

## **Title 6. Education**

### **Chapter I. Division of Elementary and Secondary Education, Department of Education**

#### **Subchapter E. Special Education**

#### **Part 130. Procedural Requirements and Program Standards**

##### **Subpart 1. Purpose and Applicability**

###### **6 CAR § 130-101. Purpose.**

The purposes of this part are to:

(1) Ensure that all children with disabilities in the State of Arkansas 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:

- (A) Further education;
- (B) Employment; and
- (C) Independent living;

(2) Ensure that the rights of children with disabilities and their parents are protected;

(3) Assist public agencies, local education agencies, and educational service agencies to provide for the education of children with disabilities in the State of Arkansas; and

(4) Assess and ensure the effectiveness of efforts to educate children with disabilities in the State of Arkansas.

###### **6 CAR § 130-102. Applicability.**

The applicability of this part to state, local, and private agencies is as follows:

(1) This part applies to all public agencies providing education to children with disabilities;

(2) For public agencies within the state, the provisions of this part:

(A) Apply to all political subdivisions of the State of Arkansas that are involved in the education of children with disabilities, including:

- (i) The state educational agency (SEA);
  - (ii) Local educational agencies, educational service agencies, 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 human services and health and state schools for children with deafness or children with blindness); and
  - (iv) State and local juvenile and adult correctional facilities; and
- (B) 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 of the Individuals with Disabilities Education Act; and
- (3) For private schools and facilities, each public agency in the State of Arkansas is responsible for ensuring that the rights and protections under Part B of the Individuals with Disabilities Education Act are given to children with disabilities:
- (A) Referred to or placed in private schools and facilities by that public agency; or
  - (B) Placed in private schools by their parents under the provisions of 34 C.F.R. § 300.148 and 6 CAR § 130-1401 et seq.

## **Subpart 2. Definitions**

### **6 CAR § 130-201. Adverse effect on educational performance.**

(a) "Adverse effect on educational performance" means the effect on the child that an impairment identified in 34 C.F.R. § 300.8(c)(1) – (13) and 6 CAR § 130-608 must have in order to establish eligibility for special education and related services under Part B of the Individuals with Disabilities Education Act.

(b) In the consideration of the effect of the child's disability on his or her overall educational performance, criteria must include not only curriculum/developmental

areas, but also affective, behavioral, and physical characteristics or professional judgment of a multidisciplinary team.

**6 CAR § 130-202. Administrative case management.**

“Administrative case management” activities include the purchase by an LEA of appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities.

**6 CAR § 130-203. Department of Education.**

The Department of Education is the state educational agency designated in state law as responsible for the state supervision of public elementary and secondary schools.

**6 CAR § 130-204. Assistive technology device.**

(a) “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.

(b) The term does not include a medical device that is surgically implanted or the replacement of such device.

**6 CAR § 130-205. Assistive technology service.**

(a) “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.

(b) The term includes:

(1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(6) 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.

**6 CAR § 130-206. At no cost.**

The term "at no cost", within the definition of special education, 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.

**6 CAR § 130-207. Charter school.**

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

**6 CAR § 130-208. Child with a disability.**

(a)(1) The term "child with a disability" means a child from three (3) years of age until the end of the school year in which the child turns twenty-one (21) years of age, evaluated in accordance with 34 C.F.R. §§ 300.304 – 300.311 and 6 CAR § 130-601 et seq., as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic

impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2) Subject to subdivision (a)(3) of this section, if it is determined through an appropriate evaluation under this part that a child has one (1) of the disabilities identified in this subsection but only needs a related service and not special education, the child is not a child with a disability under this part.

(3) If the related service required by the child is considered to be special education rather than a related service under state standards, the child would be determined to be a child with a disability under this subsection.

(b) The term "child with a disability" for children aged three (3) to five (5) includes a child:

(1) Who is experiencing developmental delays:

(A) As defined by the state in 6 CAR § 131-201 et seq.; and

(B) As measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas:

(i) Physical development;

(ii) Cognitive development;

(iii) Communication development;

(iv) Social or emotional development; or

(v) Adaptive development; and

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

#### **6 CAR § 130-209. Code of Federal Regulations.**

(a) The Code of Federal Regulations refers to the official system of documentation containing codified federal rules and regulations implementing specified federal statutes.

(b) Such rules and regulations, as codified and adopted, have the force of law.

#### **6 CAR § 130-210. Combination resource services/special class services.**

(a) "Combination resource services/special class services" means instruction provided in this service setting is primarily one of resource services.

(b) However, because of the need for special class services on a very limited basis, up to three (3) students may receive special education in excess of sixty percent (60%) of the instructional day within a resource setting.

(c) Careful consideration must be given to the number and needs of students receiving special class services within a resource setting to ensure that services to all students are programmatically sound.

#### **6 CAR § 130-211. Combination special class services/resource services.**

(a) "Combination special class services/resource services" means instruction provided in this service setting is primarily one of special class services.

(b) However, because of the need for resource services on a limited basis, up to five (5) students may receive resource services within a special class setting.

(c) Careful consideration must be given to the number and needs of students receiving resource services within a special class setting to ensure that services to all students are programmatically sound.

#### **6 CAR § 130-212. Consent.**

"Consent" means that the parent:

(1) 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;

(2) 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

(3)(A) Understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(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).

**6 CAR § 130-213. Core academic subjects.**

The term “core academic subjects” means:

- (1) English;
- (2) Reading or language arts;
- (3) Mathematics;
- (4) Science;
- (5) Foreign languages;
- (6) Civics and government;
- (7) Economics;
- (8) Arts;
- (9) History; and
- (10) Geography.

**6 CAR § 130-214. Data-based problem solving — Functional assessment.**

(a)(1) “Data-based problem solving” is a systematic process based on the scientific method that can be used to:

- (A) Make decisions about the effectiveness of instructional programs;
- (B) Identify the need for and specify the focus areas for academic and/or behavioral interventions; and
- (C) Formatively and summatively evaluate intervention goals and outcomes.

(2) Data-based problem solving has four (4) primary steps:

- (A) Problem identification and description;
- (B) Problem analysis and functional assessment;
- (C) Intervention development and implementation; and
- (D) Formative and summative evaluation.

(b)(1) Functional assessment, which occurs within the context of data-based problem solving, involves:

- (A) The review of existing records and other sources of information;

- (B) Diagnostic and historical interviews;
- (C) Structured academic or behavioral observations; and
- (D) Authentic, criterion-referenced, or norm-referenced tests.

(2) The goal of functional assessment is to determine why a specific problem or situation is occurring so that a strategic intervention can be directly linked to the assessment and solve or resolve the problem.

**(c) Relationship to response to intervention.**

(1) "Response to intervention" is an inherent part of the data-based problem solving process in that, when a strategic intervention is implemented with a student, evaluation procedures must be in place to determine how well the student responded to the intervention.

(2) Given a positive response, the intervention will either be maintained or faded out over time.

(3) Given a negative response, analysis must determine:

(A) If the intervention was improperly:

- (i) Selected;
- (ii) Implemented; or
- (iii) Evaluated; or

(B) If, simply, more time to allow the intervention to be successful is needed.

**6 CAR § 130-215. Day — Business day — School day.**

The term:

(1) "Day" means calendar day unless otherwise indicated as business day or school day;

(2) "Business day" means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day); and

(3)(A) "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes.



(B) The term "school day" has the same meaning for all children in school, including children with and without disabilities.

**6 CAR § 130-216. Destruction.**

"Destruction" for the purpose of this part means physical destruction of information or removal of personal identifiers from information so that the information is no longer personally identifiable.

**6 CAR § 130-217. Discrepancy model for the assessment of learning disabilities — Arkansas definition.**

(a) According to the psychometric standard established by the Special Education Unit of the Division of Elementary and Secondary Education, a severe discrepancy exists between a student's intellectual ability and achievement when the level of severity is equal to or greater than 1.75 or more standard deviations at the fifty percent (50%) or above level of probability as determined by regression analysis.

(b) The determination of a severe discrepancy does not necessarily mean that there is a specific learning disability as other factors may contribute to a student's lowered academic performance.

(c) Conversely, there may be rare cases where a child has a specific learning disability but does not clearly demonstrate this upon use of a regression analysis standard.

(d) Local education agencies in Arkansas are not required to use this model in determining specific learning disabilities.

**6 CAR § 130-218. Early intervening services.**

"Early intervening services" means coordinated, early intervening services, which may include interagency financing structures for students in kindergarten through grade twelve (K – 12) (with a particular emphasis on students in kindergarten through grade three (K – 3)) who are not currently identified as needing special education or related

services, but who need additional academic and behavioral support to succeed in a general education environment.

**6 CAR § 130-219. Early intervening services activities.**

“Early intervening services activities” means activities implemented and coordinated by an LEA that include:

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

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

**6 CAR § 130-220. Education records.**

(a) “Education records” are broadly defined as those records, files, documents, and other materials that:

(1) Contain information directly related to the student; and

(2) Are maintained by an educational agency or institution or by a person acting for such agency or institution.

(b)(1) “Educational records” means the type of records covered under the definition of education records in 34 C.F.R. pt. 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g).

(2) According to interpretation provided by the Family Policy Compliance Office, which administers the Family Educational Rights and Privacy Act of 1974:

(A) Any record, such as a permanent record, report card, a student’s work, or a teacher’s grade book, is an education record under the Family Educational Rights and Privacy Act of 1974 if it is maintained by a school and is directly related to the student;

(B) A psychological evaluation or assessment, as well as test protocol or protocols, would be education records under the Family Educational Rights and Privacy Act of 1974 if they contain information that is directly related to the student; and

(C) Any test protocols or test question booklets that do not contain information directly related to the student are not education records under the Family Educational Rights and Privacy Act of 1974.

(c) Records maintained by an agency or institution that are not directly related to the student are not “educational records” under the Family Educational Rights and Privacy Act of 1974, and parents do not have a right to inspect and review such records under the Family Educational Rights and Privacy Act of 1974.

(d)(1) The Family Educational Rights and Privacy Act of 1974 requires that an educational agency or institution respond to reasonable requests for explanations and interpretations of education records, such as test answer sheets not accompanied by the question booklets.

(2) A school district should, upon request:

(A) Provide an opportunity for a parent to review the education records; and

(B) Provide any explanations and interpretations necessary, which may include the interpretation of standardized test scores, such as reviewing the test questions with the parent.

### **6 CAR § 130-221. Educational interpreter.**

(a) An “educational interpreter” is a person who:

(1) Performs conventional interpreting tasks; and  
(2) Holds appropriate credentials and licensure relative to interpreting in educational settings.

(b) An educational interpreter is a person who facilitates communication between a deaf individual and a hearing individual by interpreting spoken language to a manual language form or otherwise, and vice-versa.

**6 CAR § 130-222. Educational service agency (ESA).**

As used in this part, "educational service agency (ESA)":

(1) Means a regional public multiservice agency:

(A) Authorized by state law to develop, manage, and provide services or programs to LEAs; and

(B) 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;

(2) Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school; and

(3) Includes entities that meet the definition of "intermediate educational unit" in Section 602(23) of Individuals with Disabilities Education Act as in effect prior to June 4, 1997.

**6 CAR § 130-223. Eligibility for special education services.**

(a) Eligibility for special education services means that a child is determined eligible, upon completion of the administration of assessments and other evaluation measures by a group of qualified professionals and the parent of the child, as a child with a disability, in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and this part.

(b) The disability must result in an adverse effect on educational performance and the corresponding need for special education services.

**6 CAR § 130-224. Elementary school.**

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

**6 CAR § 130-225. Equipment.**

"Equipment" means:

(1) Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(2) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as:

(A) Instructional equipment and necessary furniture;

(B) Printed, published, and audio-visual instructional materials;

(C) Telecommunications, sensory, and other technological aids and devices; and

(D) Books, periodicals, documents, and other related materials.

#### **6 CAR § 130-226. Evaluation.**

(a) "Evaluation" means procedures used in accordance with 34 C.F.R. §§ 300.304 – 300.311 and 6 CAR § 130-601 et seq., to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(b) The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a:

(1) School;

(2) Grade; or

(3) Class.

#### **6 CAR § 130-227. Extended school year services.**

As used in this part, the term "extended school year services (ESY)" means special education and related services that:

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

(A) Beyond the normal school year of the public agency;

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

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

(2) Meet the standards of the SEA.

#### **6 CAR § 130-228. Free appropriate public education.**

“Free appropriate public education” or “FAPE” means special education and related services that:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the SEA, including the requirements of Part B of the Individuals with Disabilities Education Act, as amended;

(3) Include an appropriate preschool, elementary school, or secondary school education in Arkansas; and

(4) Are provided in conformity with an individualized education program that meets the requirements of 34 C.F.R. §§ 300.320 – 300.324 and 6 CAR § 130-801 et seq.

#### **6 CAR § 130-229. Homeless children.**

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

#### **6 CAR § 130-230. Include.**

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.

#### **6 CAR § 130-231. Independent educational evaluation.**

“Independent educational evaluation (IEE)” means an evaluation conducted by a qualified examiner who is not employed by the local education agency or other public agency responsible for the education of the child in question.

#### **6 CAR § 130-232. Indirect services.**

(a) “Indirect services” means those services provided by a qualified professional, commonly termed “consulting teacher”, whose primary role is to consult with general

and/or special education teachers regarding the modification and/or adaptation of instruction for specific students with disabilities.

(b) The consulting teacher may provide limited direct instruction to students.

**6 CAR § 130-233. Integrated classroom.**

(a) "Integrated classroom" means a general education classroom in which instruction is provided to general and special education students for the entire instructional day by a teacher dually licensed in general and special education.

(b) The maximum classroom composition is limited to two-thirds (2/3) general education students and one-third (1/3) students with disabilities.

(c) This classroom must have a half-time paraprofessional.

**6 CAR § 130-234. Interpreting services.**

When used with respect to children who are deaf or hard of hearing, "interpreting services" means:

(1) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as:

(A) Communication access real-time translation;

(B) C-Print; and

(C) Type Well; and

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

**6 CAR § 130-235. Itinerant instruction.**

(a) "Itinerant instruction" means direct instruction, which may be educational or therapeutic in nature, provided to a student by qualified personnel.

(b) Itinerant instruction may be delivered in a variety of settings, including:

(1) General and special education classrooms;

(2) Homes and hospitals; and

(3) Other community settings.

(c) Such instruction may be provided daily or on a rotating schedule.

**6 CAR § 130-236. Individualized education program.**

“Individualized education program” or “IEP” means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. §§ 300.320 – 300.324 and 6 CAR § 130-801 et seq.

**6 CAR § 130-237. Individualized education program team.**

The term “individualized education program team” or “IEP team” means a group of individuals, as described in 34 C.F.R. § 300.321 and in 6 CAR § 130-805, that is responsible for developing, reviewing, or revising an IEP for a child with a disability, including:

- (1) The parents of the child;
- (2) Not less than one (1) regular education teacher of the child (if the child is or may be participating in the regular education environment);
- (3) Not less than one (1) special education teacher of the child, or where appropriate, not less than one (1) special education provider of the child;
- (4) A representative of the public agency who is:
  - (A) Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (B) Knowledgeable about the general education curriculum; and
  - (C) Knowledgeable about the availability of resources of the public agency;
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in this section;
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

**6 CAR § 130-238. Individuals with Disabilities Education Act.**



The Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., referred to as the Individuals with Disabilities Education Act, is a federal statute that requires states to provide all eligible children with disabilities with a free appropriate public education from infancy through age twenty-one (21) years, consistent with state law age provisions for making education available.

**6 CAR § 130-239. Institution of higher education.**

“Institution of higher education”:

(1) Has the meaning given the term in Section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1021 et seq.; and

(2) Also includes any community college receiving funds from the United States Secretary of the Interior under the Tribally Controlled Colleges and Universities Assistance Act of 1978, 25 U.S.C. § 1801 et seq.

**6 CAR § 130-240. Instructional day.**

(a) “Instructional day” means the amount of time spent engaged in instructional activities.

(b)(1) Generally, this excludes lunch, recess, and nonacademic or extracurricular activity periods.

(2) However, when such activities are considered as special education instruction on a student’s IEP, these activity periods may constitute part of the instructional day.

**6 CAR § 130-241. Limited English proficient.**

(a) “Limited English proficient” has the meaning given the term in Section 9101(25) of the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10.

(b) The term, when used with respect to an individual, means an individual:

(1) Who is aged three (3) through twenty-one (21);

(2) Who is enrolled or preparing to reenroll in an elementary school or secondary school;

(3) Who was not born in the United States or whose native language is a language other than English;

(4) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(5) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(6) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(7) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the:

(A) Ability to meet the state's proficient level of achievement on state assessments;

(B) Ability to successfully achieve in classrooms where the language of instruction is English; or

(C) Opportunity to participate fully in society.

#### **6 CAR § 130-242. Local educational agency.**

"Local educational agency (LEA)" means a public board of education or other public authority legally constituted within the State of Arkansas 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.

#### **6 CAR § 130-243. Mediation.**

"Mediation" means, as used in this part, procedures established and implemented to allow parties to disputes involving any matter under Part B of the Individuals with

Disabilities Education Act, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

**6 CAR § 130-244. Meetings.**

(a) The term “meetings”, as defined within the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and this part, includes those to which parents have the right to be provided notice of and which, generally, are scheduled in advance, to address the identification, evaluation, placement, or the provision of FAPE to the child.

(b) A meeting does not include:

- (1) Informal or unscheduled conversations involving public agency personnel;
- (2) Conversations on issues such as teaching methodology, lesson plans, or coordination of service provision; or
- (3) 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.

**6 CAR § 130-245. Native language.**

(a) “Native language”, when used with respect to an individual who has 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 this subsection; and
- (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:

- (1) Sign language;
- (2) Braille; or
- (3) Oral communication.

**6 CAR § 130-246. Parent.**

(a) The term "parent" means:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless state law, rules, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the state if the child is a ward of the state);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519 and 6 CAR § 130-1501 et seq.

(b) Except as provided in subsection (c) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one (1) party is qualified under subsection (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(c) If a judicial decree or order identifies a specific person or persons under subsection (a) of this section to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this section.

**6 CAR § 130-247. Paraprofessional.**

A "paraprofessional", in connection with special education, is a staff member other than a teacher who:

- (1) Works directly with students with disabilities under the direct supervision of a teacher or other licensed professional;
- (2) Has received appropriate training pertaining to the tasks and activities he or she is asked to perform; and

(3) Meets state-established qualification standards.

**6 CAR § 130-248. Participating agency.**

(a) As used with regard to IEPs and agency responsibilities for transition services, “participating agency” means a state or other public agency, including a state vocational rehabilitation agency, other than the public agency responsible for a student’s education, that is likely to be responsible for providing or paying for transition services to the student, therefore being financially and legally responsible.

