <ol style="list-style-type: none"> 1. the numbers of students |

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| | | <p>enrolled in programs for the preparation of special education and related services personnel administered by the IHE, and</p> <p>2. the numbers of students who graduated during the past year with certification programs for the preparation of special education and related service personnel which are administered by the IHE.</p> <p>The CSPD plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other federal and state laws that address personnel recruitment and training. Training activities provide for the joint training of parents, special education and regular education personnel and related services personnel.</p> |
| <p align="center">Subpart D--Children in Private Schools <u>Children With Disabilities in Private Schools Placed or Referred by Public Agencies</u></p> <p>Sec. 300.400 Applicability of Secs. 300.400-300.402. Sections 300.401-300.402 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (Authority: 20 U.S.C. 1412(a)(10)(B))</p> | | |
| <p>Sec. 300.401 Responsibility of State educational agency. Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency--</p> <p>(a) Is provided special education and related services--</p> <p>(1) In conformance with an IEP that meets the requirements of Secs. 300.340-300.350; and</p> <p>(2) At no cost to the parents;</p> <p>(b) Is provided an education that meets the standards that apply to</p> | | |

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| <p>education provided by the SEA and LEAs (including the requirements of this part); and</p> <p>(c) Has all of the rights of a child with a disability who is served by a public agency. (Authority: 20 U.S.C. 1412(a)(10)(B))</p> | | |
| <p>Sec. 300.402 Implementation by State educational agency. In implementing Sec. 300.401, the SEA shall--</p> <p>(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;</p> <p>(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and</p> <p>(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. (Authority: 20 U.S.C. 1412(a)(10)(B))</p> | <p>(See 20-7-435(3)(a), MCA, found at Fed Reg Sec. 300.600.)</p> | <p>Monitoring Procedures</p> <p>The OPI implements monitoring procedures to ensure that a student with a disability, who is placed in or referred to a private school or facility by a public agency, is provided special education and related services in conformance with an IEP which meets the requirements of 34 CFR 300.340 through 300.350, is at no cost to the parents, is provided an education which meets the standards that apply to state and local education agencies, and has all of the rights of a child with a disability who is served by the public agency.</p> <p>The following procedures are implemented as appropriate: review of a sampling of IEPs, on-site visitations, review of any complaints or due process, review of other special education records, parent questionnaires and written reports.</p> <p>The OPI disseminates copies of applicable standards to each private school and facility to which a public agency has referred or placed a student with a disability and provides those private schools and facilities an opportunity to participate in the</p> |

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| | | development and revision of state standards that apply to them. |
| <p><u>Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue</u> Sec. 300.403 Placement of children by parents if FAPE is at issue.</p> <p>(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with Secs. 300.450-300.462.</p> <p>(b) Disagreements about FAPE. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Secs. 300.500-300.517.</p> <p>(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.</p> <p>(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--</p> <p>(1) If--</p> <p>(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or</p> <p>(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public</p> | | |

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| <p>agency of the information described in paragraph (d)(1)(i) of this section;</p> <p>(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or</p> <p>(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.</p> <p>(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if--</p> <p>(1) The parent is illiterate and cannot write in English;</p> <p>(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;</p> <p>(3) The school prevented the parent from providing the notice; or</p> <p>(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section. (Authority: 20 U.S.C. 1412(a)(10)(C))</p> | | |
| <p><u>Children With Disabilities Enrolled by Their Parents in Private Schools</u></p> <p>Sec. 300.450 Definition of "private school children with disabilities."</p> <p>As used in this part, private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under Secs. 300.400-300.402. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.451 Child find for private school children with disabilities.</p> <p>(a) Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the LEA, in accordance with Secs. 300.125 and 300.220. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.</p> <p>(b) Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in paragraph (a) of this section. (Authority: 20 U.S.C. 1412(a)(10)(A)(ii))</p> | | <p>LEAs shall implement child find procedures in accord with the requirements of ARM 10.16.3125 and 34 CFR 300.451.</p> |

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| <p>Sec. 300.452 Provision of services--basic requirement. (a) General. To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with Secs. 300.453-300.462. (b) SEA Responsibility--services plan. Each SEA shall ensure that, in accordance with paragraph (a) of this section and Secs. 300.454-300.456, a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part. (Authority: 20 U.S.C. 1412(a)(10)(A)(i))</p> | <p>(See ARM 10.16.3122, Local Educational Agency Responsibility For Students With Disabilities, subsection (3), found at Fed Reg Sec. 300.122.)</p> | <p>Monitoring Procedures The OPI ensures a services plan is developed and implemented for each private school student with a disability who has been designated to receive special education and related services under 34 CFR 300.453 through 300.462. Monitoring activities include a review of LEA policies and procedures for consistency with the requirements of 34 CFR 300.451 through 300.462, a sampling review of services plans, and review of any complaints and/or due process.</p> <p>An LEA is required to take corrective action if it is found to be in noncompliance.</p> |
| <p>Sec. 300.453 Expenditures. (a) Formula. To meet the requirement of Sec. 300.452(a), each LEA must spend on providing special education and related services to private school children with disabilities-- (1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and (2) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5. (b) Child count. (1) Each LEA shall-- (i) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and (ii) Ensure that the count is conducted on December 1 or the last Friday of October of each year.</p> | | |

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| <p>(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.</p> <p>(c) Expenditures for child find may not be considered. Expenditures for child find activities described in Sec. 300.451 may not be considered in determining whether the LEA has met the requirements of paragraph (a) of this section.</p> <p>(d) Additional services permissible. State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.454 Services determined.</p> <p>(a) No individual right to special education and related services. (1) No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.</p> <p>(2) Decisions about the services that will be provided to private school children with disabilities under Secs. 300.452-300.462, must be made in accordance with paragraphs (b), and (c) of this section.</p> <p>(b) Consultation with representatives of private school children with disabilities. (1) General. Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under Sec. 300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide--</p> <ul style="list-style-type: none"> (i) Which children will receive services under Sec. 300.452; (ii) What services will be provided; (iii) How and where the services will be provided; and (iv) How the services provided will be evaluated. <p>(2) Genuine opportunity. Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.</p> <p>(3) Timing. The consultation required by paragraph (b)(1) of this section must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under Secs. 300.452-300.462.</p> <p>(4) Decisions. The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.</p> | | |

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| <p>(c) Services plan for each child served under Secs. 300.450-300.462. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall--</p> <p>(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with Sec. 300.455(b); and</p> <p>(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls. (Authority: 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.455 Services provided.</p> <p>(a) General. (1) The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.</p> <p>(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.</p> <p>(3) No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.</p> <p>(b) Services provided in accordance with a services plan. (1) Each private school child with a disability who has been designated to receive services under Sec. 300.452 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in Secs. 300.453-300.454, it will make available to private school children with disabilities.</p> <p>(2) The services plan must, to the extent appropriate--</p> <p>(i) Meet the requirements of Sec. 300.347, with respect to the services provided; and</p> <p>(ii) Be developed, reviewed, and revised consistent with Secs. 300.342-300.346. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.456 Location of services; transportation.</p> <p>(a) On-site. Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law.</p> <p>(b) Transportation. (1) General. (i) If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation--</p> <p>(A) From the child's school or the child's home to a site other than the private school; and</p> | | |

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| <p>(B) From the service site to the private school, or to the child's home, depending on the timing of the services.</p> <p>(ii) LEAs are not required to provide transportation from the child's home to the private school.</p> <p>(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of Sec. 300.453. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.457 Complaints.</p> <p>(a) Due process inapplicable. The procedures in Secs. 300.504-300.515 do not apply to complaints that an LEA has failed to meet the requirements of Secs. 300.452-300.462, including the provision of services indicated on the child's services plan.</p> <p>(b) Due process applicable. The procedures in Secs. 300.504-300.515 do apply to complaints that an LEA has failed to meet the requirements of Sec. 300.451, including the requirements of Secs. 300.530-300.543.</p> <p>(c) State complaints. Complaints that an SEA or LEA has failed to meet the requirements of Secs. 300.451-300.462 may be filed under the procedures in Secs. 300.660-300.662. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.458 Separate classes prohibited.</p> <p>An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if--</p> <p>(a) The classes are at the same site; and</p> <p>(b) The classes include students enrolled in public schools and students enrolled in private schools. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.459 Requirement that funds not benefit a private school.</p> <p>(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.</p> <p>(b) The LEA shall use funds provided under Part B of the Act to meet the special education and related services needs of students enrolled in private schools, but not for--</p> <p>(1) The needs of a private school; or</p> <p>(2) The general needs of the students enrolled in the private school. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |

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| <p>Sec. 300.460 Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--</p> <p>(a) To the extent necessary to provide services under Secs. 300.450-300.462 for private school children with disabilities; and</p> <p>(b) If those services are not normally provided by the private school. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.461 Use of private school personnel. An LEA may use funds available under section 611 or 619 of the Act to pay for the services of an employee of a private school to provide services under Secs. 300.450-300.462 if--</p> <p>(a) The employee performs the services outside of his or her regular hours of duty; and</p> <p>(b) The employee performs the services under public supervision and control. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Sec. 300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.</p> <p>(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.</p> <p>(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.</p> <p>(c) The public agency shall ensure that the equipment and supplies placed in a private school--</p> <p>(1) Are used only for Part B purposes; and</p> <p>(2) Can be removed from the private school without remodeling the private school facility.</p> <p>(d) The public agency shall remove equipment and supplies from a private school if--</p> <p>(1) The equipment and supplies are no longer needed for Part B purposes; or</p> <p>(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.</p> <p>(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities. (Authority: 20 U.S.C. 1412(a)(10)(A))</p> | | |
| <p>Procedures for By-Pass</p> | | |

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| Secs. 300.480 through 300.487 | | |
| <p style="text-align: center;">Subpart E--Procedural Safeguards <u>Due Process Procedures for Parents and Children</u></p> <p>Sec. 300.500 General responsibility of public agencies; definitions.</p> <p>(a) Responsibility of SEA and other public agencies. Each SEA shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of Secs. 300.500-300.529.</p> <p>(b) Definitions of "consent," "evaluation," and "personally identifiable." As used in this part --</p> <p>(1) Consent means that --(i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;</p> <p>(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and</p> <p>(iii)(A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.</p> <p>(B) 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).</p> <p>(2) Evaluation means procedures used in accordance with Secs. 300.530-300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs; and</p> <p>(3) Personally identifiable means that information includes--</p> <p>(i) The name of the child, the child's parent, or other family member;</p> <p>(ii) The address of the child;</p> <p>(iii) A personal identifier, such as the child's social security number or student number; or</p> <p>(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.</p> <p>(Authority: 20 U.S.C. 1415(a))</p> | | <p>Each LEA shall establish, maintain, and implement procedural safeguards in accordance with the requirements of 34 CFR 300.500 through 300.529 and state administrative rules. The policies and procedures shall be submitted as part of the LEA's program narrative.</p> <p>The OPI informs public agencies of their responsibility for ensuring effective implementation of procedural safeguards for children with disabilities served by the public agency through ongoing training for administrators and directors of special education.</p> <p>Monitoring Procedures LEAs submit their procedural safeguard policies as part of their application for Part B funds under IDEA. The OPI staff review the policies and procedures for consistency with requirements under IDEA and state rules. If it is determined that an LEA's policies and procedures are not in compliance with state policies and rules and federal regulations, the LEA is required to take corrective actions and to implement policies and procedures consistent with requirements.</p> <p>Reviews of LEA special</p> |