(b) As used in connection with education records and confidentiality of information, 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 Individuals with Disabilities Education Act.

**6 CAR § 130-249. Personally identifiable.**

“Personally identifiable” means information that contains:

- (1) The name of:
  - (A) The child;
  - (B) The child’s parent; or
  - (C) Other family member;
- (2) The address of the child;
- (3) A personal identifier, such as the child’s Social Security number or student number; or
- (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

**6 CAR § 130-250. Public agency.**

“Public agency” includes the SEA, LEAs, ESAs, nonprofit 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.

**6 CAR § 130-251. Public expense.**

“Public expense” means, as applied to an independent educational evaluation, that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 34 C.F.R. § 300.502(a)(3)(ii) and 6 CAR § 130-502.

**6 CAR § 130-252. Physical education.**

The term “physical education”:

- (1) 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
- (2) Includes:
  - (A) Special physical education;
  - (B) Adapted physical education;
  - (C) Movement education; and
  - (D) Motor development.

**6 CAR § 130-253. Positive behavioral supports.**

(a) “Positive behavioral supports (PBS)” involves the application of behavior analysis to achieve socially important behavior change.

(b) PBS occurs at the:

- (1) Prevention level for all students in a school;
- (2) Strategic intervention level for students who are not responding, from a social-emotional and behavioral perspective, to the prevention level; and
- (3) Intensive service or crisis-management level for students who need multi-faceted and/or comprehensive behavioral or mental health services.

(c)(1) PBS involves a planned and collaborative school-wide approach with a goal of:

(A) Establishing positive and supportive school environments that teach and reinforce students' prosocial behavior;

(B) Holding students positively accountable for meeting established behavioral expectations; and

(C) Maintaining a level of consistency throughout the implementation process.

(2) This goal is accomplished by using positive behavioral:

(A) Programs;

(B) Strategies; and

(C) Approaches.

#### **6 CAR § 130-254. Qualified examiner.**

(a) A "qualified examiner" shall include any person who fits the description of an individual who is qualified to conduct some or all of the assessments listed in this section:

(1) The licensed teacher or counselor who may administer tests that do not require special training, certification, or licensure, i.e., achievement tests;

(2) The educational examiner, licensed by the SEA, who may administer intellectual, academic, and/or behavior rating scales, and some language measures, but may not administer tests that measure personality or psychiatric traits;

(3)(A) The school psychology specialist, licensed by the SEA, who conducts multi-factored, psycho-educational evaluations/assessments.

(B) Such assessments of a student include consideration of:

(i) Personal and social adjustment within the educational environment;

(ii) Intelligence and scholastic aptitude;

(iii) Adaptive behavior;

(iv) Selected language and communication skills;

- (v) Academic achievement;
- (vi) Sensory-motor and perceptual-motor functioning;
- (vii) Environmental and cultural influences; and
- (viii) Vocational aptitude and interests.

(C) School psychology specialists will assess only those areas that:

- (i) Are relevant and specific to educational programming; and
- (ii) That enhance the academic and personal/social adjustment of a

student within educational settings and systems;

(4)(A) The psychological examiner, licensed by the Arkansas Psychology Board, who may administer and interpret tests of mental abilities, aptitudes, interests, and personality characteristics for such purposes as:

- (i) Psychological evaluation; or
- (ii) Educational or vocational:
  - (a) Selection;
  - (b) Guidance; or
  - (c) Placement.

(B) The psychological examiner will conduct personality appraisal or classification only under qualified supervision as stipulated by the Arkansas Psychology Board;

(5) The psychologist, licensed by the Arkansas Psychology Board, who may administer and interpret tests of mental abilities, aptitudes, interests, and personality characteristics for such purposes as:

- (A) Psychological evaluation;
- (B) Educational and vocational:
  - (i) Selection;
  - (ii) Guidance; or
  - (iii) Placement;
- (C) Overall personality appraisal or classification;
- (D) Personality counseling;
- (E) Psychotherapy; or



(F) Personality adjustment;

(6) The speech-language pathologist, either licensed by the SEA or licensed by the Board of Examiners in Speech-Language Pathology and Audiology, who may conduct assessments of communicative abilities;

(7) The licensed professional counselor, licensed by the Arkansas Board of Examiners in Counseling, who may administer individualized intelligence tests, provided he or she holds the Appraisal Specialization classification as stipulated by the Arkansas Board of Examiners in Counseling;

(8)(A) The licensed associate counselor, licensed by the Arkansas Board of Examiners in Counseling, who may administer individualized intelligence tests as stipulated by the Arkansas Board of Examiners in Counseling.

(B) Associate counselors must practice under supervision for this specialization, as stipulated by the Arkansas Board of Examiners in Counseling;

(9)(A) The student evaluator who is either practicing as an intern or participating in a practicum and is subsequently administering tests to complete requirements for certification or licensure.

(B) The following requirements apply when using a student evaluator:

(i) The informed consent form signed by the parent must indicate the use of a student evaluator;

(ii) The evaluation report must indicate that the evaluation was administered by a student evaluator;

(iii) The student evaluator must sign the evaluation report;

(iv) The supervisor of the student evaluator must review and sign the report, indicating the supervisor's licensure or certification status; and

(v) The student evaluator must abide by the rules, regulations, and laws that pertain to the area of certification, licensure, or field of study the student is pursuing; and

(10)(A) The licensed teacher of the visually impaired, or a person who is qualified in braille instruction as determined by the SEA, who at least once a year

conducts an assessment of the educational progress of each student with a visual impairment.

(B) That assessment shall:

(i) Address the student's need for braille instruction, using procedures developed by the SEA, and specify the learning medium most appropriate for the student's educational progress;

(ii) Identify the student's strengths and weaknesses in braille skills when that medium is used for instruction; and

(iii)(a) Identify appropriate and necessary related services and technologies for use in combination with braille instruction.

(b) The results of the assessment shall be used in developing the student's IEP.

#### **6 CAR § 130-255. Qualified personnel.**

"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.

#### **6 CAR § 130-256. Related services.**

(a)(1) "Related services":

(A) 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

(B) Includes:

(i) Speech-language pathology and audiology services;

(ii) Interpreting services;

(iii) Psychological services;

(iv) Physical and occupational therapy;

(v) Recreation, including therapeutic recreation;

- (vi) Early identification and assessment of disabilities in children;
- (vii) Counseling services, including rehabilitation counseling;
- (viii) Orientation and mobility services; and
- (ix) Medical services for diagnostic or evaluation purposes.

(2) The term also includes school health services, school nurse services, social work services in schools, and parent counseling and training.

(3) The specific services listed above are defined in 34 C.F.R. § 300.34 (Related services).

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

(1) Related services do not include:

- (A) A medical device that is surgically implanted;
- (B) The optimization of that device's functioning (e.g., mapping);
- (C) Maintenance of that device; or
- (D) The replacement of that device.

(2) Nothing in subdivision (b)(1) of this section:

(A) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in 6 CAR § 130-259) that are determined by the IEP team to be necessary for the child to receive FAPE;

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

(C) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in 34 C.F.R. § 300.113(b).

**6 CAR § 130-257. Resource services.**

(a) "Resource services" consist of direct instruction provided by a special education teacher to students with disabilities.

(b) Individual students may receive resource services for a period of time not to exceed sixty percent (60%) of the instructional day.

**6 CAR § 130-258. Response to intervention.**

“Response to intervention” is the practice of:

(1) Providing high quality instruction/intervention matched to student needs;  
and

(2) Using learning rate over time and level of performance to make important educational decisions.

**6 CAR § 130-259. School-based day treatment services.**

(a) The term “school-based day treatment services” means a cooperative program that includes the provision of both education and mental health services for each participating student with emotional disturbance in a coordinated, therapeutic manner.

(b) This program is located on a school campus in an age-appropriate regular education school building.

(c) Instruction is provided by:

(1) A full-time teacher who is licensed in an area of special education; and

(2) At a minimum, one (1) full-time paraprofessional.

**6 CAR § 130-260. Scientifically based research.**

(a) Section 9101(37) of the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, as amended by the No Child Left Behind Act of 2001, Pub. L. No. 107-110, defines “scientifically based research” as “research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs”.

(b) The statute then explains that this kind of research:

(1) Employs systematic, empirical methods that draw on observation or experiment;

- (2) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
- (3) Relies on measurements or observational methods that provide reliable and valid data:
  - (A) Across evaluators and observers;
  - (B) Across multiple measurements and observations; and
  - (C) Across studies by the same or different investigators;
- (4) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls evaluate the effects of the condition of interest, with a preference for random-assignment, experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
- (5) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
- (6) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, scientific review.

**6 CAR § 130-261. School health services and school nurse services.**

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

**6 CAR § 130-262. Screening.**

- (a) Screening, for instructional purposes, is not evaluation.

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

**6 CAR § 130-263. Secondary school.**

“Secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law, except that it does not include any education beyond grade twelve (12).

**6 CAR § 130-264. Services plan.**

“Services plan” means a written statement that:

- (1) Describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 C.F.R. § 300.132; and
- (2) Is developed and implemented in accordance with 34 C.F.R. §§ 300.137 – 300.139.

**6 CAR § 130-265. Special class services.**

“Special class services” means instruction provided by a special education teacher for students with disabilities whose programs require in excess of sixty percent (60%) of the instructional day as special education services.

**6 CAR § 130-266. Special day school, private.**

“Special day school, private” means instruction provided by a special education teacher to students with disabilities whose:

- (1) Programs require in excess of sixty percent (60%) of the instructional day in special education services; and

(2) Special education services are delivered in a day school operated by a private agency.

**6 CAR § 130-267. Special day school, public.**

“Special day school, public” means instruction provided by a special education teacher to students with disabilities whose:

(1) Programs require in excess of sixty percent (60%) of the instructional day in special education services; and

(2) Special education services are delivered in a day school operated by a public agency or an educational service agency.

**6 CAR § 130-268. Special education.**

(a) “Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

(1) Instruction conducted in:

- (A) The classroom;
- (B) The home;
- (C) Hospitals and institutions; and
- (D) Other settings; and

(2) Instruction in physical education.

(b) The term includes each of the following, if the services otherwise meet the requirements of subdivision (b)(1) of this section:

(1) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under state standards;

- (2) Travel training; and
- (3) Vocational education.

**6 CAR § 130-269. Specially designed instruction.**

“Specially designed instruction” means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to:

(1) Address the unique needs of the child that result from the child’s disability;  
and

(2) 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.

**6 CAR § 130-270. State educational agency.**

(a) The term “state educational agency (SEA)” means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by state law.

(b) The SEA in Arkansas is the Department of Education.

**6 CAR § 130-271. Supplementary aids and services.**

“Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes, or other education-related settings, and in extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 34 C.F.R. §§ 300.114 – 300.116 and 6 CAR § 130-1301 et seq.

**6 CAR § 130-272. Transition services.**

(a) “Transition services” means a coordinated set of activities for a child with a disability that:

(1) Is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including:

- (A) Postsecondary education;
- (B) Vocational education;



- (C) Integrated employment (including supported employment);
  - (D) Continuing and adult education;
  - (E) Adult services;
  - (F) Independent living; or
  - (G) Community participation;
- (2) Is based on the individual child's needs, taking into account the child's:
- (A) Strengths;
  - (B) Preferences; and
  - (C) Interests; and
- (3) Includes:
- (A) Instruction;
  - (B) Related services;
  - (C) Community experiences;
  - (D) The development of employment and other post-school adult living objectives; and
  - (E) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) Transition services for children with disabilities may be:
- (1) Special education, if provided as specially designed instruction; or
  - (2) A related service, if required to assist a child with a disability to benefit from special education.

### **6 CAR § 130-273. Travel training.**

"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:

- (1) Develop an awareness of the environment in which they live; and
- (2) 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).

#### **6 CAR § 130-274. Vocational education.**

“Vocational education” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

#### **6 CAR § 130-275. Universal design.**

“Universal design” has the meaning given to the term in Section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. § 3002.

#### **6 CAR § 130-276. Ward of the state.**

(a) **General.** “Ward of the state” means a child who, as determined by the state where the child resides, is:

- (1) A foster child;
- (2) A ward of the state; or
- (3) In the custody of a public child welfare agency.

(b) **Exception.** “Ward of the state” does not include a foster child who has a foster parent who meets the definition of a parent in 34 C.F.R. § 300.30 or 6 CAR § 130-246.

### **Subpart 3. Child Find**

#### **6 CAR § 130-301. General responsibility to conduct child find.**

(a) Each local educational agency is responsible for ensuring that all children with disabilities from birth to twenty-one (21) years within its jurisdiction and in need of special education and related services are identified, located, and evaluated, regardless of the severity of their disability, including:

- (1) Children with disabilities attending private schools;
- (2) Highly mobile children with disabilities, including migrant children;
- (3) Children who are suspected of having a disability and need special education even though they are advancing from grade to grade; and

(4) Children with disabilities who are homeless or a ward of the state.

(b) The responsibility of the local educational agency to conduct child find activities extends to identifying, locating, and evaluating children attending private schools within its jurisdiction.

(c) Before any major identification, location, or evaluation activity (child find), a notice to parents must be published or announced in newspapers or other media, with local circulation adequate to notify parents throughout the LEA's jurisdiction of the activity.

**6 CAR § 130-302. Children with disabilities enrolled by their parent in private schools.**

(a) **Definition of “parentally placed private school children with disabilities”.** “Parentally placed private school children with disabilities” means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36 other than children with disabilities covered under 34 C.F.R. §§ 300.145 – 300.147.

(b) **Child find for parentally placed private school children with disabilities.**

(1) **General.** Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with requirements of this section.

(2) **Child find design.** The child find process must be designed to ensure:

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

(B) An accurate count of those children.

(3) **Activities.** In carrying out the requirements of this section, the LEA or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency’s public school children.

(4) **Cost.** The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under 34 C.F.R. § 300.133.

(5) **Completion period.** The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with 34 C.F.R. § 300.301.

(6) **Out-of-state children.** Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally placed private school children who reside in a state other than the state in which the private schools that they attend are located.

#### **6 CAR § 130-303. Development of plan — Documentation of effort.**

(a) Each local educational agency must develop and maintain a written child find plan outlining the systematic and continuous efforts the local educational agency will undertake to meet its responsibilities as described in 6 CAR §§ 130-301 and 130-302.

(b) At a minimum, any child find plan must set forth annual child find activities including, but not limited to:

- (1) Initiation of a campaign of public awareness; and
- (2) Procedures for the conduct of routine school screening.

(c) The local educational agency shall:

(1) Maintain a written record of the child find plan and documentation of annual child find activities; and

(2) Make such records and documents available for review by staff of the Department of Education.

(d) It is the responsibility of the local educational agency to maintain a record of all children with disabilities receiving special education and related services from the local educational agency.

#### **6 CAR § 130-304. Confidentiality of data.**

The collection and use of data to meet the requirements of this part are subject to the confidentiality requirements of 6 CAR § 130-1601 et seq.

## **Subpart 4. Referral**

### **6 CAR § 130-401. Referral generally.**

(a) If a child is suspected of having a disability that adversely affects educational performance and who by reason thereof needs special education and related services, a referral may be made at any time to the local educational agency by:

- (1) The child's teacher;
- (2) Other educational personnel;
- (3) The child's parent or parents;
- (4) The child; or
- (5) Other individuals with relevant knowledge of the child.

(b)(1) A referral is to be made in writing through the completion of the required Referral Form and provided to the principal or designee of the school in which the child is enrolled.

(2) Where the referral originates from a parent, an individual not associated with the school, or other agency personnel, an employee of the local educational agency where the child is enrolled must complete the Referral Form and forward it to the principal or designee of the school.

(c) Informal data collection conducted pursuant to 6 CAR § 130-402 must be completed prior to any referral conference.

(d) Where appropriate, a child's parent or parents must be informed of the referral and shall be offered an explanation of its purpose.

### **6 CAR § 130-402. Content of referral.**

Along with the information provided in the Referral Form, any information that may assist in determining whether or not a child is a child with a disability should be submitted, including, but not limited to:

- (1) The results of hearing and vision screening;
- (2) Home or classroom behavior checklists;
- (3) Existing medical, social, or educational data;
- (4) Examples of the child's academic work; and
- (5) Screening inventories.

**6 CAR § 130-403. Notice of referral conference.**

(a) Within seven (7) calendar days of the date the local educational agency receives the written referral, the local educational agency must schedule a referral conference at a time and place agreed upon by the parent or parents and provide the parent or parents with written notification of the referral and referral conference consistent with the notice requirements established in 6 CAR § 130-904.

(b) In addition to meeting the requirements of 6 CAR § 130-904, notice of a referral conference must:

- (1) Be provided to the parent or parents early enough to ensure that they will have an opportunity to attend; and
- (2) Include the time and location of the conference and who will be in attendance.

(c) The agency may provide initial notice to the parent or parents through the use of:

- (1) Registered mail;
- (2) Certified mail; or
- (3) First class mail.

(d)(1) If the parents do not respond to the initial written notice within seven (7) calendar days of its dissemination, a subsequent notice must be issued to the parents by any communication means necessary, specifying that the referral conference will be held seven (7) calendar days from the date of dissemination of the subsequent notice, but in no case more than twenty-one (21) calendar days from receipt of the written referral.

(2) If the parents do not respond to the subsequent notice, the referral conference may be conducted without the parent in attendance.

(3) If no parent can be identified or located after reasonable efforts by the agency or if the child is a ward of the state or an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11434a(6), then a surrogate parent must be assigned to the child pursuant to 6 CAR § 130-1501 et seq.

(e) The public agency shall maintain written documentation of its efforts to ensure that the requirements of 6 CAR § 130-401 et seq., have been met.

**6 CAR § 130-404. Referral conference.**

(a) If a child is referred to the local educational agency pursuant to 6 CAR § 130-401, a referral conference must be held for the purpose of:

- (1) Reviewing all existing information related to the child; and
- (2) Determining the actions to be taken.

(b)(1) The referral conference must be attended by at least three (3) persons, including:

- (A) The principal or a designee; and
- (B) One (1) teacher directly involved in the education of the child.

(2) The conference may also be attended by the child, if appropriate, and by other individuals at the discretion of the parents or agency.

(c)(1) Decisions made at the referral conference must be recorded on the required Referral Conference Decision Form and signed by the principal or a designee.

(2) The Referral Conference Decision Form shall also include the names of the participants of the conference.

(d) Options for referral conference outcomes include:

(1) A decision to conduct a comprehensive evaluation of the child consistent with the eligibility criteria set out in 6 CAR § 130-601 et seq.;

(2) A decision to conduct a specialized evaluation of the child consistent with the eligibility criteria set out in 6 CAR § 130-601 et seq.; or

(3) A decision not to conduct an evaluation of the child.

(e)(1) Subsequent to the conclusion of the referral conference, the local educational agency must provide the parent written notice of the decision reached at the referral conference, consistent with 6 CAR § 130-904.