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| | | <p>education programs consist of reviewing a sampling of student records for written documentation of:</p> <ol style="list-style-type: none"> 1. Parent's receipt of written notice in accord with 34 CFR 300.503; 2. Parental consent for initial evaluation and reevaluation, initial and annual placement; and 3. Implementation of procedures for appointment of surrogate parents, when appropriate. <p>The OPI implements a monitoring system to ensure established timelines for due process hearings and the complaint process are effectively met.</p> |
| <p>Sec. 300.501 Opportunity to examine records; parent participation in meetings.</p> <p>(a) General. The parents of a child with a disability must be afforded, in accordance with the procedures of Secs. 300.562-300.569, an opportunity to--</p> <ol style="list-style-type: none"> (1) Inspect and review all education records with respect to-- <ol style="list-style-type: none"> (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child; and (2) Participate in meetings with respect to -- <ol style="list-style-type: none"> (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child. <p>(b) Parent participation in meetings. (1) Each public agency shall provide notice consistent with Sec. 300.345(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section.</p> <p>(2) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A</p> | | <p>Parents are members of the child study team and the IEP team. In accord with 10.16.3340, Individualized Education Program And Placement Decisions, subsection (2) (found at Fed Reg Sec. 300.340), IEP teams make placement decisions.</p> |

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| <p>meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.</p> <p>(c) Parent involvement in placement decisions. (1) Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.</p> <p>(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall use procedures consistent with the procedures described in Sec. 300.345(a) through (b)(1).</p> <p>(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.</p> <p>(4) A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of Sec. 300.345(d).</p> <p>(5) The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English. (Authority: 20 U.S.C. 1414(f), 1415(b)(1))</p> | | |
| <p>Sec. 300.502 Independent educational evaluation.</p> <p>(a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.</p> <p>(2) Each public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.</p> <p>(3) For the purposes of this part--</p> <p>(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and</p> <p>(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is</p> | | |

*State Statutes (Montana Code Annotated)

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| <p>otherwise provided at no cost to the parent, consistent with Sec. 300.301.</p> <p>(b) Parent right to evaluation at public expense. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.</p> <p>(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--</p> <p>(i) Initiate a hearing under Sec. 300.507 to show that its evaluation is appropriate; or</p> <p>(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under Sec. 300.507 that the evaluation obtained by the parent did not meet agency criteria.</p> <p>(3) If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.</p> <p>(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.</p> <p>(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation--</p> <p>(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and</p> <p>(2) May be presented as evidence at a hearing under this subpart regarding that child.</p> <p>(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.</p> <p>(e) Agency criteria. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.</p> | | |

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| <p>(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (Authority: 20 U.S.C. 1415(b)(1))</p> | | |
| <p>Sec. 300.503 Prior notice by the public agency; content of notice.</p> <p>(a) Notice. (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--</p> <p>(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or</p> <p>(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p> <p>(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under Sec. 300.505, the agency may give notice at the same time it requests parent consent.</p> <p>(b) Content of notice. The notice required under paragraph (a) of this section must include--</p> <p>(1) A description of the action proposed or refused by the agency;</p> <p>(2) An explanation of why the agency proposes or refuses to take the action;</p> <p>(3) A description of any other options that the agency considered and the reasons why those options were rejected;</p> <p>(4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;</p> <p>(5) A description of any other factors that are relevant to the agency's proposal or refusal;</p> <p>(6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and</p> <p>(7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.</p> <p>(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be--</p> <p>(i) Written in language understandable to the general public; and</p> | | |

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| <p>(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.</p> <p>(2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure--</p> <p>(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;</p> <p>(ii) That the parent understands the content of the notice; and</p> <p>(iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met. (Authority: 20 U.S.C. 1415(b)(3), (4) and (c), 1414(b)(1))</p> | | |
| <p>Sec. 300.504 Procedural safeguards notice.</p> <p>(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum--</p> <p>(1) Upon initial referral for evaluation;</p> <p>(2) Upon each notification of an IEP meeting;</p> <p>(3) Upon reevaluation of the child; and</p> <p>(4) Upon receipt of a request for due process under Sec. 300.507.</p> <p>(b) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under Secs. 300.403, 300.500-300.529, and 300.560-300.577, and the State complaint procedures available under Secs. 300.660-300.662 relating to--</p> <p>(1) Independent educational evaluation;</p> <p>(2) Prior written notice;</p> <p>(3) Parental consent;</p> <p>(4) Access to educational records;</p> <p>(5) Opportunity to present complaints to initiate due process hearings;</p> <p>(6) The child's placement during pendency of due process proceedings;</p> <p>(7) Procedures for students who are subject to placement in an interim alternative educational setting;</p> <p>(8) Requirements for unilateral placement by parents of children in private schools at public expense;</p> <p>(9) Mediation;</p> <p>(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;</p> <p>(11) State-level appeals (if applicable in that State);</p> | | <p>The OPI shall provide LEAs with a copy of a procedural safeguards notice which addresses all of the requirements of 34 CFR 300.504(b).</p> |

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| <p>(12) Civil actions; (13) Attorneys' fees; and (14) The State complaint procedures under Secs. 300.660-300.662, including a description of how to file a complaint and the timelines under those procedures. (c) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of Sec. 300.503(c). (Authority: 20 U.S.C. 1415(d))</p> | | |
| <p>Sec. 300.505 Parental consent. (a) General. (1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parent consent must be obtained before-- (i) Conducting an initial evaluation or reevaluation; and (ii) Initial provision of special education and related services to a child with a disability. (2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section. (3) Parental consent is not required before-- (i) Reviewing existing data as part of an evaluation or a reevaluation; or (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. (b) Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under Secs. 300.507-300.509, or the mediation procedures under Sec. 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent. (c) Failure to respond to request for reevaluation. (1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. (2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the public agency must use procedures consistent with those in Sec. 300.345(d). (d) Additional State consent requirements. In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the</p> | <p><u>10.16.3505 PARENTAL CONSENT</u> (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</p> | <p>34 CFR 300.505 does not permit a public agency to override a parental refusal to consent to the initial provision of special education and related services. Therefore, if a parent refuses consent for initial placement, the local educational agency does not have the option of filing for a due process hearing.</p> |

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| <p>child with FAPE.</p> <p>(e) Limitation. A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part. (Authority: 20 U.S.C. 1415(b)(3); 1414(a)(1)(C) and (c)(3))</p> | <p>attempt to obtain consent from the parent.</p> <p>(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.</p> <p>(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.</p> <p>(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:</p> <p>(i) provide the parent written notice as required by 34 CFR 300.503; and</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.506 Mediation.</p> <p>(a) General. Each public agency shall ensure that procedures are</p> | <p><u>10.16.3506 VOLUNTARY MEDIATION</u> (1) Upon receipt by mail of a written request for mediation signed</p> | <p>Mediation is a voluntary process to assist parents and LEAs in</p> |

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| <p>established and implemented to allow parties to disputes involving any matter described in Sec. 300.503(a)(1) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under Secs. 300.507 or 300.520-300.528.</p> <p>(b) Requirements. The procedures must meet the following requirements:</p> <p>(1) The procedures must ensure that the mediation process--</p> <p>(i) Is voluntary on the part of the parties;</p> <p>(ii) Is not used to deny or delay a parent's right to a due process hearing under Sec. 300.507, or to deny any other rights afforded under Part B of the Act; and</p> <p>(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p> <p>(2)(i) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.</p> <p>(ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.</p> <p>(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.</p> <p>(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.</p> <p>(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.</p> <p>(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.</p> <p>(c) Impartiality of mediator. (1) An individual who serves as a mediator under this part--</p> <p>(i) May not be an employee of--</p> <p>(A) Any LEA or any State agency described under Sec. 300.194;</p> <p>or</p> <p>(B) An SEA that is providing direct services to a child who is the subject of the mediation process; and</p> <p>(ii) Must not have a personal or professional conflict of interest.</p> | <p>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.</p> <p>(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.</p> <p>(3) If the request for mediation does not include the name of a qualified mediator, the process for selection is as follows:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(5) Mediation shall comply with 34 CFR 300.506.</p> | <p>resolving disagreements regarding a student's special education program. Upon mutual agreement of the LEA and parent, the OPI will make available the services of a trained mediator to assist the LEA and the parent in resolving disagreements with respect to any matter relating to the identification, evaluation, educational placement, or the provision of FAPE for a qualified student.</p> <p>Mediations are conducted in accord with 10.16.3528, Initiating Expedited Due Process Hearing (found at Fed Reg Sec. 300.528), and the requirements of 34 CFR 300.506.</p> |

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| <p>(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Sec. 300.194 solely because he or she is paid by the agency to serve as a mediator.</p> <p>(d) Meeting to encourage mediation. (1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party--</p> <p>(i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and</p> <p>(ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.</p> <p>(2) A public agency may not deny or delay a parent's right to a due process hearing under Sec. 300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section. (Authority: 20 U.S.C. 1415(e))</p> | | |
| <p>Sec. 300.507 Impartial due process hearing; parent notice.</p> <p>(a) General. (1) A parent or a public agency may initiate a hearing on any of the matters described in Sec. 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).</p> <p>(2) When a hearing is initiated under paragraph (a)(1) of this section, the public agency shall inform the parents of the availability of mediation described in Sec. 300.506.</p> <p>(3) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if--</p> <p>(i) The parent requests the information; or</p> <p>(ii) The parent or the agency initiates a hearing under this section.</p> <p>(b) Agency responsible for conducting hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.</p> <p>(c) Parent notice to the public agency. (1) General. The public agency must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the public agency in a request for a hearing under paragraph (a)(1) of this section.</p> <p>(2) Content of parent notice. The notice required in paragraph (c)(1) of this section must include--</p> | <p><u>10.16.3507 SCOPE OF RULES</u> (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.</p> <p><u>10.16.3508 INITIATING SPECIAL EDUCATION DUE PROCESS</u> (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.</p> <p>(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:</p> <p>(a) The name of the student;</p> <p>(b) The address of the residence of the student;</p> <p>(c) The name of the school the student attends;</p> <p>(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</p> | <p>The OPI shall conduct due process hearings in accord with the requirements of 34 CFR 300.507 through 300.514 and state administrative rules governing due process procedures.</p> <p>The OPI provides training to due process hearing officers on the requirements of IDEA and state laws and rules governing the conduct of special education and the provision of FAPE to eligible students with disabilities.</p> |

*State Statutes (Montana Code Annotated)

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| <p>(i) The name of the child; (ii) The address of the residence of the child; (iii) The name of the school the child is attending; (iv) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (v) A proposed resolution of the problem to the extent known and available to the parents at the time.</p> <p>(3) Model form to assist parents. Each SEA shall develop a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section.</p> <p>(4) Right to due process hearing. A public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraphs (c)(1) and (2) of this section. (Authority: 20 U.S.C. 1415(b)(5), (b)(6), (b)(7), (b)(8), (e)(1) and (f)(1))</p> <p>Sec. 300.508 Impartial hearing officer.</p> <p>(a) A hearing may not be conducted--</p> <p>(1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or</p> <p>(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.</p> <p>(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> <p>(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. (Authority: 20 U.S.C. 1415(f)(3))</p> <p>Sec. 300.509 Hearing rights.</p> <p>(a) General. Any party to a hearing conducted pursuant to Secs. 300.507 or 300.520-300.528, or an appeal conducted pursuant to Sec. 300.510, has the right to--</p> <p>(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;</p> <p>(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;</p> | <p>(e) A proposed resolution of the problem to the extent known and available to the parents at the time.</p> <p>(3) Upon receipt, the office of public instruction shall mail a copy to the other party.</p> <p><u>10.16.3509 SPECIAL EDUCATION DUE PROCESS HEARING PROCEDURES</u> (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:</p> <p>(a) Promptly advise the district administration and parent, legal guardian or surrogate parent of the request for due process hearing; and</p> <p>(b) Appoint an impartial hearing officer to conduct a due process hearing.</p> <p>(i) The superintendent of public instruction shall maintain a list of individuals who are qualified to serve as impartial hearing officers.</p> <p>(ii) Selection of impartial hearing officer:</p> <p>(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</p> <p>(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.)</p> <p>(C) If the parties arrive at a mutually agreeable choice, the superintendent of public instruction shall make the appointment from the ranking.</p> | |

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| <p>(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;</p> <p>(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and</p> <p>(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.</p> <p>(b) Additional disclosure of information. (1) At least 5 business days prior to a hearing conducted pursuant to Sec. 300.507(a), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.</p> <p>(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.</p> <p>(c) Parental rights at hearings. (1) Parents involved in hearings must be given the right to--</p> <p>(i) Have the child who is the subject of the hearing present; and</p> <p>(ii) Open the hearing to the public.</p> <p>(2) The record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section must be provided at no cost to parents.</p> <p>(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, shall --</p> <p>(1) Transmit the findings and decisions referred to in paragraph (a)(5) of this section to the State advisory panel established under Sec. 300.650; and</p> <p>(2) Make those findings and decisions available to the public. (Authority: 20 U.S.C. 1415(f)(2) and (h))</p> <p>Sec. 300.510 Finality of decision; appeal; impartial review.</p> <p>(a) Finality of decision. A decision made in a hearing conducted pursuant to Secs. 300.507 or 300.520-300.528 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and Sec. 300.512. (Authority: 20 U.S.C. 1415(i)(1)(A))</p> <p>(b) Appeal of decisions; impartial review. (1) General. If the hearing required by Sec. 300.507 is conducted by a public agency other than</p> | <p>(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.</p> <p>(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.</p> <p><u>10.16.3510 NOTICE OF HEARING</u> (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:</p> <p>(a) a statement of the time, place and nature of the hearing;</p> <p>(b) references to the specific statutes and rules involved available at that time;</p> <p>(c) a provision advising the parties of their right to be represented by counsel at the hearing;</p> <p>(d) a provision informing the parent of any free or low-cost legal and other relevant services available in the area;</p> <p>(e) a statement of issues and matters to be discussed at the hearing.</p> <p>(2) The notice of hearing shall be sent by certified mail to all parties.</p> <p>(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</p> | |

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| <p>the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.</p> <p>(2) SEA responsibility for review. If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall--</p> <ul style="list-style-type: none"> (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Sec. 300.509 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties. <p>(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, shall--</p> <ul style="list-style-type: none"> (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under Sec. 300.650; and (2) Make those findings and decisions available to the public. (d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under Sec. 300.512. (Authority: 20 U.S.C. 1415(g); H. R. Rep. No. 94-664, at p. 49 (1975)) <p>Sec. 300.511 Timelines and convenience of hearings and reviews.</p> <ul style="list-style-type: none"> (a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing-- <ul style="list-style-type: none"> (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties. (b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review-- <ul style="list-style-type: none"> (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties. (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party. (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the | <p>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.</p> <p>(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.</p> <p><u>10.16.3511 CONFERENCE AND INFORMAL DISPOSITION</u> (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.</p> <p>(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.</p> <p><u>10.16.3512 IMPARTIAL HEARING OFFICER'S PREHEARING - FORMULATING ISSUES</u> (1) The impartial hearing officer shall schedule a prehearing conference to:</p> | |

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| <p>parents and child involved. (Authority: 20 U.S.C. 1415)</p> | <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | |

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| | <p><u>10.16.3513 DISCOVERY</u> (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.</p> <p><u>10.16.3514 DISCOVERY METHODS</u> (1) Parties may obtain discovery by one or more of the following methods:</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p><u>10.16.3515 SCOPE OF DISCOVERY</u> (1) Unless otherwise limited by order of the impartial hearing officer, the scope of discovery is as follows:</p> <ul style="list-style-type: none"> (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. <p><u>10.16.3516 LIMITATIONS ON DISCOVERY BY THE</u></p> | <p>Disclosure of information must be provided in accordance with 300.509(b)(1) & (2).</p> |

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| | <p><u>IMPARTIAL HEARING OFFICER</u> (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:</p> <ul style="list-style-type: none"> (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. <p><u>10.16.3517 SEQUENCE AND TIMING OF DISCOVERY</u> (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.</p> <p><u>10.16.3518 AVAILABILITY OF CROSS- EXAMINATION OR PARTICIPATION IN THE HEARING</u> (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.</p> | |

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| | <p><u>10.16.3519 EX-PARTE CONSULTATIONS</u> (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.</p> <p><u>10.16.3520 POWERS OF THE IMPARTIAL HEARING OFFICER</u> (1) The impartial hearing officer may:</p> <ul style="list-style-type: none"> (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. <p>(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:</p> <ul style="list-style-type: none"> (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. <p><u>10.16.3521 HEARING</u> (1) The hearing will be conducted before the impartial hearing officer in the</p> | |

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| | <p>following order:</p> <ul style="list-style-type: none"> (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. <p>(2) The order of procedure may be changed by order of the impartial hearing officer upon a showing of good cause.</p> <p>(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.</p> <p><u>10.16.3522 RECORD</u> (1) The record in the impartial due process hearing shall include:</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p><u>10.16.3523 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS</u></p> | |

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| | <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.</p> <p>(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.</p> <p>(6) The superintendent of public instruction shall only be responsible for paying administrative costs related to the hearing, including necessary expenses</p> | |

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| | <p>incurred by the impartial hearing officer and stenographic services. The parties involved shall each be responsible for any legal or other fees that occur.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.512 Civil action.</p> <p>(a) General. Any party aggrieved by the findings and decision made under Secs. 300.507 or 300.520-300.528 who does not have the right to an appeal under Sec. 300.510(b), and any party aggrieved by the findings and decision under Sec. 300.510(b), has the right to bring a civil action with respect to the complaint presented pursuant to Sec. 300.507. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.</p> <p>(b) Additional requirements. In any action brought under paragraph (a) of this section, the court--</p> <ol style="list-style-type: none"> (1) Shall receive the records of the administrative proceedings; (2) Shall hear additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate. <p>(c) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.</p> <p>(d) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with</p> | | |

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| <p>disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under Secs. 300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(2), (i)(3)(A), and 1415(l))</p> | | |
| <p>Sec. 300.513 Attorneys' fees.</p> <p>(a) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.</p> <p>(b)(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the Act and subpart E of this part.</p> <p>(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.</p> <p>(c) A court awards reasonable attorney's fees under section 615(i)(3) of the Act consistent with the following:</p> <p>(1) Determination of amount of attorneys' fees. Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.</p> <p>(2) Prohibition of attorneys' fees and related costs for certain services. (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if-</p> <p>(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;</p> <p>(B) The offer is not accepted within 10 days; and</p> <p>(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.</p> <p>(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in Sec. 300.506 that is conducted</p> | | |

*State Statutes (Montana Code Annotated)

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| <p>prior to the filing of a request for due process under Secs. 300.507 or 300.520-300.528.</p> <p>(3) Exception to prohibition on attorneys' fees and related costs. Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.</p> <p>(4) Reduction of amount of attorneys' fees. Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--</p> <p>(i) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;</p> <p>(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;</p> <p>(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or</p> <p>(iv) The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with Sec. 300.507(c).</p> <p>(5) Exception to reduction in amount of attorneys' fees. The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(3)(B)-(G))</p> | | |
| <p>Sec. 300.514 Child's status during proceedings.</p> <p>(a) Except as provided in Sec. 300.526, during the pendency of any administrative or judicial proceeding regarding a complaint under Sec. 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.</p> <p>(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.</p> <p>(c) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between</p> | | |

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| the State or local agency and the parents for purposes of paragraph (a) of this section. (Authority: 20 U.S.C. 1415(j)) | | |
| <p>Sec. 300.515 Surrogate parents.</p> <p>(a) General. Each public agency shall ensure that the rights of a child are protected if--</p> <p>(1) No parent (as defined in Sec. 300.20) can be identified;</p> <p>(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or</p> <p>(3) The child is a ward of the State under the laws of that State.</p> <p>(b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method--</p> <p>(1) For determining whether a child needs a surrogate parent; and</p> <p>(2) For assigning a surrogate parent to the child.</p> <p>(c) Criteria for selection of surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law.</p> <p>(2) Except as provided in paragraph (c)(3) of this section, public agencies shall ensure that a person selected as a surrogate--</p> <p>(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;</p> <p>(ii) Has no interest that conflicts with the interest of the child he or she represents; and</p> <p>(iii) Has knowledge and skills that ensure adequate representation of the child.</p> <p>(3) A public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section.</p> <p>(d) Non-employee requirement; compensation. A person who otherwise qualifies to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.</p> <p>(e) Responsibilities. The surrogate parent may represent the child in all matters relating to--</p> <p>(1) The identification, evaluation, and educational placement of the child; and</p> <p>(2) The provision of FAPE to the child. (Authority: 20 U.S.C. 1415(b)(2))</p> | <p><i>*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.</i></p> <p><i>(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency. 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.</i></p> <p><i>(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</i></p> | |

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| | <p><i>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.</i></p> <p><i>(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:</i></p> <ul style="list-style-type: none"> <i>(a) a child's parents are identified;</i> <i>(b) the location of the parents is discovered;</i> <i>(c) the child is no longer a ward of the state; or</i> <i>(d) the surrogate parent wishes to discontinue the appointment.</i> <p><i>*20-7-462. Responsibilities of surrogate parent. A person assigned as a surrogate parent shall represent the child with a disability in all decisionmaking processes concerning the child's education by:</i></p> <ul style="list-style-type: none"> <i>(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;</i> <i>(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;</i> <i>(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</i> <i>(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.</i> <p><i>*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</i></p> | |