(2) If the parent was not present at the referral conference, notice must be given to the parent within seven (7) calendar days after the referral conference by:

(A) Registered mail;

(B) Certified mail; or

(C) First class mail.

(f) If the local educational agency has reason to believe that the parent may require assistance in understanding the decision reached at the referral conference, a representative of the local educational agency must contact the parent by telephone or initiate a home visit to explain the decision.

#### **6 CAR § 130-405. Temporary placement during evaluation.**

(a) If a referral conference results in a decision to evaluate a child, and existing data and educational observations establish the need for immediate intervention or differential diagnostic data gathering, the local educational agency, with the parent's written consent, may initiate a temporary placement for the child to provide special education and related services.

(b) The temporary placement of a child is limited to sixty (60) calendar days, during which time the evaluation must be completed.

(c) If a determination is made to initiate a temporary placement for a child:

(1) The reason or reasons for such placement must be stated on the Referral Conference Decision Form; and

(2) An interim individualized educational program must be developed and implemented for the period of time the student is in the temporary placement, not to exceed sixty (60) calendar days.

#### **6 CAR § 130-406. Consent to evaluate.**



(a)(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 C.F.R. § 300.8 must, after providing notice consistent with 34 C.F.R. §§ 300.503 and 300.504, obtain informed consent, consistent with 34 C.F.R. § 300.1, from the parent of the child before conducting the evaluation.

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

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

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

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

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

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

(c)(1) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under subsection (a) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in 34 C.F.R. § 300.501 et seq. (including the mediation procedures under 34 C.F.R. § 300.506 or the due process procedures under 34 C.F.R. §§ 300.507 – 300.516), if appropriate, except to the extent inconsistent with state law relating to such parental consent.

(2) The public agency does not violate its obligation under 34 C.F.R. §§ 300.111 and 300.301 – 300.311 if it declines to pursue the evaluation.

(d) Public agency personnel must also:

(1) Provide the parent with a copy of Information for Parents Regarding Consent; and

(2) Ensure that the parent understands the information it contains.

## **Subpart 5. Free Appropriate Public Education (FAPE)**

### **6 CAR § 130-501. Provision of FAPE.**

(a) The State of Arkansas must ensure that all children with disabilities, from three (3) years of age until the end of the school year in which the child turns twenty-one (21) years of age, residing in the state have the right to and availability of FAPE, including children with disabilities who have been suspended or expelled from school.

(b) Each public agency must implement child find requirements as set out in 6 CAR § 130-301 et seq., to identify, locate, and evaluate all children with disabilities.

(c) The services provided to a child with disabilities under this part must address all of the child's identified special education and related services needs.

(d) 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.

(e)(1) FAPE for children beginning at age three (3).

(2) Each state must ensure that:

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

(B) An IEP is in effect for the child by that date, in accordance with 34 C.F.R. § 300.323(b).

(3) If a child's third birthday occurs during the summer, the child's IEP team must determine the date when services under the IEP will begin.

(4) **Limitation.** The obligation to make FAPE available to all children with disabilities does not apply with respect to children with disabilities who are eligible

under Subpart H of the Individuals with Disabilities Education Act but who receive early intervention services under Part C of the act.

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

(1) Each LEA must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child:

(A) Has not failed or been retained in a course or grade; and

(B) Is advancing from grade to grade.

(2) The determination that a child described in subdivision (f)(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 eligibility determinations.

**6 CAR § 130-502. FAPE — Methods and payments.**

(a) Public agencies in the State of Arkansas may use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of this part.

(b) Nothing herein relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(c) Public agencies 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.

**6 CAR § 130-503. Residential placement.**

(a) 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 nonmedical care and room and board, must be at no cost to the parents of the child.

(b) See 6 CAR § 130-1801 et seq., for specific rules governing residential placements.

**6 CAR § 130-504. Routine checking of hearing aids and external components of surgically implanted medical devices.**

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

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

(1) Subject to subdivision (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of:

(A) The medical device that has been surgically implanted; or

(B) An external component of the surgically implanted medical device.

**6 CAR § 130-505. Program options.**

Each LEA or other public agency must take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the school district or other public agency, including:

(1) Art;

(2) Music;

(3) Industrial arts;

(4) Consumer and homemaking education; and

(5) Vocational education.

**6 CAR § 130-506. Nonacademic services.**

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

- (b) Nonacademic and extracurricular services and activities may include:
- (1) Counseling services;
  - (2) Athletics;
  - (3) Transportation;
  - (4) Health services;
  - (5) Recreational activities;
  - (6) Special interest groups or clubs sponsored by the school district or other public agency;
  - (7) Referrals to agencies that provide assistance to individuals with disabilities;
- and
- (8) Employment of students, including both:
    - (A) Employment by the public agency; and
    - (B) Assistance in making outside employment available.

**6 CAR § 130-507. Physical education.**

(a) Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE unless the public agency:

- (1) Enrolls children without disabilities; and
- (2) Does not provide physical education to children without disabilities in the same grades.

(b) **Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child:

- (1) Is enrolled full time in a separate facility; or
- (2) Needs specially designed physical education, as prescribed in the child's IEP.

(c) **Special physical education.** If specially designed physical education is prescribed in a child's IEP, the LEA or other public agency responsible for the education of that child must:

- (1) Provide the services directly; or

(2) Make arrangements for those services to be provided through other public or private programs.

(d) **Education in separate facilities.** The LEA or other public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

### **6 CAR § 130-508. Assistive technology.**

(a) Each LEA and other public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 34 C.F.R. §§ 300.5 and 300.6, respectively, and 6 CAR §§ 130-204 and 130-205, are made available to a child with a disability if required as part of the child's:

- (1) Special education under 34 C.F.R. § 300.36;
- (2) Related services under 34 C.F.R. § 300.34; or
- (3) Supplementary aids and services under 34 C.F.R. § 300.38 and § 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

### **(c) Evaluation for assistive technology.**

(1) It is essential that decisions about a child's use of technology be made by a committee of professionals and family members to ensure a broad perspective of knowledge and experience.

(2) Committee members might necessarily include any of the following:

- (A) Child;
- (B) Family members;
- (C) Paraprofessionals/aides;
- (D) Audiologists;
- (E) Classroom teachers;
- (F) Occupational therapists;

- (G) Physical therapists;
- (H) Physicians;
- (I) Qualified examiners;
- (J) Special educators; or
- (K) Speech-language pathologists.

(d) **Assessment of communication.**

(1) For children who require assistive technology to communicate, assessment is an ongoing process.

(2) Initial assessment can only provide good baseline information and allow the assessment team to make reasonable hypotheses about where and how to begin intervention.

(3) The goals of communication assessment are to enable the team to:

- (A) Determine the current and future communication needs of the child and those interacting with him or her;
- (B) Identify the communication capabilities of the child and the child's partners, as well as the characteristics of his or her environments and tasks;
- (C) Reach a consensus on communication goals and prioritize these goals;
- (D) Develop and revise plans that allow these goals to be implemented and that increase the child's involvement in activities and interactions; and
- (E) Monitor the success and/or failure of intervention approaches, including the use of assistive technology.

(e) **Assessment variables.** The following variables should be considered when evaluating communication:

(1) Child:

- (A) Child's needs;
- (B) Capabilities and skills of the child; and
- (C) Personal goals and preferences;

(2) Communication context/environment:

- (A) Partners with whom the child will communicate;
- (B) Social contexts; and

- (C) Physical contexts;
- (3) Communication activities:
  - (A) Social interaction;
  - (B) Pragmatic/conversational skills; and
  - (C) Participation in curriculum;
- (4) Augmentative communication aids, symbols, techniques, and strategies:
  - (A) Gestures;
  - (B) Vocalizations;
  - (C) Communication displays (symbols and vocabulary);
  - (D) Devices;
  - (E) Means of accessing equipment; and
  - (F) Communication strategies a child can use to accomplish communications tasks; and
- (5) **Assessment procedures.** Assessment of communication abilities, which should take place in more than one (1) environment, should include the following:
  - (A) Record general observations;
  - (B) Complete checklists or other criterion-based instruments;
  - (C) Interview primary care providers;
  - (D) Review educational and medical records; and
  - (E) Administer tests.

## **6 CAR § 130-509. Extended school year services.**

### **(a) General.**

(1) Each LEA and other public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with subdivision (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with 34 C.F.R. §§ 300.320 – 300.324, that the services are necessary for the provision of FAPE to the child.



(3) In implementing the requirements of this part, the LEA or other public agency may not:

(A) Limit extended school year services to particular categories of disabilities; or

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

(b) **Definition.** As used in this part, the term “extended school year services” means special education and related services that:

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

(A) Beyond the normal school year of the LEA or other public agency;

(B) In accordance with the child’s IEP; and

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

(2)(A) Meet the standards of the SEA.

(B) See 6 CAR § 130-1901 et seq.

**6 CAR § 130-510. FAPE requirements for students with disabilities in adult prisons.**

(a) Except as provided in 34 C.F.R. § 300.102, the obligation to make FAPE available to all children with disabilities does not apply with respect to students aged eighteen (18) to twenty-one (21) years to the extent that state law does not require that special education and related services under Part B of the Individuals with Disabilities Education Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility:

(1) Were not actually identified as being a child with a disability under 34 C.F.R. § 300.8; and

(2) Did not have an IEP under Part B of the Individuals with Disabilities Education Act.

(b) The exception in subsection (a) of this section does not apply to the children with disabilities, aged eighteen (18) through twenty-one (21), who:

(1) Had been identified as a child with a disability under 34 C.F.R. § 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(2) Did not have an IEP in their last education setting, but who had actually been identified as a child with a disability under 34 C.F.R. § 300.8.

(c) **Requirements that do not apply.** The following requirements do not apply to children with disabilities who are convicted as adults under Arkansas state law and are incarcerated in adult prisons:

(1) The requirements relating to participation of children with disabilities in general assessments found in Section 612(a)(16) of the Individuals with Disabilities Education Act and 34 C.F.R. § 300.320(a)(6); and

(2) The requirements in 34 C.F.R. § 300.320(b) relating to transition planning and transition services, with respect to the children whose eligibility under Part B of Individuals with Disabilities Education 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.

(d) **Modifications of IEP or placement.**

(1) Subject to subdivision (d)(2) of this section, the IEP team of a child with a disability who is convicted as an adult under Arkansas state law and incarcerated in an adult prison may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements of 34 C.F.R. §§ 300.320 and 300.112, and 6 CAR § 130-802(a) and 6 CAR § 130-808(a) relating to IEPs, and 34 C.F.R. § 300.114 and 6 CAR § 130-1301 relating to LRE, do not apply with respect to the modifications described in subdivision (d)(1) of this section.

**6 CAR § 130-511. Children with disabilities in charter schools.**

(a) Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b)(1) If the public charter school is an LEA, consistent with 34 C.F.R. § 300.28, that receives funding under 34 C.F.R. § 300.705, 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.

(2) See §27.00 of this part.

(c) **Charter schools that are public schools of the LEA.** In carrying out Part B of the Individuals with Disabilities Education Act and this part with respect to charter schools that are public schools of the LEA, the LEA must:

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

(2) Provide funds under Part B of the act to those charter schools:

(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

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

(d) If the public charter school is a school of an LEA that receives funding under 34 C.F.R. § 300.705 and includes other public schools, the LEA:

(1) Is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity; and

(2) Must meet the requirements of 34 C.F.R. § 300.209 and §27.00 of this part.

(e) If the public charter school is not an LEA receiving funding under 34 C.F.R. § 300.705 or a school that is part of an LEA receiving funding under 34 C.F.R. § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(f)(1) Subsection (e) of this section does not preclude the Department of Education from assigning initial responsibility for ensuring the requirements of this part are met to another entity.

(2) However, the department must maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 C.F.R. § 300.149 and §27.00 of this part.

**6 CAR § 130-512. FAPE for children suspended or expelled from school.**

(a) A child with a disability who is removed from the child's current placement pursuant to this section must:

(1) Continue to receive educational services, as provided in 34 C.F.R. § 300.101(a), so as to enable the child to:

(A) Continue to participate in the general education curriculum, although in another setting; and

(B) Progress toward meeting the goals set out in the child's IEP; and

(2) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(b) The services required by subsection (a) of this section may be provided in an interim alternative educational setting.

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

(d) After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if the current removal is for not more than ten (10) consecutive school days and is not a change of placement under 34 C.F.R. § 300.536, school personnel, in consultation with at least one (1) of the child's teachers, determine the extent to which services are needed, as provided in 34 C.F.R. § 300.101(a), so as to enable the child to:

(1) Continue to participate in the general education curriculum, although in another setting; and

(2) Progress toward meeting the goals set out in the child's IEP.

(e) If the removal is a change of placement under 34 C.F.R. § 300.536, the child's IEP team determines appropriate services under subsection (a) of this section.

**6 CAR § 130-513. Students with disabilities who have graduated from high school with a regular high school diploma.**

(a) The exception in this section does not apply to children who have graduated from high school but have not been awarded the regular high school diploma.

(b) Graduation from high school with a regular diploma constitutes a change of placement requiring written prior notice in accordance with 34 C.F.R. § 300.503 and 6 CAR § 130-904.

(c) As used in this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development (GED) credential.

**6 CAR § 130-514. Prohibition on mandatory medication.**

(a) **General.** The SEA must prohibit state and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in Section 202(c) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 812(c), for a child as a condition of:

(1) Attending school;

(2) Receiving an evaluation under 34 C.F.R. §§ 300.300 – 300.311; or

(3) Receiving services under Part B of the Individuals with Disabilities Education Act.

(b) **Rule of construction.** Nothing in this section shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding:

- (1) A student's academic and functional performance or behavior in the classroom or school; or
- (2) The need for evaluation for special education or related services under 34 C.F.R. § 300.111 (related to child find).

## **Subpart 6. Evaluation — Eligibility Criteria**

### **6 CAR § 130-601. Initial evaluations.**

Each public agency must conduct a full and individual evaluation, in accordance with 34 C.F.R. §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

### **6 CAR § 130-602. Request for initial evaluation.**

Consistent with the consent requirements in 34 C.F.R. § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

### **6 CAR § 130-603. Procedures for initial evaluation — General.**

(a) Evaluation procedures for initial evaluation of a child must:

(1) Be conducted within sixty (60) calendar days of receiving parental consent for the evaluation; and

(2) Consist of procedures to determine:

(A) If the child is a child with a disability under 34 C.F.R. § 300.8; and

(B) The educational needs of the child.

(b)(1) Evaluation is defined as the data gathering process where procedures are used selectively with an individual student.

(2) It does not include basic tests administered or procedures used with all students in a:

(A) School;

(B) Grade; or

(C) Class.

(c) **Exception.** The time frame described in subsection (a) of this section does not apply to a public agency if:

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

(2) A child enrolls in a school of another public agency after the relevant timeframe in subsection (a) of this section has begun and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 C.F.R. § 300.8.

(d) The exception in subsection (a) of this section applies only if the:

(1) Subsequent public agency is making sufficient progress to ensure a prompt completion of this evaluation; and

(2) Parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(e)(1) Screening for instructional purposes is not evaluation.

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

#### **6 CAR § 130-604. Evaluation procedures.**

(a) **Notice.** The public agency must provide notice to the parents of a child with a disability, in accordance with 34 C.F.R. § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Each public agency must ensure that:

(1) Assessments and other evaluation materials used to assess a child under Part B of the Individuals with Disabilities Education Act are:

(A) Selected and administered so as not to be discriminatory on a racial or cultural basis; and

(B) Provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on

what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(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;

(3) A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic 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 curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:

(A) Whether the child is a child with a disability under 34 C.F.R. § 300.8 and 6 CAR §§ 130-208 and 130-609; and

(B) The content of the child's IEP;

(4) Any standardized tests that are given to a child:

(A) Have been validated for the specific purpose for which they are used; and

(B) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests;

(5) 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;

(6) 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;

(7) 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);

- (8) No single procedure is used as the sole criterion for determining:
  - (A) Whether a child is a child with a disability; and
  - (B) An appropriate educational program for the child;
- (9) The child is assessed in all areas related to the suspected disability, including, if appropriate:

- (A) Health;
- (B) Vision;
- (C) Hearing;
- (D) Social and emotional status;
- (E) General intelligence;
- (F) Academic performance;
- (G) Communicative status; and
- (H) Motor abilities;

(10) In evaluating each child with a disability under 34 C.F.R. §§ 300.304 – 300.306 and this subpart, 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;

(11) 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; and

(12) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

#### **6 CAR § 130-605. Determination of needed evaluation data.**

(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 Individuals with

Disabilities Education Act, the IEP team and other qualified professionals, as appropriate, must:

- (1) Review existing evaluation data on the child, including:
    - (A) Evaluations and information provided by the parents of the child;
    - (B) Current classroom-based local or state assessments and classroom-based observations; and
    - (C) Observations by teachers and related services providers; and
  - (2) On the basis of that review and input from the child's parents, identify what additional data, if any, are needed to determine:
    - (A) Whether the child is a child with a disability, as defined in 34 C.F.R. § 300.8 and 6 CAR § 130-608, or, in case of a reevaluation of a child, whether the child continues to have such a disability;
    - (B) The present levels of academic achievement and related developmental needs and educational needs of the child;
    - (C) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    - (D) Whether any additions or modifications to the special education and related services are needed to enable the child to:
      - (i) Meet the measurable annual goals set out in the IEP of the child; and
      - (ii) Participate, as appropriate, in the general education curriculum.
- (b) **Conduct of review.** The group described in subsection (a) of this section may conduct its review without a meeting.
- (c) **Need for additional data.** The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under subsection (a) of this section.
- (d) **Requirements if additional information is not needed.**
- (1) If the determination under subsection (a) of this section is that no additional data are needed to determine whether the child continues to be a child with

a disability and to determine the child's educational needs, the public agency must notify the child's parents of:

(A) That determination and the reasons for it; and

(B) The right of the parents to request an assessment to determine:

(i) Whether, for purposes of services under this part, the child continues to be a child with a disability; and

(ii) The child's educational needs.

(2) The public agency is not required to conduct the assessment described in subdivision (d)(1)(B) of this section unless requested to do so by the child's parents.

**(e) Evaluations before change in eligibility.**

(1) Except as provided in subdivision (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with 34 C.F.R. §§ 300.304 – 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in subdivision (e)(1) of this section is not required before the termination of a child's eligibility under this part due to:

(A) Graduation from secondary school with a regular diploma; or

(B) Exceeding the age eligibility for FAPE under state law.

(3) For a child whose eligibility terminates under circumstances described in subdivision (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals.