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| | <p><i>surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner.</i></p> <p><i>(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.</i></p> <p><i>(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.</i></p> <p><u>10.16.3504 SURROGATE PARENTS</u> (1) Procedures for the appointment of a surrogate parent shall comply with 20-7-461, MCA.</p> <p>(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:</p> <p>(a) has an ongoing, long-term parental relationship with the student;</p> <p>(b) is willing to make the educational decisions required of parents under IDEA; and</p> <p>(c) has no interest that would conflict with the interests of the student.</p> <p>(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.</p> | |
| <p>Sec. 300.517 Transfer of parental rights at age of majority.</p> <p>(a) General. A State may provide that, when a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability who has been determined to be incompetent under State law)--</p> <p>(1)(i) The public agency shall provide any notice required by this part to both the individual and the parents; and</p> <p>(ii) All other rights accorded to parents under Part B of the Act</p> | <p><u>10.16.3502 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY</u> (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.</p> <p>(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</p> | |

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| <p>transfer to the student; and</p> <p>(2) All rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.</p> <p>(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency shall notify the individual and the parents of the transfer of rights.</p> <p>(b) Special rule. If, under State law, a State has a mechanism to determine that a student with a disability, who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State shall establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the Act. (Authority: 20 U.S.C. 1415(m))</p> | <p>of IDEA that will transfer to the student.</p> <p>(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.</p> <p>(c) Both the parent and the student will receive all notices required by 34 CFR 300.504.</p> | |
| <p style="text-align: center;"><u>Discipline Procedures</u></p> <p>Sec. 300.519 Change of placement for disciplinary removals.</p> <p>For purposes of removals of a child with a disability from the child's current educational placement under Secs. 300.520-300.529, a change of placement occurs if--</p> <p>(a) The removal is for more than 10 consecutive school days; or</p> <p>(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. (Authority: 20 U.S.C. 1415(k))</p> | <p><i>*20-5-202. Suspension and expulsion. (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is a disciplinary action available only to the trustees.</i></p> <p><i>(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.</i></p> <p><i>(3) In accordance with 20-4-302, 20-4-402,</i></p> | <p>Discipline Procedures:</p> <p>LEAs shall develop policies and procedures for disciplining students with disabilities consistent with the procedures in 34 CFR 300.519 through 300.529.</p> |

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| | <p><i>20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.</i></p> <p><i>(4) Nothing in this section prevents a school district from:</i></p> <p><i>(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or</i></p> <p><i>(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting.</i></p> | |
| <p>Sec. 300.520 Authority of school personnel.</p> <p>(a) School personnel may order--</p> <p>(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Sec. 300.519(b));</p> <p>(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under Sec. 300.121(d); and</p> <p>(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if--</p> <p>(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or</p> <p>(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.</p> <p>(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under Sec. 300.519, including the action described in paragraph (a)(2) of this section--</p> <p>(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the</p> | | |

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| <p>behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.</p> <p>(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.</p> <p>(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.</p> <p>(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under Sec. 300.519, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.</p> <p>(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.</p> <p>(d) For purposes of this section, the following definitions apply:</p> <p>(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).</p> <p>(2) Illegal drug--</p> <p>(i) Means a controlled substance; but</p> <p>(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.</p> <p>(3) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1), (10))</p> | | |
| <p>Sec. 300.521 Authority of hearing officer.</p> <p>A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing--</p> <p>(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child</p> | | |

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| <p>is substantially likely to result in injury to the child or to others;</p> <p>(b) Considers the appropriateness of the child's current placement;</p> <p>(c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and</p> <p>(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of Sec. 300.522(b).</p> <p>(e) As used in this section, the term substantial evidence means beyond a preponderance of the evidence. (Authority: 20 U.S.C. 1415(k)(2), (10))</p> | | |
| <p>Sec. 300.522 Determination of setting.</p> <p>(a) General. The interim alternative educational setting referred to in Sec. 300.520(a)(2) must be determined by the IEP team.</p> <p>(b) Additional requirements. Any interim alternative educational setting in which a child is placed under Secs. 300.520(a)(2) or 300.521 must-</p> <p>(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and</p> <p>(2) Include services and modifications to address the behavior described in Secs. 300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring. (Authority: 20 U.S.C. 1415(k)(3))</p> | | |
| <p>Sec. 300.523 Manifestation determination review.</p> <p>(a) General. If an action is contemplated regarding behavior described in Secs. 300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under Sec. 300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children--</p> <p>(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in Sec. 300.504; and</p> <p>(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.</p> <p>(b) Individuals to carry out review. A review described in paragraph (a) of this section must be conducted by the IEP team and other</p> | | |

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| <p>qualified personnel in a meeting.</p> <p>(c) Conduct of review. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel--</p> <p>(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including --</p> <p>(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;</p> <p>(ii) Observations of the child; and</p> <p>(iii) The child's IEP and placement; and</p> <p>(2) Then determine that--</p> <p>(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;</p> <p>(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and</p> <p>(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.</p> <p>(d) Decision. If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.</p> <p>(e) Meeting. The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under Sec. 300.520(b).</p> <p>(f) Deficiencies in IEP or placement. If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies. (Authority: 20 U.S.C. 1415(k)(4))</p> | | |
| <p>Sec. 300.524 Determination that behavior was not manifestation of disability.</p> <p>(a) General. If the result of the review described in Sec. 300.523 is a determination, consistent with Sec. 300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in</p> | | |

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| <p>which they would be applied to children without disabilities, except as provided in Sec. 300.121(d).</p> <p>(b) Additional requirement. If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.</p> <p>(c) Child's status during due process proceedings. Except as provided in Sec. 300.526, Sec. 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in Sec. 300.523, that the behavior of the child was not a manifestation of the child's disability. (Authority: 20 U.S.C. 1415(k)(5))</p> | | |
| <p>Sec. 300.525 Parent appeal.</p> <p>(a) General. (1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under Secs. 300.520-300.528, the parent may request a hearing.</p> <p>(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.</p> <p>(b) Review of decision. (1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of Sec. 300.523(d).</p> <p>(2) In reviewing a decision under Sec. 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in Sec. 300.521. (Authority: 20 U.S.C. 1415(k)(6))</p> | | |
| <p>Sec. 300.526 Placement during appeals.</p> <p>(a) General. If a parent requests a hearing or an appeal regarding a disciplinary action described in Sec. 300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Sec. 300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.</p> <p>(b) Current placement. If a child is placed in an interim alternative educational setting pursuant to Sec. 300.520(a)(2) or 300.521 and</p> | | |

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| <p>school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.</p> <p>(c) Expedited hearing. (1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.</p> <p>(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in Sec. 300.521.</p> <p>(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.</p> <p>(4) The procedure in paragraph (c) of this section may be repeated, as necessary. (Authority: 20 U.S.C. 1415(k)(7))</p> | | |
| <p>Sec. 300.527 Protections for children not yet eligible for special education and related services.</p> <p>(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in Secs. 300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.</p> <p>(b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if--</p> <p>(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;</p> <p>(2) The behavior or performance of the child demonstrates the need for these services, in accordance with Sec. 300.7;</p> <p>(3) The parent of the child has requested an evaluation of the child</p> | | |

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| <p>pursuant to Secs. 300.530-300.536; or</p> <p>(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.</p> <p>(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency--</p> <p>(1) Either--</p> <p>(i) Conducted an evaluation under Secs. 300.530-300.536, and determined that the child was not a child with a disability under this part; or</p> <p>(ii) Determined that an evaluation was not necessary; and</p> <p>(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with Sec. 300.503.</p> <p>(d) Conditions that apply if no basis of knowledge. (1) General. If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.</p> <p>(2) Limitations. (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Sec. 300.520 or 300.521, the evaluation must be conducted in an expedited manner.</p> <p>(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.</p> <p>(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of Secs. 300.520-300.529 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. 1415(k)(8))</p> | | |
| <p>Sec.300.528 Expedited due process hearings.</p> <p>(a) Expedited due process hearings under Secs. 300.521-300.526 must--</p> <p>(1) Meet the requirements of Sec. 300.509, except that a State</p> | <p><u>10.16.3528 INITIATING EXPEDITED DUE PROCESS HEARING</u> (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</p> | |

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| <p>may provide that the time periods identified in Secs. 300.509(a)(3) and Sec. 300.509(b) for purposes of expedited due process hearings under Secs. 300.521-300.526 are not less than two business days; and</p> <p>(2) Be conducted by a due process hearing officer who satisfies the requirements of Sec. 300.508.</p> <p>(b)(1) Each State shall establish a timeline for expedited due process hearings that results in a written decision being mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without exceptions or extensions.</p> <p>(2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies.</p> <p>(c) A State may establish different procedural rules for expedited hearings under Secs. 300.521-300.526 than it has established for due process hearings under Sec. 300.507.</p> <p>(d) The decisions on expedited due process hearings are appealable consistent with Sec. 300.510. (Authority: 20 U.S.C. 1415(k)(2), (6), (7))</p> | <p>Instruction, P.O. Box 202501, Helena, MT 59620-2501.</p> <p>(2) The written request for expedited hearing shall include:</p> <p>(a) date of the manifestation determination and evidence of a behavioral assessment plan;</p> <p>(b) general statement of the problem;</p> <p>(c) name of the school district or public agency, including the name and telephone number of the contact person;</p> <p>(d) name of the parent and contact phone number;</p> <p>(e) student's name; and</p> <p>(f) tentative date(s) that the parties have agreed to hold the expedited hearing.</p> <p>(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.</p> <p><u>10.16.3529 SELECTION OF EXPEDITED DUE PROCESS HEARING OFFICER</u> (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.</p> <p>(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.</p> <p><u>10.16.3530 EXPEDITED HEARING</u> (1) Upon appointment, the hearing officer shall:</p> <p>(a) contact the parties to schedule a prehearing telephone conference;</p> <p>(b) set the date, time and place of the expedited hearing; and</p> <p>(c) advise the parties of their right to be represented by counsel.</p> | |

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| | <p>(2) The hearing officer may compel or limit discovery.</p> <p>(3) The hearing officer shall prepare an order identifying the issues and matters to be decided.</p> <p>(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.</p> <p>(5) The hearing shall be conducted in accordance with ARM 10.16.3519 through 10.16.3522.</p> <p><u>10.16.3531 FINAL DECISION IN EXPEDITED DUE PROCESS HEARING</u> (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.</p> <p>(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.</p> <p>(3) The hearing officer shall mail or deliver the record as defined in ARM 10.16.3522 to the superintendent of public instruction.</p> <p>(4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.</p> <p>(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.</p> | |
| <p>Sec. 300.529 Referral to and action by law enforcement and judicial authorities.</p> <p>(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to</p> | | |

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| <p>prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.</p> <p>(b)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.</p> <p>(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(9))</p> | | |
| <p><u>Procedures for Evaluation and Determination of Eligibility</u> Sec. 300.530 General. Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of Secs. 300.531-300.536. (Authority: 20 U.S.C. 1414(b)(3); 1412(a)(7))</p> | <p>(See also ARM 10.16.3320, Referral; ARM 10.16.3321, Comprehensive Educational Evaluation Process; and ARM 10.16.3322, Composition of a Child Study Team; found at Fed Reg Sec. 300.320.)</p> | |
| <p>Sec. 300.531 Initial evaluation. Each public agency shall conduct a full and individual initial evaluation, in accordance with Secs. 300.532 and 300.533, before the initial provision of special education and related services to a child with a disability under Part B of the Act. (Authority: 20 U.S.C. 1414(a)(1))</p> | | |
| <p>Sec. 300.532 Evaluation procedures. Each public agency shall ensure, at a minimum, that the following requirements are met:</p> <p>(a)(1) Tests and other evaluation materials used to assess a child under Part B of the Act--</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and</p> <p>(ii) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and</p> <p>(2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.</p> <p>(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general</p> | | |

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| <p>curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining--</p> <p>(1) Whether the child is a child with a disability under Sec. 300.7; and</p> <p>(2) The content of the child's IEP.</p> <p>(c)(1) Any standardized tests that are given to a child--</p> <p>(i) Have been validated for the specific purpose for which they are used; and</p> <p>(ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.</p> <p>(2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.</p> <p>(d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.</p> <p>(g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.</p> <p>(h) In evaluating each child with a disability under Secs. 300.531-300.536, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(i) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(j) The public agency uses assessment tools and strategies that</p> | | |

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| provide relevant information that directly assists persons in determining the educational needs of the child. (Authority: 20 U.S.C. 1412(a)(6)(B), 1414(b)(2) and (3)) | | |
| <p>Sec. 300.533 Determination of needed evaluation data.</p> <p>(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a group that includes the individuals described in Sec. 300.344, and other qualified professionals, as appropriate, shall--</p> <p>(1) Review existing evaluation data on the child, including--</p> <p>(i) Evaluations and information provided by the parents of the child;</p> <p>(ii) Current classroom-based assessments and observations; and</p> <p>(iii) Observations by teachers and related services providers; and</p> <p>(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--</p> <p>(i) Whether the child has a particular category of disability, as described in Sec. 300.7, or, in case of a reevaluation of a child, whether the child continues to have such a disability;</p> <p>(ii) The present levels of performance and educational needs of the child;</p> <p>(iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and</p> <p>(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.</p> <p>(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(c) Need for additional data. The public agency shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section.</p> <p>(d) Requirements if additional data are not needed.</p> <p>(1) If the determination under paragraph (a) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents--</p> <p>(i) Of that determination and the reasons for it; and</p> <p>(ii) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability.</p> <p>(2) The public agency is not required to conduct the assessment</p> | | |

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| described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents. (Authority: 20 U.S.C. 1414(c)(1), (2) and (4)) | | |
| <p>Sec. 300.534 Determination of eligibility.</p> <p>(a) Upon completing the administration of tests and other evaluation materials--</p> <p>(1) A group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in Sec. 300.7; and</p> <p>(2) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.</p> <p>(b) A child may not be determined to be eligible under this part if--</p> <p>(1) The determinant factor for that eligibility determination is--</p> <p>(i) Lack of instruction in reading or math; or</p> <p>(ii) Limited English proficiency; and</p> <p>(2) The child does not otherwise meet the eligibility criteria under Sec. 300.7(a).</p> <p>(c)(1) A public agency must evaluate a child with a disability in accordance with Secs. 300.532 and 300.533 before determining that the child is no longer a child with a disability.</p> <p>(2) The evaluation described in paragraph (c)(1) of this section is not required before the termination of a student's eligibility under Part B of the Act due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law. (Authority: 20 U.S.C. 1414(b)(4) and (5), (c)(5))</p> | | |
| <p>Sec. 300.535 Procedures for determining eligibility and placement.</p> <p>(a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under Sec. 300.7, and the educational needs of the child, each public agency shall--</p> <p>(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and</p> <p>(2) Ensure that information obtained from all of these sources is documented and carefully considered.</p> <p>(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Secs. 300.340-300.350. (Authority: 20 U.S.C. 1412(a)(6), 1414(b)(4))</p> | | |
| Sec. 300.536 Reevaluation. | | |

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| <p>Each public agency shall ensure--</p> <p>(a) That the IEP of each child with a disability is reviewed in accordance with Secs. 300.340-300.350; and</p> <p>(b) That a reevaluation of each child, in accordance with Secs. 300.532-300.535, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years. (Authority: 20 U.S.C. 1414(a)(2))</p> | | |
| <p><u>Additional Procedures for Evaluating Children With Specific Learning Disabilities</u></p> <p>Sec. 300.540 Additional team members.</p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in Sec. 300.7, must be made by the child's parents and a team of qualified professionals which must include--</p> <p>(a)(1) The child's regular teacher; or</p> <p>(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or</p> <p>(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and</p> <p>(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (Authority: Sec. 5(b), Pub. L. 94-142)</p> | | |
| <p>Sec. 300.541 Criteria for determining the existence of a specific learning disability.</p> <p>(a) A team may determine that a child has a specific learning disability if--</p> <p>(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and</p> <p>(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:</p> <p>(i) Oral expression.</p> <p>(ii) Listening comprehension.</p> <p>(iii) Written expression.</p> <p>(iv) Basic reading skill.</p> <p>(v) Reading comprehension.</p> <p>(vi) Mathematics calculation.</p> <p>(vii) Mathematics reasoning.</p> | | |

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| <p>(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of--</p> <ol style="list-style-type: none"> (1) A visual, hearing, or motor impairment; (2) Mental retardation; (3) Emotional disturbance; or (4) Environmental, cultural or economic disadvantage. (Authority: Sec. 5(b), Pub. L. 94-142) | | |
| <p>Sec. 300.542 Observation.</p> <p>(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.</p> <p>(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age. (Authority: Sec. 5(b), Pub. L. 94-142)</p> | | |
| <p>Sec. 300.543 Written report.</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by Sec. 300.534(a)(2), must include a statement of--</p> <ol style="list-style-type: none"> (1) Whether the child has a specific learning disability; (2) The basis for making the determination; (3) The relevant behavior noted during the observation of the child; (4) The relationship of that behavior to the child's academic functioning; (5) The educationally relevant medical findings, if any; (6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and (7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage. <p>(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions. (Authority: Sec. 5(b), Pub. L. 94-142)</p> | | |
| <p>Least Restrictive Environment (LRE)</p> <p>Sec. 300.550 General LRE requirements.</p> <p>(a) Except as provided in Sec. 300.311(b) and (c), a State shall demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the requirements of Secs. 300.550-300.556.</p> | | |

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| <p>(b) Each public agency shall ensure--</p> <p>(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and</p> <p>(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if 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. (Authority: 20 U.S.C. 1412(a)(5))</p> | | |
| <p>Sec. 300.551 Continuum of alternative placements.</p> <p>(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.</p> <p>(b) The continuum required in paragraph (a) of this section must--</p> <p>(1) Include the alternative placements listed in the definition of special education under Sec. 300.26 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and</p> <p>2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (Authority: 20 U.S.C. 1412(a)(5))</p> | | |
| <p>Sec. 300.552 Placements.</p> <p>In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that--</p> <p>(a) The placement decision--</p> <p>(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and</p> <p>(2) Is made in conformity with the LRE provisions of this subpart, including Secs. 300.550-300.554;</p> <p>(b) The child's placement--</p> <p>(1) Is determined at least annually;</p> <p>(2) Is based on the child's IEP; and</p> <p>(3) Is as close as possible to the child's home;</p> <p>(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;</p> <p>(d) In selecting the LRE, consideration is given to any potential</p> | | <p>In accord with 10.16.3340, Individualized Education Program And Placement Decisions (found at Fed Reg Sec. 300.340), placement decisions must be made by the IEP team and in accord with the requirements of 34 CFR 300.550 through 300.556.</p> |

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| <p>harmful effect on the child or on the quality of services that he or she needs; and</p> <p>(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. (Authority: 20 U.S.C. 1412(a)(5))</p> | | |
| <p>Sec. 300.553 Nonacademic settings.</p> <p>In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. (Authority: 20 U.S.C. 1412(a)(5))</p> | | |
| <p>Sec. 300.554 Children in public or private institutions.</p> <p>Except as provided in Sec. 300.600(d), an SEA must ensure that Sec. 300.550 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures). (Authority: 20 U.S.C. 1412(a)(5))</p> | | <p>The OPI has interagency agreements which ensure that 34 CFR 300.550 is effectively implemented.</p> |
| <p>Sec. 300.555 Technical assistance and training activities.</p> <p>Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies--</p> <p>(a) Are fully informed about their responsibilities for implementing Sec. 300.550; and</p> <p>(b) Are provided with technical assistance and training necessary to assist them in this effort. (Authority: 20 U.S.C. 1412(a)(5))</p> | | <p>The OPI provides ongoing technical assistance and training to administrators and special education personnel to fully inform them about their responsibilities for implementing the requirements of 34 CFR 300.550.</p> |
| <p>Sec. 300.556 Monitoring activities.</p> <p>(a) The SEA shall carry out activities to ensure that Sec. 300.550 is implemented by each public agency.</p> <p>(b) If there is evidence that a public agency makes placements that are inconsistent with Sec. 300.550, the SEA shall--</p> <ol style="list-style-type: none"> (1) Review the public agency's justification for its actions; and (2) Assist in planning and implementing any necessary corrective action. (Authority: 20 U.S.C. 1412(a)(5)) | | <p>Monitoring Procedures</p> <p>The OPI reviews LEAs' policies and procedures to ensure they are in compliance with 34 CFR 300.550. The OPI monitors LEAs and in-state private educational facilities where students with disabilities are placed in order to ensure that placement decisions are implemented in accord with requirements of 34 CFR 300.550 and that the placement is based</p> |

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| | | <p>on each student's IEP. Monitoring teams conduct random reviews of individual student records to ensure that placement decisions are based on the student's IEP and that it meets all of the other requirements of 34 CFR 300.340 through 300.350 and 34 CFR 300.550 through 300.556.</p> <p>Monitoring procedures include a review of LEAs' continuum of alternate placements to ensure compliance with 34 CFR 300.551.</p> <p>If there is evidence that an LEA or public agency makes placements that are inconsistent with 34 CFR 300.550, the OPI shall review the public agency's justification for its actions and assist in planning and implementing any necessary corrective actions.</p> |
| <p align="center"><u>Confidentiality of Information</u></p> <p>Sec. 300.560 Definitions. As used in Secs. 300.560-300.577--</p> <p>(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.</p> <p>(b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).</p> <p>(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act. (Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))</p> | <p><u>10.16.3560 SPECIAL EDUCATION RECORDS</u></p> <p>(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.</p> <p>(2) Each special education record shall include access log, referral, permission for evaluation, evaluation + 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</p> | <p>LEAs shall establish policies and implement procedures regarding confidentiality of information in accord with the requirements of 34 CFR 300.560 through 300.577. The policies shall be included in the LEAs' Program Narrative.</p> |

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| <p>Sec. 300.561 Notice to parents.</p> <p>(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of Sec. 300.127, including--</p> <p>(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;</p> <p>(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;</p> <p>(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and</p> <p>(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99.</p> <p>(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | <p>reviews of the individualized education program.</p> | |
| <p>Sec. 300.562 Access rights.</p> <p>(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Secs. 300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made.</p> <p>(b) The right to inspect and review education records under this section includes--</p> <p>(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;</p> <p>(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and</p> <p>(3) The right to have a representative of the parent inspect and review the records.</p> <p>(c) An agency may presume that the parent has authority to</p> | | |