**6 CAR § 130-606. Determination of eligibility.**

(a) Upon completing the administration of tests and other evaluation measures:

(1) Within thirty (30) calendar days, an evaluation/programming conference must be conducted;

(2) A group of qualified professionals and the parent of the child must determine:

(A) Whether the child is a child with a disability, as defined in 34 C.F.R. § 300.8, in accordance with 6 CAR § 130-609; and

(B) The educational need of the child; and

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

(b) **Special rule for eligibility determination.** A child must not be determined to be a child with a disability under this part:

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

(A) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in Section 1208(3) of the Every Student Succeeds Act);

(B) Lack of appropriate instruction in math; or

(C) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under 34 C.F.R. § 300.8(a).

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

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 34 C.F.R. § 300.8, and the educational needs of the child, each public agency must:

(A) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's:

(i) Physical condition;

(ii) Social or cultural background; and

(iii) Adaptive behavior; and

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

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with 34 C.F.R. §§ 300.320 – 300.324.

**6 CAR § 130-607. Additional procedures for evaluating children with specific learning disabilities.**

(a) **Additional team members.** The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in 34 C.F.R. § 300.8 and in 6 CAR § 130-208, must be made by the child's parents and a team of qualified professionals, which must include:

- (1) The child's regular teacher, or:
  - (A) If the child does not have a regular teacher, a general classroom teacher qualified to teach a child of his or her age; or
  - (B) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
- (2) At least one (1) person qualified to conduct individual diagnostic examinations of children, such as a:
  - (A) School psychology specialist;
  - (B) Speech-language pathologist; or
  - (C) Remedial reading teacher.

(b) **Criteria for determining the existence of a specific learning disability.**

(1) A public agency must use the state criteria adopted pursuant to 34 C.F.R. § 300.307(a) in determining whether a child has a specific learning disability.

(2) The group described in 34 C.F.R. § 300.306 may determine that a child has a specific learning disability, as defined in 34 C.F.R. § 300.8(c)(10), if:

- (A) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one (1) or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:
  - (i) Oral expression;
  - (ii) Listening comprehension;
  - (iii) Written expression;
  - (iv) Basic reading skill;

- (v) Reading fluency skills;
- (vi) Reading comprehension;
- (vii) Mathematics calculation; or
- (viii) Mathematics problem solving; and

(B) The child:

(i) Does not make sufficient progress to meet age or state-approved grade-level standards in one (1) or more of the areas identified in subdivision (b)(2)(A) of this section, when using a process based on the child's response to scientific, research-based intervention; or

(ii) Exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 C.F.R. §§ 300.304 and 300.305.

(3) The group may not identify a child as having a specific learning disability under 34 C.F.R. § 300.309(a)(1) and (2) and subdivision (b)(2) of this section if the findings are primarily the result of:

- (A) A visual, hearing, or motor disability;
- (B) An intellectual disability;
- (C) Emotional disturbance;
- (D) Cultural factors;
- (E) Environmental or economic disadvantage; or
- (F) Limited English proficiency.

(4) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 34 C.F.R. §§ 300.304 – 300.306:

(A) Data that demonstrates that prior to or as a part of the referral process, the child was provided with appropriate instruction in regular education settings, delivered by qualified personnel; and

(B) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) **Additional requirements regarding parental consent for SLD evaluation.** The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the time frames described in 34 C.F.R. §§ 300.301 and 300.303 and 6 CAR § 130-603(a), unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 34 C.F.R. § 300.306(a)(1) and 6 CAR § 130-805 and 6 CAR § 130-606(a):

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 34 C.F.R. § 300.309(b)(1) and (2) and subsection (b)(4) of this section; and

(2) Whenever a child is referred for an evaluation.

(d) **Observation.**

(1) The public agency must ensure the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(2) The group described in 34 C.F.R. § 300.306(a)(1) and 6 CAR § 130-805 and 6 CAR § 130-606(a), in determining whether a child has a specific learning disability, must decide to:

(A) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(B) Have at least one (1) member of the team described in 34 C.F.R. § 300.306(a)(1), other than the child's regular classroom teacher, conduct an observation of the child's academic performance in the regular classroom after:

(i) The child has been referred for an evaluation; and

(ii) Parental consent consistent with 34 C.F.R. § 300.300(a) is obtained.

(3) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

**(e) Specific documentation for the eligibility determination.**

(1) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 34 C.F.R. § 300.306(a)(2) and § 6.05.1.3 of this part, must contain a statement of:

(A) Whether the child has a specific learning disability;

(B) The basis for making the determination, including an assurance that the determination has been made in accordance with 34 C.F.R. § 300.306(c)(1);

(C) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(D) The educationally relevant medical findings, if any;

(E) Whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 C.F.R. § 300.309(a)(1), and the child:

(i) Does not make sufficient progress to meet age or state-approved grade-level standards consistent with 34 C.F.R. § 300.309(a)(2)(i); or

(ii) Exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards, or intellectual development consistent with 34 C.F.R. § 300.309(a)(2)(i);

(F) The determination of the group concerning the effects of a visual, hearing, or motor disability; an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(G) If the child has participated in a process that assesses the child's response to scientific, research-based intervention including the instructional strategies used and the student-centered data collected, and the documentation that the child's parents were notified about:



(i) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(ii) Strategies for increasing the child's rate of learning; and

(iii) The parents' right to request an evaluation.

(2)(A) Each group member must certify in writing whether the report reflects his or her conclusion.

(B) If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions.

**6 CAR § 130-608. Additional procedures for evaluating children with emotional disturbance.**

(a)(1) For students suspected of having emotional disturbance, a clinical diagnosis must be made by either a licensed psychologist or psychiatrist.

(2) A clinical diagnosis alone does not qualify a student to receive special education services.

(b)(1) The evaluation committee shall determine the adverse effect on educational performance of the emotional disturbance and the corresponding need for special education and related services.

(2) Decisions related to the need for special education services are the responsibility of the evaluation committee.

**6 CAR § 130-609. Eligibility criteria.**

The terms used to establish eligibility criteria are defined as follows:

**(1) Autism.**

(A) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance.

(B) Other characteristics often associated with autism are:

(i) Engagement in repetitive activities and stereotyped movements;

(ii) Resistance to environmental change or change in daily routines;  
and

(iii) Unusual responses to sensory experiences.

(C)(i) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in 34 C.F.R. § 300.8(c)(4) and at subdivision (3) of this section.

(ii) A child who manifests the characteristics of autism after age three (3) could be diagnosed as having autism if the criteria in this part are satisfied;

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

(3) **Emotional disturbance.**

(A) "Emotional disturbance" means a condition exhibiting one (1) 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:

(i) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

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

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(B) The term includes schizophrenia.

(C) The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under subdivision (3)(A) of this section and 34 C.F.R. § 300.8(c)(4);

(4) **Hearing impairment including deafness.**

(A) "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 educational performance.

(B) "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.

**(C) Audiological indicators.**

(i)(a) An average pure-tone hearing loss in the speech range (five hundred to two thousand hertz (500 – 2,000 Hz)) of twenty decibels (20 dB) or greater in the better ear.

(b) A child with a fluctuating hearing impairment, such as one resulting from chronic otitis media, is classified as hearing impaired.

(ii) An average high frequency, pure-tone hearing loss of thirty-five decibels (35 dB) or greater in the better ear at two (2) or more of the following frequencies:

(a) Two thousand hertz (2,000 Hz);

(b) Three thousand hertz (3,000 Hz);

(c) Four thousand hertz (4,000 Hz); and

(d) Six thousand hertz (6,000 Hz).

(iii) A permanent unilateral hearing loss of thirty-five decibels (35 dB) or greater in the speech range (pure-tone average of five hundred to two thousand hertz (500 – 2,000 Hz)).

(iv) A diagnosis of auditory neuropathy;

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

**(6) Multiple disabilities.**

(A) "Multiple disabilities" means concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the

combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one (1) of the impairments.

(B) "Multiple disabilities" does not include deaf-blindness;

**(7) Orthopedic impairment.**

(A) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance.

(B) The term includes impairments:

(i) Caused by congenital anomaly;

(ii) Caused by disease (e.g., poliomyelitis, bone tuberculosis); and

(iii) From other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures);

**(8) Other health impairment.** "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:

(A) Is due to chronic or acute health problems such as:

(i) Asthma;

(ii) Attention deficit disorder or attention deficit hyperactivity disorder;

(iii) Diabetes;

(iv) Epilepsy;

(v) A heart condition;

(vi) Hemophilia;

(vii) Lead poisoning;

(viii) Leukemia;

(ix) Nephritis;

(x) Rheumatic fever;

(xi) Sickle cell anemia; and

(xii) Tourette syndrome; and

(B) Adversely affects a child's educational performance;

**(9) Specific learning disability.**

(A) **General.** The term means a disorder in one (1) 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:

- (i) Perceptual disabilities;
- (ii) Brain injury;
- (iii) Minimal brain dysfunction;
- (iv) Dyslexia; and
- (v) Developmental aphasia.

(B) **Disorders not included.** "Specific learning disability" does not include learning problems that are primarily the result of:

- (i) Visual, hearing, or motor disabilities;
- (ii) Intellectual disability;
- (iii) Emotional disturbance; or
- (iv) Environmental, cultural, or economic disadvantage;

(10) **Speech or language impairment.** "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;

(11) **Traumatic brain injury.**

(A) "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.

(B) "Traumatic brain injury" applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as:

- (i) Cognition;
- (ii) Language;
- (iii) Memory;
- (iv) Attention;

- (v) Reasoning;
- (vi) Abstract thinking;
- (vii) Judgment;
- (viii) Problem-solving;
- (ix) Sensory, perceptual, and motor abilities;
- (x) Psychosocial behavior;
- (xi) Physical functions;
- (xii) Information processing; and
- (xiii) Speech.

(C) "Traumatic brain injury" does not apply to brain injuries:

- (i) That are congenital or degenerative; or
- (ii) Induced by birth trauma; and

**(12) Visual impairment.**

(A)(i) "Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance.

(ii) The term includes both partial sight and blindness.

(B)(i) Students with partial sight are those whose vision, although impaired, is still the primary channel of learning and, with adjustments, are able to perform the visual tasks required in the usual school situation.

(ii) Generally, their visual acuity with correction is 20/70 or less.

(C) Students with blindness are those with no vision or with little potential for developing vision as a primary channel for learning and, therefore, must rely upon tactile and auditory sense to obtain information.

**Subpart 7. Reevaluation**

**6 CAR § 130-701. General.**

(a)(1) Each public agency must ensure that:

(A) The IEP of a child with a disability is reviewed in accordance with 34 C.F.R. §§ 300.320 – 300.324 and 6 CAR § 130-801 et seq.; and

(B) A reevaluation of each child, in accordance with 34 C.F.R. §§ 300.304 – 300.311 and 6 CAR § 130-601 et seq., and 6 CAR § 130-701 et seq., is conducted if the:

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

(ii) Child's parent or teacher requests a reevaluation.

(2) In accordance with 34 C.F.R. § 300.303(b) the reevaluation must occur at least once every three (3) years unless the parent and the public agency agree that a reevaluation is unnecessary.

(3) A reevaluation may occur not more than once a year unless the parent and the public agency agree otherwise.

(b) Subject to 34 C.F.R. § 300.300(c)(2) and 6 CAR § 130-906, informed parent consent must be obtained in accordance with 34 C.F.R. § 300.300(a)(1) before conducting any reevaluation of a child with a disability.

(c) Parental consent is not required before reviewing existing data as part of an evaluation or a reevaluation.

#### **6 CAR § 130-702. Refusal.**

(a) If the parent of a child with a disability refuses to consent to the reevaluation, the public agency may, but is not required to, pursue that evaluation by using the consent override procedures under 6 CAR § 130-1001 et seq., and 34 C.F.R. §§ 300.507 – 300.516, if appropriate, except to the extent inconsistent with other state laws relating to parental consent.

(b) The public agency does not violate its obligation under 34 C.F.R. §§ 300.111 and 300.301 – 300.311 if it declines to pursue the evaluation or reevaluation.

#### **6 CAR § 130-703. Failure to respond to request for reevaluation.**

(a) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that:

- (1) It has made reasonable efforts to obtain that consent; and
- (2) The child's parent has failed to respond.

(b) To meet the reasonable efforts requirement in subsection (a) of this section, the public agency must use procedures consistent with those in 6 CAR § 130-806(d) and 34 C.F.R. § 300.322(a) and (c).

#### **6 CAR § 130-704. Review of existing evaluation data.**

As part of any reevaluation under this part, the IEP team and other qualified professionals, as appropriate, must:

- (1) Review existing evaluation data on the child, including:
  - (A) Evaluations and information provided by the parents of the child;
  - (B) Current classroom-based local or state assessments and classroom-based observations; and
  - (C) Observations by teachers and related service providers;
- (2) On the basis of that review and input from the child's parents, identify what additional data, if any, are needed to determine:
  - (A) Whether the child continues to have a disability as described in 34 C.F.R. § 300.8 and 6 CAR §§ 130-208 and 130-609;
  - (B) Whether the child continues to need special education and related services;
  - (C) The present levels of academic achievement and related developmental needs of the child; and
  - (D) Whether any additions or modifications to the special education and related services are needed to enable the child to:
    - (i) Meet the measurable annual goals set out in the IEP of the child; and
    - (ii) Participate, as appropriate, in the general curriculum; and
- (3) The results of any reevaluations are addressed by the child's IEP team in revising the child's IEP, as appropriate.



### **6 CAR § 130-705. Change in eligibility.**

(a) Except as provided in 34 C.F.R. § 300.305(e)(2), a public agency must evaluate a child with a disability in accordance with 34 C.F.R. §§ 300.304 – 300.311 before determining that the child is no longer a child with a disability.

(b) The evaluation described in 34 C.F.R. § 300.305(e)(1) is not required before the termination of a child's eligibility under 34 C.F.R. § 300.305(e)(1) due to:

- (1) Graduation from secondary school with a regular diploma; or
- (2) Exceeding the age eligibility for free appropriate public education under state law.

(c) For a child whose eligibility terminates under circumstances described in 34 C.F.R. § 300.305(e)(2), a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

## **Subpart 8. Individualized Education Program (IEP)**

### **6 CAR § 130-801. Responsibility of public agencies for IEPs.**

Each public agency shall ensure that:

(1) Except as provided in 34 C.F.R. §§ 300.320 – 300.324 and this subpart, an IEP is developed and implemented for each child with a disability served by that agency; and

(2) An IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the public agency.

### **6 CAR § 130-802. Definitions related to IEPs.**

(a) **Individualized education program.** As used in this part, the term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. §§ 300.320 – 300.324.

(b) **Participating agency.** As used in 34 C.F.R. § 300.324(c)(1) and 6 CAR § 130-809, “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.

**6 CAR § 130-803. When IEPs must be in effect.**

(a) **General.** At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in 34 C.F.R. § 300.320.

(b) **Implementation of IEPs.** Each public agency shall ensure that:

(1) An IEP:

(A) Is in effect before special education and related services are provided to an eligible child under this part; and

(B)(i) As soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.

(ii) Exceptions to this would be when the meetings occur during the summer or other vacation period, or when there are circumstances which require a short delay, such as working out transportation arrangements.

(iii) However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible, but not later than thirty (30) calendar days following the IEP meeting;

(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

(3) Each teacher and provider described in subdivision (b)(2) of this section is informed of:

(A) His or her specific responsibilities related to implementing the child’s IEP; and

(B) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the child's IEP.

(c) **IEPs for children who transfer public agencies in the same state.** If a child with a disability (who had an IEP that was in effect in a previous public agency in the same state) transfers to a new public agency in the same state and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous public agency, until the new public agency either:

- (1) Adopts the child's IEP from the previous public agency; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in 34 C.F.R. §§ 300.320 – 300.324.

(d) **IEPs for children who transfer from another state.** If a child with a disability (who had an IEP that was in effect in a previous public agency in another state) transfers to a public agency in a new state and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous public agency, until the new public agency:

- (1) Conducts an evaluation pursuant to 34 C.F.R. §§ 300.304 – 300.306 (if determined to be necessary by the new public agency); and
- (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 C.F.R. §§ 300.320 – 300.324.

(e) **Transmittal of records.** To facilitate the transition for a child described in subsections (c) and (d) of this section:

- (1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 C.F.R. § 99.31(a)(2); and

(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

**6 CAR § 130-804. IEP meetings.**

(a) **General.** Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability.

(b) **Initial IEPs — Provision for services.** Each public agency must ensure that:

(1) As set forth in 6 CAR § 130-603(a), procedures for initial evaluation of a child must be completed within sixty (60) calendar days of the written parental consent to evaluate; and

(2) Within thirty (30) calendar days of completing the administration of tests and other evaluation materials, an evaluation/programming conference must be conducted by a group of qualified professionals and the parent of the child, as set out in 6 CAR § 130-605(a)(2) and 34 C.F.R. § 300.321 for the purpose of:

(A) Determining the:

- (i) Student's eligibility for special education and related services; and
- (ii) Educational needs of the child; and

(B) If appropriate, developing an IEP for the child.

(c) **Review and revision of IEPs.** Each public agency must ensure that the IEP team:

(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

(2) Revises the IEP as appropriate to address:

(A) Any lack of expected progress toward the annual goals described in 34 C.F.R. § 300.320(a)(2) and 6 CAR § 130-808(a), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under 34 C.F.R. § 300.303 and 6 CAR § 130-701;

(C) Information about the child provided to, or by, the parents, as described in 34 C.F.R. § 300.503(a)(2) and 6 CAR § 130-605(a);

(D) The child's anticipated needs; or

(E) Other matters.

### **6 CAR § 130-805. IEP team.**

(a) **General.** The public agency must ensure that the IEP team for each child with a disability includes:

(1) The parents of the child;

(2) Not less than a regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one (1) special education teacher of the child, or where appropriate, not less than one (1) special education provider of the child;

(4) A representative of the public agency who is:

(A) Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(B) Knowledgeable about the general education curriculum; and

(C) Knowledgeable about the availability of resources of the public agency;

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subdivisions (a)(2) – (a)(6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

### **(b) Transition services participants.**

(1) Under subdivision (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the:

(A) Consideration of the postsecondary goals for the child; and

(B) Transition services needed to assist the child in reaching those goals under 34 C.F.R. § 300.320(b).

(2) If the child does not attend the IEP team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority in implementing the requirements of 34 C.F.R. § 300.3-321(b)(1) and 6 CAR § 130-808(b), the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(4) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with 34 C.F.R. § 300.320(b), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(c) **Determination of knowledge and special expertise.** The determination of the knowledge or special expertise of any individual described in subdivision (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

(d) **Designating a public agency representative.** A public agency may designate a public agency member of the IEP team to also serve as the agency representative, if the criteria in subdivision (a)(4) of this section are satisfied.

(e) **IEP team attendance.**

(1) A member of the IEP team described in subdivisions (a)(2) – (a)(5) of this section is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP team described in subdivision (e)(1) of this section may be excused from attending an IEP team meeting, in whole or in part, when the

meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the:

- (A) Parent, in writing, and the public agency consent to the excusal; and
- (B) Member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

#### **6 CAR § 130-806. Parent participation.**

(a) **Public agency responsibility.** Each public agency must take steps to ensure that one (1) 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:

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.

(b) **Information provided to parents.**

- (1) The notice required under subdivision (a)(1) of this section must:
  - (A) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
  - (B) Inform the parents of the provisions in 34 C.F.R. § 300.321(a)(6) and (c) and 6 CAR § 130-805(a)(6) and 6 CAR § 130-805(c) relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.
- (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger, if determined appropriate by the IEP team, the notice also must:
  - (A) Indicate that a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child in accordance with 34 C.F.R. § 300.320(b) and 6 CAR § 130-808(b);
  - (B) Indicate that the agency will invite the student; and
  - (C) Identify any other agency that will be invited to send a representative.

(c) **Other methods to ensure parent participation.** If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls consistent with 34 C.F.R. § 300.328 (related to alternative means of meeting participation).

(d) **Conducting an IEP team meeting without a parent in attendance.**

(1) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend.

(2) In this case the public agency must keep a record of the attempts to arrange a mutually agreed on time and place, such as:

(A) Detailed records of telephone calls made or attempted and the results of those calls;

(B) Copies of correspondence sent to the parents and any responses received; and

(C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) **Use of interpreters or other action, as appropriate.** The public agency must take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) **Parent copy of child's IEP.** The public agency must give the parent a copy of the child's IEP at no cost to the parent.

**6 CAR § 130-807. Development, review, and revision of IEP.**

(a) **Development of IEP.**

(1) **General.** In developing each child's IEP, the IEP team must consider:

(A) The strengths of the child and the concerns of the parents for enhancing the education of their child;

(B) The results of the initial or most recent evaluation of the child;

(C) The academic, developmental, and functional needs of the child; and



(D) As appropriate, the results of the child's performance on any general state or district-wide assessment programs.

(2) **Consideration of special factors.** The IEP team must:

(A)(i) In the case of a child whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

(ii) Such consideration may include the need to conduct a functional behavioral assessment of the child and/or develop a behavior intervention plan to address identified behavioral needs of the child.

(iii) See 6 CAR § 130-1101 et seq.;

(B) 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;

(C) 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;

(D) 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

(E) Consider whether the child needs assistive technology devices and services.

(3) **Additional FAPE considerations.** The IEP team must consider whether the child:

(A)(i) Has available to him or her the variety of educational programs and services available to nondisabled children, including:

- (a)* Art;
- (b)* Music;
- (c)* Industrial arts;
- (d)* Consumer and homemaking education; and
- (e)* Vocational education.

(ii) This list of program options is not exhaustive and could include any program or activity in which nondisabled children participate; and

(B)(i) Is being afforded an equal opportunity for participation in nonacademic and extracurricular services and activities.

(ii) Nonacademic and extracurricular services and activities may include:

- (a)* Counseling services;
- (b)* Athletics;
- (c)* Transportation;
- (d)* Health services;
- (e)* Recreational activities;
- (f)* Special interest groups or clubs sponsored by the public

agency; and

- (g)* Assistance in making outside employment available.

#### **(4) Agreement.**

(A) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(B) If changes are made to the child's IEP in accordance with subdivision (a)(4)(A) of this section, the public agency must ensure that the child's IEP team is informed of those changes.

(5) **Consolidation of IEP team meetings.** To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

(6) **Amendments.**

(A) Changes to the IEP may be made either:

(i) By the entire IEP team at an IEP team meeting; or

(ii) As provided in subdivision (a)(4)(A) of this section, by amending the IEP rather than by redrafting the entire IEP.

(B) Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(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 subsection (a) of this section.

(c) **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 IEP of the child, including assisting in the determination of:

(1) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(2) Supplementary aids and services, program modifications, and support for school personnel consistent with 34 C.F.R. § 300.320(a)(4) and 6 CAR § 130-808(a)(2)(B).

(d) **Construction.** Nothing in this part shall be construed to require:

(1) The IEP team to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP; or

(2) That additional information be included in a child's IEP beyond what is explicitly required in Section 614 of the Individuals with Disabilities Education Act.

**6 CAR § 130-808. Content of IEP.**

(a) **General.** The IEP for each child with a disability must include:

(1) A statement of the child's present levels of academic achievement and functional performance, including:

(A) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or meet each of the child's other educational needs that result from the child's disability; or

(B) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2)(A) A statement of measurable annual goals, including academic and functional goals designed to:

(i) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(ii) Meet each of the child's other educational needs that result from the child's disability;

(B) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to:

(A) Advance appropriately toward attaining the annual goals;

(B) Be involved and make progress in the general curriculum in accordance with subsection (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and

(C) Be educated and participate with other children with disabilities and nondisabled children in the activities described in this part;

(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 subsection (a)(3) of this section;

(5)(A) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of a child on state and district-wide assessments consistent with Section 612(a)(16) of the Individuals with Disabilities Education Act; and

(B) If the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why the:

(i) Child cannot participate in the regular assessment; and

(ii) Particular alternate assessment selected is appropriate for the child;

(6) The projected date for the beginning of the services and modifications described in subsection (a)(2)(B) of this section, and the anticipated frequency, location, and duration of those services and modifications; and

(7) A description of:

(A) How the child's progress toward meeting the annual goals described in subsection (a)(2)(A) of this section will be measured; and

(B) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

(b) **Transition services.** Beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger, if determined appropriate by the IEP team and updated annually thereafter, the IEP must include:

(1) Appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

**(c) Transfer of rights at age of majority.**

(1) In Arkansas, beginning not later than one (1) year before the child reaches the age of majority under state law (age eighteen (18)), the child's IEP must include a statement that the child has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act and 6 CAR § 130-901 et seq., if any, that will transfer to the child on reaching the age of majority, consistent with 34 C.F.R. § 300.520 and 6 CAR § 130-907.

(2)(A) The LEA must use the procedures established by the state for appointing the parent of a child with a disability, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the act if, under state law, a child who has reached the age of majority, but has not been determined not to be incompetent, can be determined to have the ability to provide informed consent with respect to the child's educational program.

(B) In Arkansas, state statutes at Arkansas Code § 28-65-101 et seq., and § 28-65-202 et seq., provide a mechanism whereby any individual may file a petition for the appointment of himself or herself or some other qualified person as guardian of an incapacitated person.

(C) It is appropriate for the LEA to inform the parent of a student who may be determined to not have the ability to provide informed consent with respect to his or her education program to seek to obtain such legal guardianship from an appropriate circuit or juvenile court, dependent upon the age and status of the youth or young adult in question.

**(d) Students with disabilities convicted as adults and incarcerated in adult prisons.**

(1) Special rules concerning the content of IEPs for children with disabilities convicted as adults and incarcerated in adult prisons include requirements that do not apply to these populations, as follows:

(A) The requirements contained in Section 612(a)(16) of the act and 34 C.F.R. § 300.320(a)(6) and subdivisions (a)(4) and (a)(5) of this section, relating to the participation of children with disabilities in general assessments; and

(B) The requirements in 34 C.F.R. § 300.320(b) and subsection (b) of this section relating to transition planning and transition services with respect to children whose eligibility under Part B of the Individuals with Disabilities Education 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.

**(2) Modifications of IEP or placement.**

(A) Subject to subdivision (d)(2)(B) of this section, the IEP team of a child with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(B) The requirements of 34 C.F.R. § 300.320, 6 CAR § 130-802(a), and subsection (a) of this section relating to IEPs and 34 C.F.R. § 300.112 and 6 CAR § 130-1301(a) relating to LRE do not apply with respect to the modifications described in subdivision (d)(2)(A) of this section.

**6 CAR § 130-809. Agency responsibilities for transition services.**

(a) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with 34 C.F.R. § 300.320(b) and 6 CAR § 130-808(b)(1), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(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 children with disabilities who meet the eligibility criteria of that agency.

**6 CAR § 130-810. Private school placements by public agencies.**

**(a) Developing IEPs.**

(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with 34 C.F.R. §§ 300.320 and 300.324 and 6 CAR §§ 130-807 and 130-808.

(2) The agency must ensure that a representative of the private school or facility attends the meeting.

(3) If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

**(b) Reviewing and revising IEPs.**

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative:

(A) Are involved in any decisions about the child's IEP; and

(B) Agree to any proposed changes in the IEP before those changes are implemented.

**(c) Responsibility.** Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

**Subpart 9. Due Process**

**6 CAR § 130-901. General responsibility of public agencies.**

It shall be the responsibility of each public agency providing special education and related services to establish, maintain, and implement procedural safeguards that meet the requirements of this part and 34 C.F.R. §§ 300.500 – 300.536.



**6 CAR § 130-902. Opportunity to examine records — Parent participation in meetings.**

(a) **Opportunity to examine records.** The parents of a child with a disability must be afforded, in accordance with the procedures of 6 CAR §§ 130-1601 – 130-1609 and 34 C.F.R. §§ 300.613 – 300.621, an opportunity to inspect and review all education records with respect to the:

- (1) Identification, evaluation, and educational placement of the child; and
- (2) Provision of FAPE to the child.

(b) **Parent participation in meetings.**

(1) The parents of a child with a disability must have any opportunity to participate in meetings with respect to the:

- (A) Identification, evaluation, and educational placement of the child; and
- (B) Provision of FAPE to the child.

(2) Each public agency shall provide notice consistent with 6 CAR § 130-806(a)(1) and (b)(1) and 34 C.F.R. § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in subdivision (b)(1) of this section.

(3) A meeting does not include:

(A) Informal or unscheduled conversations involving public agency personnel and conversations on issues such as:

- (i) Teaching methodology;
- (ii) Lesson plans; or
- (iii) Coordination of service provision; or

(B) Preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) **Parent involvement in placement decisions.**

(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of subdivision (c)(1) of this section, the public agency must use procedures consistent with the procedures described in 6 CAR § 130-806(a)(1) and (b)(1) and 34 C.F.R. § 300.322(a) – (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including:

(A) Individual or conference telephone calls; or

(B) Video conferencing.

(4)(A) A placement decision may be made by a group without the involvement of a parent if the public agency is unable to obtain the parent's participation in the decision.

(B) In this case, the public agency must have a record of its attempt to ensure their involvement.

### **6 CAR § 130-903. Independent educational evaluation.**

#### **(a) General.**

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to subsections (b) – (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation:

(A) Information about where an independent educational evaluation may be obtained; and

(B) The agency criteria applicable for independent educational evaluations as set forth in subsection (e) of this section.

(3) For the purposes of this subpart:

(A) "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

(B) "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 6 CAR § 130-502 and 34 C.F.R. § 300.103.

**(b) Parent right to evaluation at public expense.**

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in subdivisions (b)(2) – (b)(4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either:

(A) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(B) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under 6 CAR § 130-1001 et seq., and 34 C.F.R. §§ 300.507 – 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4)(A) 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.

(B) 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 filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

**(c) Parent-initiated evaluations.** If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation:

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under this part regarding that child.

(d) **Requests for evaluations by hearing officers.** If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) **Agency criteria.**

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in subdivision (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

**6 CAR § 130-904. Prior notice by public agency — Content of notice.**

(a) **Notice.**

(1) Written notice that meets the requirements of subsection (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency:

(A) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(B) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under subdivision (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under 6 CAR § 130-906 and 34 C.F.R. § 300.300, the agency may give notice at the same time it requests parent consent.

(b) **Content of notice.** The notice required under subsection (a) of this section must include:

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) A description of other options that the IEP team considered and the reasons why those options were rejected;
- (4) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (5) A description of other factors that are relevant to the agency's proposal or refusal;
- (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
- (7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(c) **Notice in understandable language.**

- (1) The notice required under subsection (a) of this section must be:
  - (A) Written in language understandable to the general public; and
  - (B) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure that:
  - (A) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
  - (B) The parent understands the content of the notice; and
  - (C) There is written evidence that the requirements in subdivisions (c)(2)(A) and (c)(2)(B) of this section have been met.

**6 CAR § 130-905. Procedural safeguards notice.**

(a) **General.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one (1) time a school year, except that a copy also must be given to the parents, at a minimum:

- (1) Upon initial referral or parent request for evaluation;
- (2) Upon receipt of the first state complaint under 34 C.F.R. §§ 300.151 – 300.153 and upon receipt of the first due process complaint under 34 C.F.R. § 300.507 in a school year;
- (3) In accordance with the discipline procedures in 34 C.F.R. § 300.530(h);
- and
- (4) Upon request by a parent.

(b) **Internet website.** A public agency may place a current copy of the procedural safeguards notice on its internet website if a website exists.

(c) **Contents.** The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under 6 CAR § 130-901 et seq., 6 CAR § 130-1301 et seq., and 6 CAR § 130-1601 et seq., and 34 C.F.R. §§ 300.148, 300.151 – 300.153, 300.300, 300.502 – 300.503, 300.505 – 300.518, 300.520, 300.530 – 300.536, and 300.610 – 300.625 relating to:

- (1) Independent educational evaluation;
- (2) Prior written notice;
- (3) Parental consent;
- (4) Access to educational records;
- (5) Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including the:
  - (A) Time period in which to file a complaint;
  - (B) Opportunity for the agency to resolve the complaint; and
  - (C) Difference between the due process complaint and the state complaint procedures, including:
    - (i) The jurisdiction of each procedure;
    - (ii) What issues may be raised;
    - (iii) Filing and decisional timelines; and

- (iv) Relevant procedures;
- (6) The child's placement during the pendency of any due process proceedings;
- (7) Procedures for students who are subject to placement in an interim alternative educational setting;
- (8) Requirements for unilateral placement by parents of children in private schools at public expense;
- (9) The availability of mediation under 34 C.F.R. § 300.506 and 6 CAR § 130-1001 et seq.;
- (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (11) Civil actions, including the time period in which to file those actions; and
- (12) Attorneys' fees.

(d) **Notice in understandable language.** The notice required under subsection (a) of this section must meet the requirements of 6 CAR § 130-904(c) and 34 C.F.R. § 300.503(c).

(e) **Electronic mail.** A parent of a child with a disability may elect to receive notices required by 34 C.F.R. §§ 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

## **6 CAR § 130-906. Parental consent.**

### **(a) Parental consent for initial evaluation.**

(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 C.F.R. § 300.8 must, after providing notice consistent with 34 C.F.R. §§ 300.503 and 300.504, obtain informed consent, consistent with 34 C.F.R. § 300.9, from the parent of the child before conducting the evaluation.

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

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

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

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

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

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

(b)(1) If the parent of a child with a disability enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by using the due process procedures under 6 CAR § 130-1001 et seq., and 34 C.F.R. §§ 300.507 – 300.516, or the mediation procedures under 6 CAR § 130-1001 et seq., and 34 C.F.R. § 300.506 if appropriate, except to the extent inconsistent with state law relating to parental consent.

(2) The public agency does not violate its obligation under 34 C.F.R. §§ 300.111 and 300.301 – 300.311 if it declines to pursue the evaluation.

**(c) Parental consent for services.**

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.



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

(3) If the parent of a child fails to respond or refuses to consent to services under this section, the public agency may not use mediation procedures under 34 C.F.R. § 300.506 or due process procedures under 34 C.F.R. §§ 300.507 – 300.516 in order to obtain agreement or a ruling that the services may be provided to the child.

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

(A) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(B) Is not required to convene an IEP team meeting or develop an IEP under 34 C.F.R. §§ 300.320 and 300.234 for the child for the special education and related services for which the public agency requests such consent.

**(d) Failure to respond to request for reevaluation.**

(1) Each public agency must obtain informed parental consent, in accordance with 34 C.F.R. § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(2) If the parent refuses to consent to the reevaluation, the public agency may, but it is not required to, pursue the reevaluation by using the consent override procedures described in 34 C.F.R. § 300.300(a)(3).

(3) The public agency does not violate its obligations under 34 C.F.R. §§ 300.111 and 300.301 – 300.311 if it declines to pursue the evaluation or reevaluation.

(4) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that:

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

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

(5) To meet the reasonable efforts requirement in subdivision (c)(2) of this section, the public agency must document its attempts to obtain parental consent using the procedures in 34 C.F.R. § 300.322(d).

(e) **Other consent requirements.**

(1) Parental consent is not required before:

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

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

(2) **Limitation.** A public agency may not use a parent's refusal to consent to one (1) service or activity under subsection (a) 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.

(3) **Parent of a child who is home schooled or placed in a private school by the parents.**

(A) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described in this section.

(B) The public agency is not required to consider the child as eligible for services under 34 C.F.R. §§ 300.132 – 300.144.

(f) **Students with disabilities who are covered by public benefits or insurance.**

(1) **Consent.** Prior to accessing a student's or parent's public benefits or insurance for the first time, and after providing notification to the student's parents consistent with subdivision (f)(2) of this section, the public agency must obtain written consent from the parent that:

(A) Meets the confidentiality requirements of 34 C.F.R. §§ 99.30 and 300.622, which require that the consent specify the:

(i) Personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student);

(ii) Purpose of the disclosure (e.g., billing for special education services); and

(iii) Agency to which the disclosure may be made (e.g., the state's public benefits or insurance program, such as Medicaid); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for special education services provided by the public agency.

(2) **Notification.** Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the public agency must provide the student's parents with written notification, consistent with the requirements of 6 CAR § 130-904(c) and 34 C.F.R. § 300.503(c), that includes:

(A) A statement of the parental consent provisions in subdivision (f)(1) of this section;

(B) A statement that the parents are not required to sign up for or enroll in public benefits or insurance programs in order for their child to receive a free appropriate public education under Part B of the Individuals with Disabilities Education Act;

(C) A statement that the parents are not required 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;

(D) A statement that the public agency may not use the student's benefits under a public benefits or insurance program if that use would:

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

(ii) Result in the family paying for services that:

(a) Would otherwise be covered by the public benefits or insurance program; and

(b) Are required for the student outside of the time the student is in school;

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

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

(E) A statement that the parents have the right, pursuant to 34 C.F.R. pts. 99 and 300, to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) at any time; and

(F) A statement that the withdrawal of consent or refusal to provide consent under 34 C.F.R. pts. 99 and 300 to disclose personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

**(g) Students with disabilities who are covered by private insurance.**

(1) With regard to services required to provide a free appropriate public education to an eligible student under 34 C.F.R. pt. 300, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with 6 CAR § 130-212.

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

(A) Obtain such parental consent; and

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

**6 CAR § 130-907. Transfer of parental rights at age of majority.**

**(a) General.**

(1) When a child with a disability reaches the age of majority under state law that applies to all students (age eighteen (18) in Arkansas), except for a student with a disability who has been determined to be incompetent or incapacitated under state law:

(A) The public agency must provide any notice required by Part B of the Individuals with Disabilities Education Act and this part to both the child and the parents;

(B) All other rights accorded to parents under Part B of the Individuals with Disabilities Education Act and this part transfer to the child;

(C) All rights accorded to parents under Part B of the Individuals with Disabilities Education Act and this part transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution; and

(D)(i) Whenever a state provides for the transfer of rights under this part pursuant to subdivisions (a)(1)(A) and (a)(1)(B) of this section, the agency must notify the child and the parent of the transfer of rights.