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| inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce. (Authority: 20 U.S.C. 1412(a)(8), 1417(c)) | | |
| <p>Sec. 300.563 Record of access. Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.564 Records on more than one child. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.565 List of types and locations of information. Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.566 Fees. (a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. (b) A participating agency may not charge a fee to search for or to retrieve information under this part. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.567 Amendment of records at parent's request. (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. (b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.568.</p> | | |

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| (Authority: 20 U.S.C. 1412(a)(8); 1417(c)) | | |
| <p>Sec. 300.568 Opportunity for a hearing. The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.569 Result of hearing. (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing. (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (c) Any explanation placed in the records of the child under this section must-- (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.570 Hearing procedures. A hearing held under Sec. 300.568 must be conducted according to the procedures under 34 CFR 99.22. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.571 Consent. (a) Except as to disclosures addressed in Sec. 300.529(b) for which parental consent is not required by Part 99, parental consent must be obtained before personally identifiable information is-- (1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or (2) Used for any purpose other than meeting a requirement of this part. (b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating</p> | <p>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.</p> | |

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| <p>agencies without parental consent unless authorized to do so under part 99.</p> <p>(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.572 Safeguards.</p> <p>(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.</p> <p>(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.</p> <p>(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Sec. 300.127 and 34 CFR part 99.</p> <p>(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.573 Destruction of information.</p> <p>(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.</p> <p>(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p>Sec. 300.574 Children's rights.</p> <p>(a) The SEA shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.</p> <p>(b) Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.</p> <p>(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with Sec. 300.517, the rights regarding educational records in Secs.</p> | | |

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| 300.562-300.573 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents. (Authority: 20 U.S.C. 1412(a)(8), 1417(c)) | | |
| <p>Sec. 300.575 Enforcement. The SEA shall provide the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | <p>Monitoring Procedures The OPI implements an ongoing and systematic monitoring process, which includes a review of all LEA policies and procedures. LEAs must submit a copy of their policies and procedures for the conduct of special education as part of their application for funds. The OPI specialists review the policies and procedures to ensure their consistency with state and federal requirements. Implementation of the approved policies and procedures at the LEA level is conducted through reviews, which consist of documentation reviews, reviews of parent complaints, and due process.</p> |
| <p>Sec. 300.576 Disciplinary information.</p> <p>(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.</p> <p>(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.</p> <p>(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any statement of current or previous disciplinary action that has</p> | <p><i>*20-1-213. Transfer of school records. (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request.</i></p> <p><i>(2) If records cannot be forwarded within 5 days, the</i></p> | |

*State Statutes (Montana Code Annotated)

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| <p>been taken against the child. (Authority: 20 U.S.C. 1413(j))</p> | <p><i>local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred.</i></p> <p><i>(3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees.</i></p> <p><i>(4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related.</i></p> <p><i>(5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student.</i></p> <p><i>(6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement.</i></p> <p><i>(7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility.</i></p> <p><i>(8) As used in this section, "local educational agency" means a public school district or a state-funded school.</i></p> | |

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| <p>Sec. 300.577 Department use of personally identifiable information. If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (the Privacy Act of 1974), the Secretary applies the requirements of 5 U.S.C. 552a (b)(1)-(2), (4)-(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5)-(10); (h); (m); and (n); and the regulations implementing those provisions in 34 CFR part 5b. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))</p> | | |
| <p style="text-align: center;"><u>Department Procedures</u> Secs. 300.580 through 300.589</p> | | |
| <p style="text-align: center;">Subpart F--State Administration General</p> <p>Sec. 300.600 Responsibility for all educational programs. (a) The SEA is responsible for ensuring-- (1) That the requirements of this part are carried out; and (2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency-- (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and (ii) Meets the education standards of the SEA (including the requirements of this part). (b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents. (c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State. (d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. (Authority: 20 U.S.C. 1412(a)(11))</p> | <p><i>*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:</i> (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.</p> <p><i>*20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction</i></p> | |

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| | <p><i>shall supervise and coordinate the conduct of special education in the state by:</i></p> <ul style="list-style-type: none"> <i>(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;</i> <i>(2) administering the policies adopted by the board of public education;</i> <i>(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;</i> <i>(4) establishing procedures to be used by school district personnel in identifying children with disabilities;</i> <i>(5) recommending to districts the type of special education class or program needed to serve the children with disabilities of the districts and preparing appropriate guides for developing individualized education programs;</i> <i>(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;</i> <i>(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all children with disabilities;</i> <i>(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;</i> <i>(9) providing technical assistance to district superintendents, principals, teachers, and trustees;</i> <i>(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;</i> <i>(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</i> | |

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| | <p><i>surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;</i></p> <p><i>(12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities 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 children with disabilities within the state;</i></p> <p><i>(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</i></p> <p><i>(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.</i></p> <p><i><u>*20-7-414. Determination of children in need and type of special education needed -- approval of classes and programs by superintendent.</u> (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</i></p> | |

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| | <p><i>Disabilities Education Act and who reside in the school district.</i></p> <p><i>(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.</i></p> <p><i><u>*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.</u> (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.</i></p> <p><i>(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.</i></p> <p><i>(3) Whenever the superintendent of public instruction contracts with an in-state children's</i></p> | |

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| | <p><i>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:</i></p> <p><i>(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;</i></p> <p><i>(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;</i></p> <p><i>(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;</i></p> <p><i>(d) provide funding for allowable costs according to a proration based on average daily membership.</i></p> <p><i>(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.</i></p> <p><i>(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</i></p> | |

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| | <p><i>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.</i></p> <p><i>(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:</i></p> <p><i>(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</i></p> <p><i>(b) are not subject to the budget limitations in 20-9-308.</i></p> | |
| <p>Sec. 300.601 Relation of Part B to other Federal programs. Part B of the Act may not be construed to permit a State to reduce medical and other assistance available to children with disabilities, or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE. (Authority: 20 U.S.C. 1412(e))</p> | | |
| <p>Sec. 300.602 State-level activities.</p> <p>(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration in accordance with Secs. 300.620 and 300.621 and other State-level activities in accordance with Sec. 300.370.</p> <p>(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of--</p> <p>(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 611 of the Act; or</p> <p>(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (Authority: 20 U.S.C. 1411(f)(1)(A) and (B))</p> | (See Fed Reg Sec. 300.156.) | |
| <u>Use of Funds</u> | | |

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| <p>Sec. 300.620 Use of funds for State administration. (a) For the purpose of administering Part B of the Act, including section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities)-- (1) Each State may use not more than twenty percent of the maximum amount it may retain under Sec. 300.602(a) for any fiscal year or \$500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and (2) Each outlying area may use up to five percent of the amount it receives under this section for any fiscal year or \$35,000, whichever is greater. (b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part. (Authority: 20 U.S.C. 1411(f)(2))</p> | <p>(See Fed Reg Sec. 300.156.)</p> | |
| <p>Sec. 300.621 Allowable costs. (a) The SEA may use funds under Sec. 300.620 for-- (1) Administration of State activities under Part B of the Act and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities; (2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities; (3) Technical assistance to LEAs with respect to the requirements of Part B of the Act; (4) Leadership services for the program supervision and management of special education activities for children with disabilities; and (5) Other State leadership activities and consultative services. (b) The SEA shall use the remainder of its funds under Sec. 300.620 in accordance with Sec. 300.370. (Authority: 20 U.S.C. 1411(f)(2))</p> | | <p>The OPI will use a portion of its Part B funds for state-level administration. Activities will include the following:</p> <ol style="list-style-type: none"> 1. Administration of state activities under Part B of IDEA and for planning at the state level, including planning or assisting in the planning of programs or projects for the education of children with disabilities; 2. Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities; 3. Technical assistance to LEAs with respect to the requirements of Part B of the Act; 4. Leadership services for the program supervision and |

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| | | management of special education activities for students with disabilities; and 5. Other state leadership activities and consultative services. |
| <p>Sec. 300.622 Subgrants to LEAs for capacity-building and improvement. In any fiscal year in which the percentage increase in the State's allocation under 611 of the Act exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under 611 of the Act, the amount described in Sec. 300.623 to make subgrants to LEAs, unless that amount is less than \$100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:</p> <p>(a) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.</p> <p>(b) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under subpart 1 of Part D of the Act.</p> <p>(c) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.</p> <p>(d) Establishing, expanding, or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to children with disabilities and their families.</p> <p>(e) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution. (Authority: 20 U.S.C. 1411(f)(4)(A))</p> | | |
| <p>Sec. 300.623 Amount required for subgrants to LEAs. For each fiscal year, the amount referred to in Sec. 300.622 is--</p> <p>(a) The maximum amount the State was allowed to retain under Sec. 300.602(a) for the prior fiscal year, or, for fiscal year 1998, 25</p> | | |

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| <p>percent of the State's allocation for fiscal year 1997 under section 611; multiplied by</p> <p>(b) The difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (Authority: 20 U.S.C. 1411(f)(4)(B))</p> | | |
| <p>Sec. 300.624 State discretion in awarding subgrants. The State may establish priorities in awarding subgrants under Sec. 300.622 to LEAs competitively or on a targeted basis. (Authority: 20 U.S.C. 1411(f)(4)(A))</p> | | |
| <p style="text-align: center;">State Advisory Panel</p> <p>Sec. 300.650 Establishment of advisory panels.</p> <p>(a) Each State shall establish and maintain, in accordance with Secs. 300.650-300.653, a State advisory panel on the education of children with disabilities.</p> <p>(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.</p> <p>(c) If a State has an existing advisory panel that can perform the functions in Sec. 300.652, the State may modify the existing panel so that it fulfills all of the requirements of Secs. 300.650-300.653, instead of establishing a new advisory panel. (Authority: 20 U.S.C. 1412(a)(21)(A))</p> | <p>(See ARM 10.16.3150, State Advisory Panel, found at Fed Reg Sec. 300.150.)</p> | <p>The Superintendent of Public Instruction has established and maintains a State Special Education Advisory Panel in accord with the requirements of 34 CFR 300.650 through 300.651. The Advisory Panel functions and conducts its procedures in accord with the requirements of 34 CFR 300.652 through 300.653.</p> |
| <p>Sec. 300.651 Membership.</p> <p>(a) General. The membership of the State advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make these appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with the education of children with disabilities, including--</p> <ol style="list-style-type: none"> (1) Parents of children with disabilities; (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that prepare special education and related services personnel; (5) State and local education officials; (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; | | |