(ii) See form: Letter of Notification of Transfer of Rights.

(2) The LEA must use the procedures established by the state for appointing the parent of a child with a disability or, if the parent is not available, another appropriate individual to represent the educational interest of the child throughout the period of the child's eligibility under Part B of the Individuals with Disabilities Education Act if, under state law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

**(b) Legal guardianship.**

(1) In accordance with Arkansas Code § 28-65-101 et seq., and § 28-65-201 et seq., any person may file a petition for the appointment of himself or herself or some other qualified person as guardian of an incapacitated person.

(2) Arkansas Code § 28-65-101(5)(A) defines an "incapacitated person" to mean a person who is impaired by reason of a disability such as mental illness, mental deficiency, physical illness, chronic use of drugs, or chronic intoxication to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet the essential requirements for his or her health or safety or to manage his or her estate.

(3) Arkansas Code § 28-65-101(3) defines a “guardian” as one appointed by a court to have care and custody of the person or of the estate, or of both, of an incapacitated person.

**(4) Jurisdiction of courts.**

(A)(i) The jurisdiction of the circuit courts over all matters of guardianship, other than guardianships ad litem in other courts, shall be exclusive, subject to the right of appeal.

(ii) Arkansas Code § 28-65-107(a).

(B) If a juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code of 1989, Arkansas Code § 9-27-301 et seq., the guardianship petition shall be filed in that case if the juvenile resides in Arkansas.

(5) **Rights of incapacitated persons.** An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted by order to the guardian by the court.

## **Subpart 10. Mediation and Hearings — Impartial Due Process Hearing Procedures**

### **6 CAR § 130-1001. Purpose.**

The purpose of this subpart is to ensure that an impartial due process hearing is conducted in the manner prescribed by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 – 1487, and the corresponding federal regulations at 34 C.F.R. pt. 300.

### **6 CAR § 130-1002. Definitions.**

As used in this subpart:

(1) “Business day” means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day, as in 34 C.F.R. § 300.148(d)(1)(ii);

(2) "Day" means a calendar day unless otherwise indicated as business day or school day;

(3) "Department" means the Department of Education;

(4) "He" or "his" means both the male and female gender;

(5) "Joint exhibit" means an exhibit that the parties agree should be admitted into evidence;

(6) "Party" means a parent or a public agency responsible for the provision of a free appropriate public education to children with disabilities; and

(7)(A) "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes.

(B) School day has the same meaning for all children in school, including children with and without disabilities.

#### **6 CAR § 130-1003. Hearings generally — Subject matter.**

(a) A parent or public agency may file a due process complaint on any of the matters described in 34 C.F.R. § 300.503(a)(1) and (2) and 6 CAR § 130-904(a) relating to the:

(1) Identification, evaluation, or educational placement of a child with a disability; or

(2) Provision of a free appropriate public education to the child.

(b) The due process complaint must allege a violation that occurred not more than two (2) years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint.

(c) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under 34 C.F.R. § 508(b) and 6 CAR § 130-1007 unless the other party agrees otherwise.

#### **6 CAR § 130-1004. Hearings generally — Subject matter for expedited hearings — Timelines for request.**

(a) If a parent disagrees with a determination that a child's behavior was not a manifestation of the child's disability or with any decision regarding placement of the child during disciplinary removals, the parent may appeal the decision by filing a complaint requesting an expedited due process hearing pursuant to 34 C.F.R. § 300.507 and § 300.508(a) and (b).

(b) A school district may appeal the decision by requesting an expedited hearing when school personnel have reason to believe that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(c) Whenever a hearing is requested under this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 C.F.R. § 300.507, 34 C.F.R. § 300.508(a) – (c), and 34 C.F.R. §§ 300.510 – 300.514 except as provided in 34 C.F.R. § 300.532(c)(2) – (4).

(d)(1) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within twenty (20) school days of the date the complaint requesting the hearing is filed.

(2) The hearing officer must make a determination within ten (10) school days after the hearing.

(e) Unless the parents and LEA agree in writing to waive the resolution meeting described in 34 C.F.R. § 300.532(c)(3)(i) and this part, or agree to use the mediation process described in 34 C.F.R. § 300.506:

(1) A resolution meeting must occur within seven (7) days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the due process complaint.

**(f) Timeline for requesting a hearing.**

(1) A parent or agency must request an impartial hearing on their due process complaint within two (2) years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.



(2) **Exceptions to timeline.** The timeline described in subdivision (f)(1) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:

(A) Specific misrepresentations by the LEA that it had resolved the problem by forming this basis of the due process complaint; or

(B) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

### **6 CAR § 130-1005. Hearings generally — Notification procedures.**

The following are the procedures to be followed when the parents or public agency officials make it known that they wish to initiate a due process hearing:

(1)(A) The hearing request is placed in writing by the requesting party.

(B) The party, or attorney representing the party, filing a due process complaint must provide to the other party a due process complaint, which must remain confidential.

(C) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(D) See forms for request for hearing/expedited hearing;

(2)(A) The public agency official completes the Due Process Information form and notifies the:

(i) Director of the Special Education Unit; or

(ii) SEA.

(B) See Notification Letter to SEA;

(3)(A)(i) The public agency notifies the parent in writing that the request for hearing has been filed with the SEA.

(ii) See Notice of Filing a Request For Hearing/Expedited Hearing form.

(B)(i) The letter will include:

(a) A copy of "Your Rights Under the IDEA";

(b) Due process hearing procedures; and

(c) A completed copy of the Due Process Hearing Information form.

(ii) See Notice of Filing a Request for Hearing/Expedited Hearing form; and

(4) The Special Education Unit will make arrangements for the hearing and inform parties of their hearing rights.

**6 CAR § 130-1006. Hearings generally — Parent notice of legal services.**

When the parent or public agency initiates a hearing under these procedures, or when a parent requests information regarding representation, the public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area.

**6 CAR § 130-1007. Hearings generally — Content of complaint.**

The party filing a due process hearing request must provide the following information:

- (1) The name of the child;
- (2) The residential address of the child;
- (3) The name of the school the child is attending;
- (4) 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;
- (5) A proposed resolution of the problem to the extent known and available to the parent or parents at the time; and
- (6) In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)):
  - (A) Available contact information of the child; and
  - (B) The name of the school the child is attending.

**6 CAR § 130-1008. Hearings generally — Public agency responsibilities.**

The public agency as a party to a due process hearing must:

- (1) Complete the Due Process Hearing Information form;
- (2) Provide access to all education records, reports, and files regarding the child to parents and their representative for review and inspection;
- (3) Provide the parents with an opportunity to inspect and copy these records at a reasonable cost;
- (4) Make the arrangements for an independent educational evaluation for the child by an outside evaluator when deemed necessary by:
  - (A) Agreement with the parents; or
  - (B) Order of the hearing officer;
- (5) Compel appropriate educational personnel to provide testimony at the hearing as determined by the public agency and/or as requested by the parents;
- (6) Provide a meeting room for the due process hearing;
- (7) Provide evidence and testimony at the hearing to show that the proposed course of action is necessary and appropriate;
- (8) Inform parents of any free or low-cost legal and other relevant services available in the area if:
  - (A) The parent requests the information; or
  - (B) The parent or the public agency initiates a hearing; and
- (9)(A) Supply information to the hearing officer and the Special Education Unit concerning the assignment and appointment of the child's surrogate parent, if applicable.
  - (B) See 6 CAR § 130-1501 et seq., for rules regarding the appointment of surrogate parents.

**6 CAR § 130-1009. Hearings generally — State education agency responsibilities.**

It shall be the responsibility of the state education agency to:

- (1)(A) Arrange for the date, time, and location of the hearing and assign a hearing officer to conduct the hearing.

(B) The hearing shall be conducted at a time and place that is reasonably convenient to the parents and child involved; and

(2) Provide upon request interpreters for the deaf or interpreters fluent in the primary language spoken in the child's home.

**6 CAR § 130-1010. Sufficiency of complaint.**

(a) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen (15) days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in 6 CAR § 130-1007.

(b) Within five (5) days of receipt of notification under subsection (a) of this section, the hearing officer must:

(1) Make a determination on the face of the due process complaint whether the due process complaint meets the requirements of 6 CAR § 130-1007; and

(2) Immediately notify the parties in writing of that determination.

(c) A party may amend its due process complaint only if the:

(1) Party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting pursuant to 34 C.F.R. § 300.510 and 6 CAR § 130-1011(a); or

(2) Hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) days before the due process hearing begins.

(d) If a party files an amended due process complaint, the timelines for the resolution meeting in 34 C.F.R. § 300.510(a) and 6 CAR § 130-1011(a) and the time period to resolve in 34 C.F.R. § 300.510(b) and 6 CAR § 130-1011(b) begin again with the filing of the amended due process complaint.

(e) **LEA response to a due process complaint.** If the LEA has not sent a prior written notice under 34 C.F.R. § 300.503 and 6 CAR § 130-904 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must,

within ten (10) days of receiving the due process complaint, send to the parent a response that includes:

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

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

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

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

(f) **Other party response to a due process complaint.** Except as provided in subsection (e) of this section, the party receiving a due process complaint must, within ten (10) days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

## **6 CAR § 130-1011. Resolution process.**

### **(a) Resolution meeting.**

(1) Within fifteen (15) days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 C.F.R. § 300.511 and 6 CAR § 130-1004(c), the LEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

(A) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(B) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in subsection (a) of this section need not be held if:

- (A) The parent and the LEA agree in writing to waive the meeting; or
- (B) The parent and the LEA agree to use the mediation process described in 34 C.F.R. § 300.506 and 6 CAR § 130-1012.

(4) The parent and the LEA determine the relevant members of the IEP team to attend the meeting.

**(b) Resolution period.**

(1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in subsection (c) of this section, the timeline for issuing a final decision under 34 C.F.R. § 300.515 and 6 CAR § 130-1016 begins with the expiration of this thirty-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 34 C.F.R. § 300.322(d)), the LEA may, at the conclusion of the thirty-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in subsection (a) of this section within fifteen (15) days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(6) The LEA shall provide written verification to the state agency that it has met the meeting requirement.

(c) **Adjustments to the thirty-day resolution period.** The forty-five-day timeline for the due process hearing in 34 C.F.R. § 300.515(a) and 6 CAR § 130-1016 starts the day after one (1) of the following events:

- (1) Both parties agree in writing to waive the resolution meeting;
- (2) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible; or
- (3) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) **Written settlement agreement.** If a resolution to the dispute is reached at the meeting described in subdivisions (b)(1) and (2) of this section, the parties must execute a legally binding agreement that is:

- (1) Signed by both the parent and representative of the agency who has the authority to bind the agency; and
- (2) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(e) **Agreement review period.** If the parties execute an agreement pursuant to subsection (c) of this section, a party may void the agreement within three (3) business days of the agreement's execution.

## **6 CAR § 130-1012. Hearings generally — Notification of availability of mediation — Mediation consultation.**

(a) **General.** The state education agency has established and implements the following procedures to allow parties to disputes involving any matter under this part to resolve the disputes through a mediation process, including matters arising prior to the filing of a due process complaint (hereafter referred to as the "prehearing mediation conference").

(b)(1) When a hearing request is initiated pursuant to these procedures, the public agency must inform the parent of the availability of mediation described in 34 C.F.R. § 300.506 and this part.

(2) The purposes of the prehearing mediation conference are to:

(A) Resolve, if possible, all disagreement, thus eliminating the need for a due process hearing;

(B) Narrow the range of disagreement to a specific issue or issues in the event that total resolution of the disagreement is not accomplished;

(C) Provide an atmosphere, through the introduction of a mediator, that is conducive to relevant discussions and mutual agreement; and

(D) To acquaint the parties to the dispute with the due process hearing procedures.

(c) **Requirements.** The procedures for a prehearing mediation conference shall meet the following requirements:

(1) The procedures ensure that the mediation process is:

(A) Voluntary on the part of the parties;

(B) Not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the Individuals with Disabilities Education Act; and

(C) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques;

(2)(A) The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and rules relating to the provision of special education and related services.

(B) The SEA must select mediators on a random, rotational, or other impartial basis;

(3) Each session in the mediation process is:

(A) Scheduled in a timely manner; and

(B) Held in a location that is convenient to the parties to the dispute;

(4) The state must bear the cost of the mediation process;

(5) If parties to a dispute elect to participate in a prehearing mediation conference, whenever possible the conference will be scheduled within seven (7)



calendar days after the written request for a due process hearing has been received by the Special Education Unit;

(6)(A) Attorneys for parties to the dispute are not permitted to attend the prehearing mediation session or sessions, as the presence of attorneys at the prehearing mediation session would have the potential for creating an adversarial atmosphere not conducive to mediation of the dispute.

(B) This does not, however, preclude either party from communicating with its attorney to seek advice regarding the terms of a settlement proposal;

(7) An agreement reached by the parties to the dispute participating in the mediation process must be set forth in a written mediation agreement that:

(A) Is legally binding;

(B) Sets forth that resolution;

(C) States that all discussions that occur during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(D) Is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(8)(A) A written, signed mediation agreement under this part is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(B) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under this part.

(d) **Impartiality of mediator.**

(1) An individual who serves as a mediator under this part:

(A) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(B) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described in 34 C.F.R. § 300.228 solely because he or she is paid by the agency to serve as a mediator.

**6 CAR § 130-1013. Hearings generally — Hearing rights.**

(a) Any party to a hearing under these procedures has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;

(4) Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written or, at the option of the parents, electronic findings of fact and decisions.

(b) At least five (5) business days prior to a scheduled hearing conducted under these procedures and at least two (2) business days prior to a scheduled expedited hearing conducted under this part, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(c) A hearing officer may prohibit any party that fails to properly disclose an evaluation and corresponding recommendations from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

**6 CAR § 130-1014. Hearings generally — Parental rights at hearings.**

(a) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(b) The record of the hearing, findings of fact, and decisions described in 6 CAR § 130-1013(a)(4) and (5) shall be provided at no cost to parents.

**6 CAR § 130-1015. Hearings generally — Publication of findings.**

The Department of Education, after deleting any personally identifiable information, must:

- (1) Transmit the findings and decisions of the hearing officer to the Advisory Council for the Education of Children with Disabilities; and
- (2) Make those findings and decisions available to the public.

**6 CAR § 130-1016. Timelines of hearing.**

(a) The Department of Education shall ensure that not later than forty-five (45) days after the expiration of the thirty-day period under 34 C.F.R. § 300.510(b) and 6 CAR § 130-1011(b), or the adjusted time periods described under 34 C.F.R. § 300.510(c) and 6 CAR § 130-1011(c):

(1) A final decision is reached in the hearing unless the hearing officer has extended the timeline; and

(2) A copy of the decision is mailed to each of the parties.

(b) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

**6 CAR § 130-1017. Extension of timelines.**

(a)(1) In general, a hearing officer may grant specific extensions of time beyond forty-five (45) days at the request of either party to the hearing.

(2) Extensions of time may be granted for good cause shown.

(b) No extension of time shall be granted by a hearing officer to any party to the hearing requesting the extension unless accompanied by a written request detailing the specific need for the extension.

(c) Any extension of time granted by the hearing officer shall be:

(1) Noted in a written order detailing the specific need for the extension; and

(2) Forwarded by the hearing officer to the Department of Education within two (2) days of the date of the decision to grant an extension of the timelines.

(d) Under no circumstance shall a hearing officer permit any party to waive the application of the forty-five-day timeline.

**6 CAR § 130-1018. Timelines for expedited hearings.**

(a)(1) The SEA is responsible for arranging the expedited due process hearing, which must occur within twenty (20) school days of the date the complaint requesting the hearing is filed.

(2) The hearing officer must make a determination within ten (10) school days after the hearing.

(b) Unless the parents and the LEA agree in writing to waive the resolution meeting described in 34 C.F.R. § 300.510 or agree to use the mediation process described in 34 C.F.R. § 300.506:

(1) A resolution meeting must occur within seven (7) days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the due process complaint.

**6 CAR § 130-1019. Impartial hearing officer.**

(a) A hearing must not be conducted by:

(1) A person who is an employee of the state education agency or of the local education agency that is involved in the education or care of the child; or

(2) Any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A hearing officer must possess the:

(1) Knowledge of, and the ability to understand, the:

(A) Provisions of the act;

(B) Federal and state regulations and rules pertaining to the act; and

- (C) Legal interpretations of the act by federal and state courts;
- (2) Knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- (3) Knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(c) A person who otherwise qualifies to conduct a hearing under this part is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(d)(1) Each public agency must keep a list of the persons who serve as hearing officers.

(2) The list must include a statement of the qualifications of each hearing officer.

#### **6 CAR § 130-1020. Authority of hearing officer.**

(a) A hearing officer has jurisdiction to rule on any matter that pertains to the:

- (1) Identification, evaluation, or educational placement of a child with a disability; and
- (2) Provision of a free appropriate public education to the child within the meaning of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and Arkansas Code § 6-41-202 et seq.

(b) The hearing officer shall dismiss a hearing if:

(1)(A) During the opening remarks, the hearing officer determines that a hearing has been initiated for reasons other than those under the hearing officer's jurisdiction or authority relative to the Individuals with Disabilities Education Act.

(B) The hearing officer must adjourn the proceeding and dismiss the hearing.

(C) It shall be the hearing officer's responsibility, within five (5) days following the adjournment, to issue an Order of Dismissal, noting the reason for the adjournment and dismissal of the hearing;

(2)(A) During the course of the hearing, the hearing officer determines that issues being put forth are not under the jurisdiction or authority of the hearing officer relative to the Individuals with Disabilities Education Act.

(B) The hearing officer must adjourn the proceeding and dismiss the hearing.

(C) The hearing officer must inform the state education agency during the five-day period, in the manner noted in subdivision (b)(1) of this section; or

(3)(A) The parties inform the hearing officer that the:

(i) Case has been settled; or

(ii) Parties request an extension of time in order to reach a settlement agreement.

(B) The hearing officer shall not continue a case for the purpose of allowing the parties additional time to reach a negotiated settlement.

(C) The hearing officer shall forthwith dismiss the case without prejudice to the rights of the parties to file a new request for a hearing.

(D) A written Order of Dismissal shall be rendered within five (5) days following the dismissal of the hearing.

(c) In the event that a party to a hearing becomes disruptive, disorderly, abusive, or disrespectful to the hearing officer or to any other party to the hearing, the hearing officer shall use reasonable means available, including dismissal, to maintain order in the conduct of the hearing.

(d)(1) In the event that the child is represented by a surrogate parent, the hearing officer shall require that information concerning the surrogate parent's assignment and training shall be introduced into the record following the opening remarks.

(2) It shall not be the responsibility of the hearing officer to determine the fitness of a surrogate parent during the hearing.

(e)(1) In a hearing conducted pursuant to these procedures, a hearing officer may:

(A) Order a change in the placement of a child with a disability to an appropriate interim educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing, determines that maintaining the

current placement of the child is substantially likely to result in injury to the child or others;

(B) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the:

(i) Removal was a violation of 34 C.F.R. § 300.530; or

(ii) Child's behavior was a manifestation of the child's disability; or

(C) Determine that the interim alternative educational setting that is proposed by LEA/public agency personnel will:

(i) Enable the child to continue to:

(a) Participate in the general education curriculum, although in another setting; and

(b) Progress toward meeting the goals set out in the child's IEP;

and

(ii) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(2) The procedures under subdivisions (e)(1)(A) and (B) of this section may be repeated if the LEA determines that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(f)(1) The hearing officer shall have the power under Arkansas Code § 6-41-216 to:

(A) Issue subpoenas; and

(B) Bring before him or her as a witness any person in this state.

(2) The hearing officer shall issue a subpoena upon the request of a party to a pending proceeding over which the hearing officer is assigned and actually presiding.

(3) The subpoena shall be directed to the sheriff of the county where the witness resides or may be found.

(4) The subpoena may require the witness to bring with him or her any book, writing, or other thing under his or her control that he or she is required by law to produce.

(5) Service of the subpoena shall be in the manner provided for the service of subpoenas in civil cases under the Arkansas Rules of Civil Procedure.

(6) The hearing officer shall have jurisdiction to issue a subpoena to compel the attendance of witnesses only in hearings over which he or she is actually presiding.

(7) In the event a witness shall have been served with a subpoena as herein provided for and fails to attend the hearing in obedience to the subpoena or otherwise comply with it, the hearing officer may apply to the circuit court of the county wherein the hearing officer is holding the hearing for an order commanding the arrest of the witness and directing that the witness be brought before the court.

(g) The hearing officer shall have the authority to sequester witnesses on his or her own motion or on that of any party to the proceeding.

(h) The hearing officer shall have the authority to restrict the number of witnesses and limit the length of their testimony.

(i) The hearing officer shall be without authority to retain jurisdiction over a case once a final order is entered and shall not attempt to reopen a case once the final order is entered.

**6 CAR § 130-1021. Disclosure by the hearing officer.**

(a)(1) The hearing officer shall disclose all personal or professional activities or relationships involving any party to the hearing.

(2) The hearing officer also shall disclose:

(A) Personal or professional activities or relationships with the public agency;

(B) The officer's representation of students of the local educational agency not the subject of the hearing or representation of the local education agency; or

(C) Other business related thereto.

(b) If any party to the hearing objects to the assigned hearing officer, the objection shall be presented to the hearing officer in writing not less than five (5) days prior to the date of the hearing.



(c) If any party to the hearing objects to the participation of the assigned hearing officer after disclosure, the hearing officer shall use discretion in determining whether to disqualify himself or herself from the proceedings.

(d) Not later than two (2) days prior to the date of the hearing, the hearing officer shall issue a written ruling on any objection to the hearing officer's participation.

(e)(1) The written objection of any party to the participation of the hearing officer and the subsequent written ruling by the hearing officer shall preserve the issue for appellate review.

(2) No objection to the participation of a hearing officer shall be raised at the hearing itself.

**6 CAR § 130-1022. Conflict of interest.**

(a) The hearing officer shall disqualify himself or herself from presiding over any case:

(1) In which he or she has a personal or professional interest; and

(2) That might conflict with the hearing officer's objectivity in the hearing.

(b) The Department of Education shall appoint a replacement hearing officer pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and these procedures.

**6 CAR § 130-1023. Disqualification of hearing officers — Impartiality at issue.**

(a)(1) It shall be the responsibility of the state education agency to ensure that the hearing officer assigned to a particular hearing is unbiased.

(2) The public agency, the parent or parents, or their respective counsel/representative may challenge the assignment of a particular hearing officer only on the basis of alleged bias.

(3) Such a challenge must be:

(A) Stated in writing; and

(B) Accompanied by written evidence to support the allegation that the hearing officer is biased and, therefore, is not impartial.

(4) In the event that the allegation of bias is substantiated, it shall be the responsibility of the state education agency to assign a different hearing officer to the case.

(b) Any challenge to the impartiality of an assigned hearing officer must occur within seven (7) days after notification to the parties to the hearing of the assignment of a hearing officer.

**6 CAR § 130-1024. Impartiality — Ex parte communications.**

(a) The hearing officer shall conduct the hearing in a manner that demonstrates fairness to all parties.

(b) No hearing officer shall engage in ex parte communications with any party during any stage of the hearing process.

**6 CAR § 130-1025. Discovery.**

(a) Prehearing discovery shall be limited to the:

- (1) Production of documentary evidence; and
- (2) Disclosure of the names, addresses, and telephone numbers of witnesses.

(b) The hearing officer shall not grant any request for depositions or interrogatories by the parties.

**6 CAR § 130-1026. Prehearing conference.**

(a) The hearing officer may order a prehearing conference to determine the relevant issues to the hearing and to address evidentiary matters, including, but not limited to, the:

- (1) Relevance of documentary evidence;
- (2) Relevance of testimonial evidence; or
- (3) Limitation of repetitive evidence, including the testimony of witnesses.

(b) The hearing officer may, at his or her discretion, limit the number of witnesses, the length of direct and cross-examination, and the number and type of documents used as evidence in the hearing.

(c) Within five (5) days of the date a request for hearing is filed, any party to a hearing may request a prehearing conference to:

(1) Determine the relevant issues; and

(2) Address evidentiary matters.

(d)(1) The hearing officer shall inform the parties of their responsibility to provide notice to the hearing officer at least twenty-four (24) hours before the case is set for hearing as to the status of the case.

(2) Failure to contact the hearing officer as required may result in dismissal of the case without prejudice.

(3) In the event a change of status occurs thereafter, the parties shall forthwith notify the hearing officer of the change.

#### **6 CAR § 130-1027. Prehearing briefs.**

(a) The hearing officer may require the parties to a hearing to submit prehearing briefs stating the issues to be addressed and the arguments to be presented in the hearing.

(b) Prehearing briefs shall be submitted to the hearing officer not less than three (3) days prior to the date of the hearing.

#### **6 CAR § 130-1028. Conduct of the hearing — Issues to be addressed.**

(a) Whenever a due process complaint is received under 34 C.F.R. § 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing.

(b)(1) Pursuant to the information contained in the hearing request and obtained from the parties at a prehearing conference and from prehearing briefs, the hearing officer may narrow the scope of the hearing at the outset of the hearing.

(2) If it is determined by the hearing officer that there are no issues that may be addressed through an impartial due process hearing pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., the hearing officer shall dismiss the hearing.

**6 CAR § 130-1029. Conduct of the hearing — Burden of proof — Opening statements.**

(a) At the beginning of the hearing, the hearing officer shall determine which party bears the burden of proof in regard to the particular issues raised.

(b) The decision to allow opening statements is at the discretion of the hearing officer.

**6 CAR § 130-1030. Conduct of the hearing — Length of presentation.**

A hearing officer may limit the length of any presentation in order to proceed with the hearing in an expeditious manner.

**6 CAR § 130-1031. Conduct of the hearing — Closing arguments — Post-hearing.**

(a)(1) At the conclusion of the presentation of the evidence, the hearing officer may allow each party to the hearing to present closing arguments.

(2) Closing arguments by any party shall not exceed thirty (30) minutes in length.

(b)(1) In lieu of closing arguments or in addition thereto, at the discretion of the hearing officer, the hearing officer may require each party to simultaneously submit a post-hearing brief summarizing the party's arguments.

(2) In the event that a post-hearing brief is required, the brief shall be submitted to the hearing officer not more than seven (7) days following the adjournment of the hearing.

**6 CAR § 130-1032. Conduct of the hearing — Evidence generally.**

(a) The Arkansas Rules of Evidence shall not be strictly applied to impartial due process hearings except as otherwise noted herein.

(b) Evidence and testimony shall be excluded if it:

(1) Is documentary evidence and it has not been included in the documentary evidence volume;

(2) Is documentary evidence and it has not been disclosed to the opposing party at least five (5) business days before the hearing or two (2) business days prior to an expedited hearing;

(3) Is cumulative or not relevant;

(4) Represents the legal conclusion of a witness; or

(5) Is speculation on the part of the witness.

(c) The hearing officer shall exclude cumulative, irrelevant, or unnecessary testimony or evidence, even in the absence of an objection by any party to the hearing.

(d) The hearing officer may exclude, at his or her discretion, other evidence given a proper basis for exclusion.

**6 CAR § 130-1033. Conduct of the hearing — Documentary evidence.**

(a)(1) Prior to the date of the hearing, the parties to the hearing shall meet for the purpose of reviewing the documentary evidence to be submitted by each party at the hearing.

(2) The documentary evidence should be assembled for the purpose of the hearing in the following order:

(A) Joint exhibits or exhibits to which there is no objection;

(B) Petitioner's exhibits to which the respondent objects;

(C) Respondent's exhibits to which the petitioner objects;

(D) Petitioner's evidence introduced through a sworn affidavit; and

(E) Respondent's evidence introduced through a sworn affidavit.

(b) Documentary evidence should be assembled in chronological order with each separate document tabbed and numbered consecutively.

(c) Separate and complete volumes of the documentary evidence shall be assembled and placed in a three-ring binder or binders and distributed to all parties to the hearing.

(d) Documents not contained in the documentary evidence volume shall be excluded from the hearing by the hearing officer unless their admission is agreed to by all parties.

(e)(1) Documentary evidence shall be provided to the hearing officer in the required format no later than the beginning of the hearing unless directed otherwise by the hearing officer.

(2) Joint exhibits and testimony presented through a sworn affidavit shall be admitted as evidence when the hearing officer acknowledges receipt of the documentary evidence volume on the record.

(3) Objections by any party to documentary evidence pursuant to 6 CAR § 130-1032(b)(2) shall be considered and ruled on at the time the documentary evidence is received by the hearing officer.

(4) Objections by any party to documentary evidence pursuant to subdivisions (a)(2)(B) and (C) of this section shall be considered and ruled on at any appropriate stage in the hearing.

#### **6 CAR § 130-1034. Conduct of hearing — Use of sworn affidavits.**

(a) If no party to the hearing objects, the testimony of witnesses, including expert witnesses, may be presented through the use of sworn affidavits.

(b) A witness, including an expert witness, who has testified by sworn affidavit can be subpoenaed by any party for the purpose of direct or cross-examination.

#### **6 CAR § 130-1035. Conduct of the hearing — Proffer of evidence.**

(a) Any party to a hearing may submit a written proffer of evidence for the purpose of preserving any issue for appeal.

(b) A proffer of evidence shall contain:

(1) A statement of the evidence and testimony that would have been presented had the hearing officer allowed its admission; and

(2) A statement signed by the party or the party's representative asserting that the contents of the proffer are truthful and that the evidence was offered in good faith.

(c)(1) Any proffer of evidence must be received by the hearing officer prior to the issuance of the final order in the hearing.

(2) Any proffer of evidence not received prior to the issuance of the final order in the hearing will not be made part of the hearing record.

### **6 CAR § 130-1036. Hearing decisions.**

(a) After the presentation of the evidence and, if allowed, closing arguments of the parties, the hearing officer shall rule orally on issues, if any, for which the hearing officer has reached a decision.

(b) Within the timeline for regular and expedited hearings (unless extensions have been granted), and after the conclusion of the hearing, the hearing officer shall issue a written judgment containing:

(1) Findings of fact;

(2) The decision or decisions; and

(3) Any orders resulting from the hearing decision.

(c) The findings of fact shall be limited to the facts:

(1) That were supported by the evidence; and

(2) Upon which the hearing officer based any portion of the decision.

(d) Any orders resulting from the hearing decision shall:

(1) Be issued in concise language;

(2) Address any violations noted in the hearing decision; and

(3) Mandate definite action to remedy any violations.

(e) In no event shall a hearing officer retain jurisdiction over the parties to the hearing after the hearing decision has been issued.

(f) **Decision of hearing officer on the provision of FAPE.**

(1) Subject to subdivision (f)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(A) Impeded the child's right to a FAPE;

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

(C) Caused a deprivation of educational benefit.

(g) Nothing in this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under 34 C.F.R. §§ 300.500 – 300.536.

#### **6 CAR § 130-1037. Hearing decisions — Expedited hearings.**

(a) After the closing arguments of the parties, the hearing officer shall rule orally on all issues properly presented in the expedited hearing.

(b) Within ten (10) school days after the conclusion of the expedited hearing, the hearing officer shall issue a written decision.

#### **6 CAR § 130-1038. Hearing decisions — Finality of decision.**

(a) Any party aggrieved by the findings and decision made under 34 C.F.R. §§ 300.507 – 300.513 or 34 C.F.R. §§ 300.530 – 300.534 who does not have the right to an appeal under 34 C.F.R. § 300.514(b), and any party aggrieved by the findings and decision under 34 C.F.R. § 300.514(b) has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under 34 C.F.R. § 300.507 or 34 C.F.R. §§ 300.530 – 300.532.

(b) 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.

#### **6 CAR § 130-1039. Time limitation.**



The party bringing the action shall have ninety (90) days from the date of the decision of the hearing officer to file a civil action.

**6 CAR § 130-1040. Additional requirements.**

In any action brought under this subpart the court:

- (1) Receives the records of the administrative proceedings;
- (2) Hears additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

**6 CAR § 130-1041. 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.

**6 CAR § 130-1042. Rule of construction.**

Nothing in this part restricts or limits the rights, procedures, and remedies available under the United States Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the act, the procedures under 34 C.F.R. §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under Section 615 of the act.

**6 CAR § 130-1043. Child's status during proceedings.**

**(a) Status during hearings on any of the matters relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child.**

- (1) Except as provided for in 34 C.F.R. § 300.533 and 6 CAR § 130-1106, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under 34 C.F.R. § 300.507

and this part, 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.

(2) 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.

(3) If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state or local agency and the parents for purposes of subdivision (a)(1) of this section.

(4)(A) If the complaint involves an application for initial services under this section from a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three (3), the public agency is not required to provide the Part C services that the child had been receiving.

(B) If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under 34 C.F.R. § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

**(b) Status during expedited hearings or appeals related to matters of discipline, including parent challenge to the interim alternative educational setting or manifestation determination decision, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others or continuing it in the interim alternative education setting.** When an appeal under 34 C.F.R. § 300.532 has been made by either the parent or LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 C.F.R. § 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

## **Subpart 11. Discipline Procedures**

### **6 CAR § 130-1101. Change of placement because of disciplinary removals.**

For purposes of removals of a child with a disability from the child's current educational placement under 34 C.F.R. §§ 300.530 – 300.535, a change of placement occurs if the:

- (1) Removal is for more than ten (10) consecutive school days; or
- (2)(A) Child has been subjected to a series of removals that constitute a pattern because the series of removals total more than ten (10) school days in a school year and because of factors such as:
  - (i) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
  - (ii) The length of each removal;
  - (iii) The total amount of time the child is removed; and
  - (iv) The proximity of the removals to one another.
- (B)(i) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (ii) This determination is subject to review through due process and judicial proceedings.

### **6 CAR § 130-1102. Services.**

(a) A child with a disability who is removed from the child's current placement pursuant to this section must:

- (1) Continue to receive educational services, as provided in 34 C.F.R. § 300.101(a), so as to enable the child to continue to:
  - (A) Participate in the general education curriculum, although in another setting; and
  - (B) Progress toward meeting the goals set out in the child's IEP; and

(2) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(b) The services required by subsection (a) of this section may be provided in an interim alternative educational setting.

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

(d) After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if the current removal is for not more than ten (10) consecutive school days and is not a change of placement under 34 C.F.R. § 300.536, school personnel, in consultation with at least one (1) of the child's teachers, determine the extent to which services are needed, as provided in 34 C.F.R. § 300.101(a), so as to enable the child to continue to:

(1) Participate in the general education curriculum, although in another setting; and

(2) Progress toward meeting the goals set out in the child's IEP.

(e) If the removal is a change of placement under 34 C.F.R. § 300.536, the child's IEP team determines appropriate services under subsection (a) of this section.

### **6 CAR § 130-1103. Authority of LEA/public agency personnel.**

(a) **Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) To the extent removal would be applied to children without disabilities, the removal of a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to

the extent those alternatives are applied to children without disabilities), and additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 C.F.R. § 300.536 and 6 CAR § 130-1104(c)).

(c) After a child with a disability has been removed from his or her current placement for more than ten (10) school days in the same school year, during any subsequent days of removal the LEA/public agency must provide services to the extent required under 34 C.F.R. § 300.101(a) and 6 CAR § 130-1102.

(d) **Additional authority.** For disciplinary changes in placement that would exceed ten (10) consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 6 CAR § 130-1105, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in 6 CAR § 130-1102.

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

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(f) **Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must:

(1) Notify the parents of that decision; and

(2) Provide the parents the procedural safeguards notice described in 34 C.F.R. § 300.504.

(g) For purposes of this section, the following definitions apply:

(1) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 812(c);

(2) "Illegal drug" means a controlled substance, but does not include a controlled substance that is:

(A) Legally possessed or used under the supervision of a licensed healthcare professional; or

(B) Legally possessed or used under any:

(i) Authority under that act; or

(ii) Other provision of federal law;

(3) "Serious bodily injury" has the meaning given the term "serious bodily injury" under 18 U.S.C. § 1365(h)(3); and

(4) "Weapon" has the meaning given the term "dangerous weapon" under 18 U.S.C. § 930(g)(2): "The term 'dangerous weapon' means a weapon, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length."

#### **6 CAR § 130-1104. Determination of setting.**

(a) The child's IEP team determines the interim alternative education setting for services under 34 C.F.R. § 300.530(c), (d)(5), and (g).

(b)(1) The parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R. §§ 300.530 and 300.531 or the manifestation determination under 34 C.F.R. § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing.

(2) The hearing is requested by filing a complaint pursuant to 34 C.F.R. § 300.507 and § 300.508(a) and (b).

**(c) Authority of hearing officer.**

(1) A hearing officer under 34 C.F.R. § 300.511 hears and makes a determination regarding an appeal under subsection (b) of this section.

(2) In making the determination under subdivision (c)(1) of this section, the hearing officer may:

(A) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the:

(i) Removal was a violation of 34 C.F.R. § 300.530; or

(ii) Child's behavior was a manifestation of the child's disability; or

(B) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under this section may be repeated if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

**6 CAR § 130-1105. Manifestation determination.**

(a) Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observation, and any relevant information provided by the parents to determine if the conduct in question was:

(1) Caused by, or had a direct and substantial relationship to, the child's disability; or

(2) The direct result of the LEA's failure to implement the IEP.