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| <p>(8) Representatives of private schools and public charter schools;</p> <p>(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and</p> <p>(10) Representatives from the State juvenile and adult corrections agencies.</p> <p>(b) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities. (Authority: 20 U.S.C. 1412(a)(21)(B) and (C))</p> | | |
| <p>Sec. 300.652 Advisory panel functions.</p> <p>(a) General. The State advisory panel shall--</p> <p>(1) Advise the SEA of unmet needs within the State in the education of children with disabilities;</p> <p>(2) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;</p> <p>(3) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;</p> <p>(4) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and</p> <p>(5) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.</p> <p>(b) Advising on eligible students with disabilities in adult prisons. The advisory panel also shall advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons, even if, consistent with Sec. 300.600(d), a State assigns general supervision responsibility for those students to a public agency other than an SEA. (Authority: 20 U.S.C. 1412(a)(21)(D))</p> | | |
| <p>Sec. 300.653 Advisory panel procedures.</p> <p>(a) The advisory panel shall meet as often as necessary to conduct its business.</p> <p>(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.</p> <p>(c) Official minutes must be kept on all panel meetings and must be made available to the public on request.</p> <p>(d) All advisory panel meetings and agenda items must be announced enough in advance of the meeting to afford interested</p> | | |

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| <p>parties a reasonable opportunity to attend. Meetings must be open to the public.</p> <p>(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under Sec. 300.620.</p> <p>(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under Sec. 300.620 for this purpose. (Authority: 20 U.S.C. 1412(a)(21))</p> | | |
| <p style="text-align: center;">State Complaint Procedures</p> <p>Sec. 300.660 Adoption of State complaint procedures.</p> <p>(a) General. Each SEA shall adopt written procedures for--</p> <p>(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of Sec. 300.662 by--</p> <p>(i) Providing for the filing of a complaint with the SEA; and</p> <p>(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and</p> <p>(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under Secs. 300.660-300.662.</p> <p>(b) Remedies for denial of appropriate services. In resolving a complaint in which it has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:</p> <p>(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and</p> <p>(2) Appropriate future provision of services for all children with disabilities. (Authority: 20 U.S.C. 1221e-3)</p> | <p><u>10.16.3660 EARLY ASSISTANCE PROGRAM</u></p> <p>(1) The office of public instruction shall provide an ongoing and systematic informal dispute resolution process referred to as the "early assistance program."</p> <p>(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.</p> <p>(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.</p> <p>(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</p> | |

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| | <p>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.</p> <p>(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.</p> <p>(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.</p> | |
| <p>Sec. 300.661 Minimum State complaint procedures.</p> <p>(a) Time limit; minimum procedures. Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under Sec. 300.660(a) to--</p> <p>(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and</p> <p>(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the SEA's final decision.</p> <p>(b) Time extension; final decision; implementation. The SEA's</p> | <p><u>10.16.3661 OPPORTUNITY TO PRESENT COMPLAINTS</u> (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.</p> | |

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| <p>procedures described in paragraph (a) of this section also must--</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and</p> <p>(2) Include procedures for effective implementation of the SEA's final decision, if needed, including--</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) Complaints filed under this section, and due process hearings under Secs. 300.507 and 300.520-300.528.</p> <p>(1) If a written complaint is received that is also the subject of a due process hearing under Sec. 300.507 or Secs. 300.520-300.528, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.</p> <p>(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties--</p> <p>(i) The hearing decision is binding; and</p> <p>(ii) The SEA must inform the complainant to that effect.</p> <p>(3) A complaint alleging a public agency's failure to implement a due process decision must be resolved by the SEA. (Authority: 20 U.S.C. 1221e-3)</p> | | |
| <p>Sec. 300.662 Filing a complaint.</p> <p>(a) An organization or individual may file a signed written complaint under the procedures described in Secs. 300.660-300.661.</p> <p>(b) The complaint must include--</p> <p>(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; and</p> <p>(2) The facts on which the statement is based.</p> <p>(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with Sec. 300.660(a) 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 Sec. 300.660(a). (Authority: 20 U.S.C. 1221e-3)</p> | <p><u>10.16.3662 STATE COMPLAINT PROCEDURES</u></p> <p>(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).</p> <p>(2) The complaint must:</p> <p>(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</p> | |

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| | <p>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;</p> <p>(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</p> <p>(c) include a statement of facts on which the allegation is based.</p> <p>(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.</p> <p>(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.</p> <p>(a) The compliance officer shall include a copy of the complaint with the notice to the local educational or public agency.</p> <p>(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.</p> <p>(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</p> | |

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

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| | <p>an extension of the 60 day period is required by exceptional circumstances which exist with respect to the particular complaint.</p> <p>(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.</p> <p>(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.</p> <p>(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:</p> <ul style="list-style-type: none"> (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. <p>(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</p> | |

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| | Administrative Procedure Act, 2-4-601 through 2-4-711, MCA, prior to implementing sanctions. | |
| <p align="center">Subpart G--Allocation of Funds; Reports Allocations</p> <p>Sec. 300.700 Special definition of the term "State". For the purposes of Secs. 300.701, and 300.703-300.714, the term State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. (Authority: 20 U.S.C. 1411(h)(2))</p> | | |
| <p>Sec. 300.701 Grants to States.</p> <p>(a) Purpose of grants. The Secretary makes grants to States and the outlying areas and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act.</p> <p>(b) Maximum amounts. The maximum amount of the grant a State may receive under section 611 of the Act for any fiscal year is--</p> <p>(1) The number of children with disabilities in the State who are receiving special education and related services--</p> <p>(i) Aged 3 through 5 if the State is eligible for a grant under section 619 of the Act; and</p> <p>(ii) Aged 6 through 21; multiplied by--</p> <p>(2) Forty (40) percent of the average per-pupil expenditure in public elementary and secondary schools in the United States. (Authority: 20 U.S.C. 1411(a))</p> | | |
| <p>Sec. 300.702 Definition.</p> <p>For the purposes of this section the term average per-pupil expenditure in public elementary and secondary schools in the United States means--</p> <p>(a) Without regard to the source of funds--</p> <p>(1) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus</p> <p>(2) Any direct expenditures by the State for the operation of those agencies; divided by</p> <p>(b) The aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year. (Authority: 20 U.S.C. 1411(h)(1))</p> | | |
| <p>Sec. 300.703 Allocations to States.</p> <p>(a) General. After reserving funds for studies and evaluations under</p> | | |

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| <p>section 674(e) of the Act, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under Secs. 300.715 and 300.717-300.719, the Secretary allocates the remaining amount among the States in accordance with paragraph (b) of this section and Secs. 300.706-300.709.</p> <p>(b) Interim formula. Except as provided in Secs. 300.706-300.709, the Secretary allocates the amount described in paragraph (a) of this section among the States in accordance with section 611(a)(3), (4), (5) and (b)(1), (2) and (3) of the Act, as in effect prior to June 4, 1997, except that the determination of the number of children with disabilities receiving special education and related services under section 611(a)(3) of the Act (as then in effect) may be calculated as of December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated. (Authority: 20 U.S.C. 1411(d))</p> | | |
| <p>Sec. 300.706 Permanent formula.</p> <p>(a) Establishment of base year. The Secretary allocates the amount described in Sec. 300.703(a) among the States in accordance with Secs. 300.706-300.709 for each fiscal year beginning with the first fiscal year for which the amount appropriated under 611(j) of the Act is more than \$4,924,672,200.</p> <p>(b) Use of base year. (1) Definition. As used in this section, the term base year means the fiscal year preceding the first fiscal year in which this section applies.</p> <p>(2) Special rule for use of base year amount. If a State received any funds under section 611 of the Act for the base year on the basis of children aged 3 through 5, but does not make FAPE available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary computes the State's base year amount, solely for the purpose of calculating the State's allocation in that subsequent year under Secs. 300.707-300.709, by subtracting the amount allocated to the State for the base year on the basis of those children. (Authority: 20 U.S.C. 1411(e)(1) and (2))</p> | | |
| <p>Sec. 300.707 Increase in funds.</p> <p>If the amount available for allocations to States under Sec. 300.706 is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:</p> <p>(a) Except as provided in Sec. 300.708, the Secretary--</p> <p>(1) Allocates to each State the amount it received for the base year;</p> | | |

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| <p>(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and</p> <p>(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.</p> <p>(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary. (Authority: 20 U.S.C. 1411(e)(3))</p> | | |
| <p>Sec. 300.708 Limitation.</p> <p>(a) Allocations under Sec. 300.707 are subject to the following:</p> <p>(1) No State's allocation may be less than its allocation for the preceding fiscal year.</p> <p>(2) No State's allocation may be less than the greatest of--</p> <p>(i) The sum of--</p> <p>(A) The amount it received for the base year; and</p> <p>(B) One-third of one percent of the amount by which the amount appropriated under section 611(j) of the Act exceeds the amount appropriated under section 611 of the Act for the base year; or</p> <p>(ii) The sum of--</p> <p>(A) The amount it received for the preceding fiscal year; and</p> <p>(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or</p> <p>(iii) The sum of--</p> <p>(A) The amount it received for the preceding fiscal year; and</p> <p>(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.</p> <p>(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under Sec. 300.707 may exceed the sum of--</p> <p>(1) The amount it received for the preceding fiscal year; and</p> <p>(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.</p> <p>(c) If the amount available for allocations to States under Sec. 300.703 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full those allocations are ratably reduced, subject to paragraph (a)(1) of this section. (Authority: 20 U.S.C. 1411(e)(3)(B) and (C))</p> | | |
| <p>Sec. 300.709 Decrease in funds.</p> | | |

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| <p>If the amount available for allocations to States under Sec. 300.706 is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:</p> <p>(a) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State is allocated the sum of--</p> <p>(1) The amount it received for the base year; and</p> <p>(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of those increases for all States.</p> <p>(b)(1) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State is allocated the amount it received for the base year.</p> <p>(2) If the amount available is insufficient to make the allocations described in paragraph (b)(1) of this section, those allocations are ratably reduced. (Authority: 20 U.S.C. 1411(e)(4))</p> | | |
| <p>Sec. 300.710 Allocation for State in which by-pass is implemented for private school children with disabilities.</p> <p>In determining the allocation under Secs. 300.700-300.709 of a State in which the Secretary will implement a by-pass for private school children with disabilities under Secs. 300.451-300.487, the Secretary includes in the State's child count--</p> <p>(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in Secs. 300.7(a) and 300.450) in the State, as of the preceding December 1; and</p> <p>(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year. (Authority: 20 U.S.C. 1412(f)(2))</p> | | |
| <p>Sec. 300.711 Subgrants to LEAs.</p> <p>Each State that receives a grant under section 611 of the Act for any fiscal year shall distribute in accordance with Sec. 300.712 any funds it does not retain under Sec. 300.602 and is not required to distribute under Secs. 300.622 and 300.623 to LEAs in the State that have established their eligibility under section 613 of the Act, and to State agencies that received funds under section 614A(a) of the Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613 of the Act, for use in accordance with Part B of the Act. (Authority: 20 U.S.C. 1411(g)(1))</p> | | |

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| <p>Sec. 300.712 Allocations to LEAs.</p> <p>(a) Interim procedure. For each fiscal year for which funds are allocated to States under Sec. 300.703(b) each State shall allocate funds under Sec. 300.711 in accordance with section 611(d) of the Act, as in effect prior to June 4, 1997.</p> <p>(b) Permanent procedure. For each fiscal year for which funds are allocated to States under Secs. 300.706-300.709, each State shall allocate funds under Sec. 300.711 as follows:</p> <p>(1) Base payments. The State first shall award each agency described in Sec. 300.711 the amount that agency would have received under this section for the base year, as defined in Sec. 300.706(b)(1), if the State had distributed 75 percent of its grant for that year under section Sec. 300.703(b).</p> <p>(2) Base payment adjustments. For any fiscal year after the base year fiscal year--</p> <p>(i) If a new LEA is created, the State shall divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under Sec. 300.706(b)(2), currently provided special education by each of the LEAs;</p> <p>(ii) If one or more LEAs are combined into a single new LEA, the State shall combine the base allocations of the merged LEAs; and</p> <p>(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under Sec. 300.706(b)(2), currently provided special education by each affected LEA.</p> <p>(3) Allocation of remaining funds. The State then shall--</p> <p>(i) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction; and</p> <p>(ii) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.</p> | | <p>Allocations of Part B funds will be made to LEAs in accordance with the requirements of 34 CFR 300.712, applicable IDEA Part B regulations, and state administrative rules. The OPI will flow through approximately 87 percent of its IDEA allocation in the form of subgrants to LEAs to supplement state and local funds for the support of special education and related services to students with disabilities. The OPI provides guidance to LEAs on management of grant funds through provision of training materials and activities.</p> |

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| <p>(iii) For the purposes of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty. (Authority: 20 U.S.C. 1411(g)(2))</p> | | |
| <p>Sec. 300.713 Former Chapter 1 State agencies. (a) To the extent necessary, the State-- (1) Shall use funds that are available under Sec. 300.602(a) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994) receives, from the combination of funds under Sec. 300.602(a) and funds provided under Sec. 300.711, an amount no less than-- (i) The number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, subject to the limitation in paragraph (b) of this section; multiplied by (ii) The per-child amount provided under that subpart for fiscal year 1994; and (2) May use funds under Sec. 300.602(a) to ensure that each LEA that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under Sec. 300.602(a) and funds provided under Sec. 300.711, an amount for each child, aged 3 through 21 to whom the agency was providing special education and related services on December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994. (b) The number of children counted under paragraph (a)(1)(i) of this section may not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994). (Authority: 20 U.S.C. 1411(g)(3))</p> | | |
| <p>Sec. 300.714 Reallocation of LEA funds. If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds</p> | | |

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| <p>under Part B of the Act that are not needed by that local agency to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve. (Authority: 20 U.S.C. 1411(g)(4))</p> | | |
| <p>Sec. 300.715 Payments to the Secretary of the Interior for the education of Indian children.</p> <p>(a) Reserved amounts for Secretary of Interior. From the amount appropriated for any fiscal year under 611(j) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with this section and Sec. 300.716.</p> <p>(b) Provision of amounts for assistance. The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under paragraph (a) of this section for that fiscal year.</p> <p>(c) Calculation of number of children. In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (BIA) schools and that are required by the States in which these schools are located to attain or maintain State accreditation, and which schools have this accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school may count those children for the purpose of distribution of the funds provided under this section to the Secretary of the Interior.</p> <p>(d) Responsibility for meeting the requirements of Part B. The Secretary of the Interior shall meet all of the requirements of Part B of the Act for the children described in paragraphs (b) and (c) of this section, in accordance with Sec. 300.260. (Authority: 20 U.S.C. 1411(c); 1411(i)(1)(A) and (B))</p> | | |
| <p>Sec. 300.716 Payments for education and services for Indian children with disabilities aged 3 through 5.</p> <p>(a) General. With funds appropriated under 611(j) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services</p> | | |

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| <p>for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under Sec. 300.715(a).</p> <p>(b) Distribution of funds. The Secretary of the Interior shall distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.</p> <p>(c) Submission of information. To receive a payment under this section, the tribe or tribal organization shall submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.</p> <p>(d) Use of funds. (1) The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities.</p> <p>(2) The entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.</p> <p>(e) Biennial report. To be eligible to receive a grant pursuant to paragraph (a) of this section, the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the two years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary required under section 611(i) of the Act. The Secretary may require any additional information from the Secretary of the Interior.</p> <p>(f) Prohibitions. None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes,</p> | | |

*State Statutes (Montana Code Annotated)

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| including child count and the provision of technical assistance. (Authority: 20 U.S.C. 1411(i)(3)) | | |
| <p>Sec. 300.717 Outlying areas and freely associated States. From the amount appropriated for any fiscal year under section 611(j) of the Act, the Secretary reserves not more than one percent, which must be used--</p> <p>(a) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and</p> <p>(b) For fiscal years 1998 through 2001, to carry out the competition described in Sec. 300.719, except that the amount reserved to carry out that competition may not exceed the amount reserved for fiscal year 1996 for the competition under Part B of the Act described under the heading "SPECIAL EDUCATION" in Public Law 104-134. (Authority: 20 U.S.C. 1411(b)(1))</p> | | |
| <p>Sec. 300.718 Outlying area--definition. As used in this part, the term outlying area means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. (Authority: 20 U.S.C. 1402(18))</p> | | |
| <p>Sec. 300.719 Limitation for freely associated States.</p> <p>(a) Competitive grants. The Secretary uses funds described in Sec. 300.717(b) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.</p> <p>(b) Award basis. The Secretary awards grants under paragraph (a) of this section on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations must be made by experts in the field of special education and related services.</p> <p>(c) Assistance requirements. Any freely associated State that wishes to receive funds under Part B of the Act shall include, in its application for assistance--</p> <p>(1) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act;</p> <p>(2) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;</p> <p>(3) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction;</p> | | |

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| <p>and</p> <p>(4) Such other information and assurances as the Secretary may require.</p> <p>(d) Termination of eligibility. Notwithstanding any other provision of law, the freely associated States may not receive any funds under Part B of the Act for any program year that begins after September 30, 2001.</p> <p>(e) Administrative costs. The Secretary may provide not more than five percent of the amount reserved for grants under this section to pay the administrative costs of the Pacific Region Educational Laboratory under paragraph (b) of this section.</p> <p>(f) Eligibility for award. An outlying area is not eligible for a competitive award under Sec. 300.719 unless it receives assistance under Sec. 300.717(a). (Authority: 20 U.S.C. 1411(b)(2) and (3))</p> | | |
| <p>Sec. 300.720 Special rule.</p> <p>The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to those areas or to the freely associated States under Part B of the Act. (Authority: 20 U.S.C. 1411(b)(4))</p> | | |
| <p>Sec. 300.722 Definition.</p> <p>As used in this part, the term freely associated States means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. (Authority: 20 U.S.C. 1411(b)(6))</p> | | |
| <p style="text-align: center;">Reports</p> <p>Sec. 300.750 Annual report of children served--report requirement.</p> <p>(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in the State who are receiving special education and related services.</p> <p>(b) The SEA shall submit the report on forms provided by the Secretary. (Authority: 20 U.S.C. 1411(d)(2); 1418(a))</p> | | |
| <p>Sec. 300.751 Annual report of children served--information required in the report.</p> <p>(a) For any year the SEA shall include in its report a table that shows the number of children with disabilities receiving special education and related services on December 1, or at the State's discretion on the last Friday in October, of that school year--</p> <p>(1) Aged 3 through 5;</p> <p>(2) Aged 6 through 17; and</p> | <p><u>10.16.3751 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR CHILD COUNT</u> (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.</p> <p>(2) In notifying local educational agencies and state</p> | |

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| <p>(3) Aged 18 through 21.</p> <p>(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1, or, at the State's discretion, the last Friday in October.</p> <p>(c) Reports must also include the number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.) within each disability category, as defined in the definition of "children with disabilities" in Sec. 300.7; and</p> <p>(d) The Secretary may permit the collection of the data in paragraph (c) of this section through sampling.</p> <p>(e) The SEA may not report a child under paragraph (c) of this section under more than one disability category.</p> <p>(f) If a child with a disability has more than one disability, the SEA shall report that child under paragraph (c) of this section in accordance with the following procedure:</p> <p>(1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness".</p> <p>(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities". (Authority: 20 U.S.C. 1411(d)(2); 1418(a) and (b))</p> | <p>operated programs of their responsibility, the office of public instruction shall identify:</p> <p>(a) procedures to follow in completing, submitting and verifying the count;</p> <p>(b) personally identifiable information required and statement of maintenance of confidentiality;</p> <p>(c) a statement of a local educational agency's and state operated program's obligation to ensure an accurate count; and</p> <p>(d) an offer of technical assistance from the office of public instruction.</p> <p>(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.</p> | |
| <p>Sec. 300.752 Annual report of children served-- certification.</p> <p>The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided under Sec. 300.751(a) is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question. (Authority: 20 U.S.C. 1411(d)(2); 1417(b))</p> | <p><u>10.16.3752 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT</u> (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.</p> <p>(a) The count shall include only those students with disabilities who:</p> <p>(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;</p> <p>(ii) are enrolled in public or private school within the jurisdiction of the local educational agency boundaries; and</p> <p>(iii) are not receiving special education and related services funded solely by other federal agencies.</p> | |

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| | <p>(b) Students with disabilities shall be identified on the count by:</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p>(3) If December 1 falls on a Saturday or Sunday, the count shall be taken on the first Monday following December 1.</p> <p>(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.</p> | |
| <p>Sec. 300.753 Annual report of children served--criteria for counting children.</p> <p>(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that--</p> <ul style="list-style-type: none"> (1) Provides them with both special education and related services that meet State standards; (2) Provides them only with special education, if a related service is not required, that meets State standards; or (3) In the case of children with disabilities enrolled by their parents in private schools, provides them with special education or related services under Secs. 300.452-300.462 that meet State standards. <p>(b) The SEA may not include children with disabilities in its report who are receiving special education funded solely by the Federal Government, including children served by the Department of Interior, the Department of Defense, or the Department of Education. However, the State may count children covered under Sec. 300.184(c)(2). (Authority: 20 U.S.C. 1411(d)(2); 1417(b))</p> | | |
| <p>Sec. 300.754 Annual report of children served--other responsibilities of the SEA.</p> | | |

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| <p>In addition to meeting the other requirements of Secs. 300.750-300.753, the SEA shall--</p> <ul style="list-style-type: none"> (a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; (b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with Sec. 300.750(a); (c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made; (d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under Secs. 300.750-300.753; and (e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count. (Authority: 20 U.S.C. 1411(d)(2); 1417(b)) | | |
| <p>Sec. 300.755 Disproportionality.</p> <ul style="list-style-type: none"> (a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State or in the schools operated by the Secretary of the Interior with respect to-- <ul style="list-style-type: none"> (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; and (2) The placement in particular educational settings of these children. (b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior shall provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the Act. (Authority: 20 U.S.C. 1418(c)) | | |
| <p>Sec. 300.756 Acquisition of equipment; construction or alteration of facilities.</p> <ul style="list-style-type: none"> (a) General. If the Secretary determines that a program authorized | | |

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| <p>under Part B of the Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.</p> <p>(b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of--</p> <p>(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Accessibility Guidelines for Buildings and Facilities"); or</p> <p>(2) Appendix A of part 101-19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal AccessibilityStandards"). (Authority: 20 U.S.C. 1405)</p> | | |

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