(b) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP team determine that a condition in subsection (a) of this section was met.

(c) If the LEA, the parent, and relevant members of the child's IEP team determine the condition described in subsection (a) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(d) **Determination that behavior was a manifestation.** If the LEA, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:

(1) Either:

(A) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(B) If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and

(2) Except as provided in 6 CAR § 130-1103(e), return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

#### **6 CAR § 130-1106. Appeal.**

(a)(1) **General.** The parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R. §§ 300.530 and 300.531 or the manifestation determination under 34 C.F.R. § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing.

(2) The hearing is requested by filing a complaint pursuant to 34 C.F.R. § 300.507 and § 300.508(a) and (b).

(b) **Authority of hearing officer.**



(1) A hearing officer under 34 C.F.R. § 300.511 hears and makes a determination regarding an appeal under 11.06.1.1 of this section.

(2) In making the determination under 11.06.1.2 A of this section, the hearing officer may:

(A) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the:

(i) Removal was a violation of 34 C.F.R. § 300.530; or

(ii) Child's behavior was a manifestation of the child's disability; or

(B) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under §§ 11.06.1.1 and 11.06.1.2 A and B may be repeated if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

**(c) Expedited due process hearing.**

(1) Whenever a hearing is requested under subsection (a) of this section the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 C.F.R. § 300.507 and § 300.508(a) – (c) and 34 C.F.R. §§ 300.510 – 300.514, except as provided in subdivisions (c)(2) and (3) of this section.

(2)(A) The SEA is responsible for arranging the expedited due process hearing, which must occur within twenty (20) school days of the date the complaint requesting the hearing is filed.

(B) The hearing officer must make a determination within ten (10) school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in subdivision (c)(3)(A) of this section or agree to use the mediation process described in 34 C.F.R. § 300.506:

(A) A resolution meeting must occur within seven (7) days of receiving notice of the due process complaint; and

(B) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the due process complaint.

(4) The decisions on expedited due process hearings are appealable consistent with 34 C.F.R. § 300.516, civil action.

**6 CAR § 130-1107. Protections for children not determined eligible for special education and related services.**

(a) **General.** A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct of the LEA/public agency may assert any of the protections provided for in this part if the LEA/public agency had knowledge (as determined in accordance with subsection (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) **Basis of knowledge.** An LEA/public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred the:

(1) Parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or a teacher of the child that the child is in need of special education and related services;

(2) Parent of the child requested an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 – 300.311 and 6 CAR § 130-601 et seq.; or

(3) Teacher of the child, or other personnel of the LEA/public agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or other supervisory personnel of the agency.

(c) **Exception.** An LEA/public agency would not be deemed to have knowledge under subsection (b) of this section if either the:

(1) Parent of the child:

(A) Has not allowed an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 – 300.311; or

(B) Has refused services under this part; or

(2) Child has been evaluated in accordance with 34 C.F.R. §§ 300.300 – 300.311 and determined to not be a child with a disability under this part.

**(d) Conditions that apply if no basis of knowledge.**

(1) If an LEA/public agency does not have knowledge that a child is a child with a disability (in accordance with subsections (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with subdivisions (d)(2) – (4) of this section.

(2) If a request is made for an evaluation of the child during the time period in which the child is subjected to disciplinary measures under 34 C.F.R. § 300.530, the evaluation must be conducted in an expedited manner.

(3) Until the evaluation is completed, the child remains in the educational placement determined by school/public agency authorities, which can include suspension or expulsion without educational services.

(4) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA/public agency and information provided by the parents, the LEA/public agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of 34 C.F.R. §§ 300.530 – 300.536, and Section 612(a)(1)(A) of the Individuals with Disabilities Education Act.

**6 CAR § 130-1108. Referral to and action by law enforcement and judicial authorities.**

(a) Nothing in this part prohibits an LEA/public agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law

enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

(b)(1) An LEA/public 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.

(2) An LEA/public 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 of 1974, 20 U.S.C. § 1232g.

#### **6 CAR § 130-1109. Corporal punishment.**

A school district that authorizes use of corporal punishment shall not:

(1) Use corporal punishment on a child who is:

- (A) Intellectually disabled;
- (B) Nonambulatory;
- (C) Nonverbal; or
- (D) Autistic; or

(2) Include in its written student discipline policy a provision to allow the use of corporal punishment on a child who is:

- (A) Intellectually disabled;
- (B) Nonambulatory;
- (C) Nonverbal; or
- (D) Autistic.

#### **6 CAR § 130-1110. Applicable statutes and rules — Note.**

In addition to the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and this subpart, school districts must follow all requirements and meet all obligations to its students under Arkansas Code § 6-18-501 et seq., and §

6-16-1406, and the Division of Elementary and Secondary Education rules regarding student discipline.

## **Subpart 12. State Complaint Procedures**

### **6 CAR § 130-1201. Filing a complaint.**

(a) An organization or an individual, including those from another state, may file a written, signed complaint with the Division of Elementary and Secondary Education, or the complaint may be made in person by recorded deposition or statement.

(b) Such complaint may be communicated directly or indirectly via other state or federal agencies.

(c) A complaint must include:

- (1) A statement that a public agency has violated a requirement of:
  - (A) Part B of Individuals with Disabilities Education Act or its implementing federal regulations; or
  - (B) This part;
- (2) The specific facts on which the statement is based;
- (3) The signature and contact information for the complainant; and
- (4) If alleging violations with respect to a specific child:
  - (A) The name and address of the residence of the child;
  - (B) The name of the school the child is attending;
  - (C) In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the child, and the name of the school the child is attending;
  - (D) A description of the nature of the problem of the child, including facts relating to the problem; and
  - (E) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(d) The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received in accordance with 34 C.F.R. § 300.151.

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

**6 CAR § 130-1202. Preliminary action.**

(a) Complaints received pursuant to 6 CAR § 130-1201 shall be referred to the Special Education Unit of the Division of Elementary and Secondary Education for subsequent investigation and resolution within sixty (60) calendar days after receipt of the complaint, except that an extension of the timeline may be granted if:

(1) It is determined by the Director of the Special Education Unit that exceptional circumstances exist with respect to a particular complaint; or

(2) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under state procedures) and the public agency involved agree to extend the time to engage in:

(A) Mediation pursuant to 34 C.F.R. § 300.152(a)(3)(ii); or

(B) Other alternative means of dispute resolution, if available in the state.

(b)(1) Within ten (10) business days of receipt of a written complaint, the director shall have designated a team to conduct an investigation of the allegations.

(2) The complainant and the party under investigation shall be notified in writing of the:

(A) Designated team members; and

(B) General investigation process.

**6 CAR § 130-1203. Team composition.**

Each investigative team shall include:

(1) At least two (2) but no more than five (5) persons; and

(2) Any person whom the Director of the Special Education Unit deems necessary to expedite the investigation and resolve the issues of the complaint.

**6 CAR § 130-1204. Timeline.**

(a) The investigation shall be completed and a written report issued of the findings, decisions, and corrective actions, if any, within sixty (60) calendar days of receipt of the complaint, unless an extension of the timeline is granted by the Director of the Special Education Unit.

(b) Should an extension of the timeline be necessary, the parties to the investigation shall be notified in writing of:

- (1) The reasons for the timeline extension; and
- (2) A projected date for issuance of the report.

**6 CAR § 130-1205. Fact-finding activities.**

(a) The complaint investigation team may use any of a variety of fact-finding activities in the course of a complaint investigation, including, but not limited to:

- (1) Independent on-site data collection, if the SEA determines that an investigation is necessary;
- (2) Off-site data collection;
- (3) Interviews; and/or
- (4) Personal observation.

(b) The complainant shall be provided an opportunity to submit additional information, either orally or in writing, concerning the allegations in the complaint.

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

- (1) At the discretion of the public agency, a proposal to resolve the complaint; and
- (2) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. § 300.506.

**6 CAR § 130-1206. Complaint investigation report.**

(a) At the close of a complaint investigation, the relevant information will be reviewed by the investigative team, and the team will make an independent determination regarding the allegation or allegations against the agency as to whether the public agency is violating a requirement of Part B of the Individuals with Disabilities Education Act or of 34 C.F.R. §§ 300.151 – 300.153.

(b) The results of the investigation shall be included in a written report, which shall include:

- (1) A summary of the substance of the allegation or allegations in the complaint;
- (2) The name of the individual, group, or agency that filed the complaint;
- (3) A summary of the investigative activities conducted by the team;
- (4) Findings of fact;
- (5) The conclusions reached by the team regarding the allegation or allegations made by the complainant;
- (6) The reasons for the SEA's final decision or decisions;
- (7) Remedies for denial of appropriate services in the form of any necessary corrective action or actions to achieve compliance to be taken by the agency against whom the complaint was filed (including, as appropriate, the awarding of monetary reimbursement and appropriate future provision of services for all children with disabilities) and/or technical assistance activities and negotiations; and
- (8) The documentation from the agency needed to establish that the corrective actions ordered in the report, if any, have been initiated.

(c) A copy of the written report that addresses each allegation in the complaint, findings of fact, and conclusions shall be forwarded to the complainant and the party under investigation within sixty (60) calendar days of receipt of the complaint by the Director of the Special Education Unit or by the terms of the timeline extension if one was granted.

#### **6 CAR § 130-1207. Complaint set-aside.**

(a) Complaints filed under this section and due process hearings under:



(1) 34 C.F.R. §§ 300.507 and 300.530 – 300.532; and

(2) 6 CAR § 130-1001 et seq.

(b)(1) If a written complaint is received that is also the subject of a due process hearing under 34 C.F.R. § 300.507 or §§ 300.530 – 300.532 and 6 CAR § 130-1001 et seq., or contains multiple issues, of which one (1) 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.

(2) However, any issue in the complaint that is not a part of the due process action must be resolved using the timeline and procedures set out in this part.

(c) If an issue is raised in a complaint filed under this part that has previously been decided in a due process hearing involving the same parties, the:

(1) Due process hearing decision is binding on that issue; and

(2) SEA must inform the complainant to that effect.

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

### **Subpart 13. Least Restrictive Environment**

#### **6 CAR § 130-1301. General LRE requirements.**

Each public agency must ensure:

(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

(2) 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.

#### **6 CAR § 130-1302. Continuum of alternative placements.**

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

(b) The continuum required in subsection (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under 34 C.F.R. § 300.38 and 6 CAR § 130-268 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

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

### **6 CAR § 130-1303. Placements.**

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that:

(1) The placement decision is made:

(A) By a group of persons, including the parents and other persons knowledgeable about the:

(i) Child;

(ii) Meaning of the evaluation data; and

(iii) Placement options; and

(B) In conformity with the LRE provisions of 6 CAR § 130-1301 and 34 C.F.R. §§ 300.114 – 300.118;

(2) The child's placement is:

(A) Determined at least annually;

(B) Based on the child's IEP; and

(C) As close as possible to the child's home;

(3) 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;

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

(5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

**6 CAR § 130-1304. Nonacademic settings.**

(a) 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 34 C.F.R. § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child.

(b) The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

**6 CAR § 130-1305. Technical assistance and training activities.**

Each public agency must carry out activities to ensure that teachers and administrators under its jurisdiction are:

- (1) Fully informed about their responsibilities for implementing LRE; and
- (2) Provided with technical assistance and training necessary to assist them in this effort.

**Subpart 14. Children in Private Schools**

**6 CAR § 130-1401. Definition of parentally placed private school children with disabilities.**

“Parentally placed private school children with disabilities” means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36, other than children with disabilities covered under 34 C.F.R. §§ 300.145 – 300.147.

**6 CAR § 130-1402. Child find for parentally placed private school children with disabilities.**

(a) **General.** Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs subsections (b) – (e) of this section and 34 C.F.R. §§ 300.311 and 300.201.

(b) **Child find design.** The child find process must be designed to ensure:

- (1) The equitable participation of parentally placed private school children; and
- (2) An accurate count of those children.

(c) **Activities.** In carrying out the requirements of this section, the LEA or, if applicable, the SEA must undertake activities similar to the activities undertaken for the agency's public school children.

(d) **Cost.** The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under 34 C.F.R. § 300.133.

(e) **Completion period.** The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with 34 C.F.R § 300.301.

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

**6 CAR § 130-1403. Basic requirements for provision of services for parentally placed private school children with disabilities.**

(a) **General.** To the extent consistent with the number and location of children with disabilities who are enrolled by their parent in private, including religious,

elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Individuals with Disabilities Education Act by providing them with special education and related services including direct services determined in accordance with 34 C.F.R. § 300.137, unless the United States Secretary of Education has arranged for services to those children under the bypass provisions in 34 C.F.R. §§ 300.190 – 300.198.

(b) **Services plan for parentally placed private school children with disabilities.** In accordance with subsection (a) of this section and 34 C.F.R. §§ 300.137 – 300.139, a service plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this section.

(c) **Record keeping.** Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally placed private school children covered under 34 C.F.R. §§ 300.130 – 300.144:

- (1) The number of children evaluated;
- (2) The number of children determined to be children with disabilities; and
- (3) The number of children served.

#### **6 CAR § 130-1404. Expenditures.**

(a)(1) Each LEA must spend on providing special education and related services (including direct services) to parentally placed private school children with disabilities:

(A) For children aged three (3) to twenty-one (21), an amount that is the same proportion of the LEA's total subgrant under Section 611(g) of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged three (3) to twenty-one (21) who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three (3) to twenty-one (21); and

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

(2) As described in subdivision (a)(1)(B) of this section, children aged three (3) through five (5) are considered to be parentally placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in 34 C.F.R. § 300.13.

(3) If an LEA has not expended for equitable services all of the funds described in subdivision (a)(1) of this section by the end of the fiscal year for which the United States Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally placed private school children with disabilities during a carryover period of one (1) additional year.

**(b) Child count (calculating proportionate amount).**

(1) **Calculating proportionate amount.** In calculating the proportionate amount of federal funds to be provided for parentally placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under 34 C.F.R. § 300.134, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the LEA.

(2)(A) Annual count of the number of parentally placed private school children with disabilities.

(B) Each LEA must:

(i) After timely and meaningful consultation with representatives of parentally placed private school children with disabilities (consistent with 34 C.F.R. §

300.134), determine the number of parentally placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on December 1 of each year.

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

(c) Expenditures for child find activities described in 34 C.F.R. § 300.131 and 6 CAR § 130-1402 may not be considered in determining whether the LEA has met the requirements of subsection (a) of this section.

(d) 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 local policy.

(e) **Supplement, not supplant.** State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed private school children with disabilities under this part.

#### **6 CAR § 130-1405. Consultation.**

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

(1) **Child find.** The child find process, including how:

(A) Parentally placed private school children suspected of having a disability can participate equitably; and

(B) Parents, teachers, and private school officials will be informed of the process;

(2) **Proportionate share of funds.** The determination of the proportionate share of federal funds available to serve parentally placed private school children with disabilities under 34 C.F.R. § 300.133(b), including the determination of how the proportionate share of those funds was calculated;

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

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

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

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

(C) How and when those decisions will be made;

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

(6) **Written affirmation.**

(A) When timely and meaningful consultation, as required by 34 C.F.R. § 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

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

## **6 CAR § 130-1406. Equitable services determined.**

(a) **No individual right to special education and related services.**



(1) No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(2) Decisions about the services that will be provided to parentally placed private school children with disabilities under 34 C.F.R. §§ 300.130 – 300.144 and 6 CAR §§ 130-1403 – 130-1414 must be made in accordance with 6 CAR § 130-1405(2) and (3) and 34 C.F.R. § 300.133(b) and § 300.134(c).

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

(b) **Services plan for each child served under this subpart.** If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with 34 C.F.R. § 300.138(b) and 6 CAR § 130-1407(b); and

(2)(A) Ensure that a representative of the religious or other private school attends each meeting.

(B) If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

#### **6 CAR § 130-1407. Equitable services provided.**

##### **(a) General.**

(1) The services provided to parentally placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of 34 C.F.R. § 300.18.

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

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

(1) Each parentally placed private school child with a disability who has been designated to receive services under 34 C.F.R. § 300.132 and 6 CAR § 130-1403 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 34 C.F.R. §§ 300.134 and 300.137 and 6 CAR §§ 130-1405 – 130-1406 that it will make available to parentally placed private school children with disabilities.

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

(A) Meet the requirements of 34 C.F.R. § 300.320 and 6 CAR § 130-808 or for a child ages three (3) through five (5), meet the requirements of 34 C.F.R. § 300.323(b) with respect to the services provided; and

(B) Be developed, reviewed, and revised consistent with 34 C.F.R. §§ 300.321 – 300.324 and 6 CAR §§ 130-803 and 130-805 – 130-807.

**(c) Provision of equitable services.**

(1) The provision of services pursuant to this section and 34 C.F.R. §§ 300.139 – 300.143 must be provided:

(A) By employees of a public agency; or

(B) Through contract by the public agency with an:

(i) Individual;

(ii) Association;

(iii) Agency;

(iv) Organization; or

(v) Other entity.

(2) Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, must be:

(A) Secular;

(B) Neutral; and

(C) Nonideological.

**6 CAR § 130-1408. Location of services — Transportation.**

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

**(b) Transportation.**

**(1) General.**

(A) If necessary for the child to benefit from or participate in the services provided under this part, a parentally placed private school child with a disability must be provided transportation from the:

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

(ii) Service site to the private school, or to the child's home, depending on the timing of the services.

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

(2) **Cost of transportation.** The cost of the transportation described in subdivision (b)(1)(A) of this section may be included in calculating whether the LEA has met the requirement of 34 C.F.R. § 300.133 and 6 CAR § 130-1404.

**6 CAR § 130-1409. Due process complaints and state complaints.**

(a) **Due process inapplicable, except for child find.** Except as provided in subsection (b) of this section, the procedures in 34 C.F.R. §§ 300.504 – 300.519 and 6 CAR §§ 130-905 – 130-906, 6 CAR § 130-1001 et seq., and 6 CAR § 130-1501 et seq. (Procedural Safeguards Notice, Parental Consent, Mediation, Due Process Hearings), do not apply to complaints that an LEA has failed to meet the requirements of 34 C.F.R. §§ 300.132 – 300.139 and 6 CAR §§ 130-1403 – 130-1408, including the provision of services indicated on the child's services plan.

**(b) Child find complaints — To be filed with the LEA in which the private school is located.**

(1) The procedures in 34 C.F.R. §§ 300.504 – 300.519 apply to complaints that an LEA has failed to meet the child find requirements in 34 C.F.R. § 300.131, including the requirements in 34 C.F.R. §§ 300.300 – 300.311.

(2) Any due process complaint regarding the child find requirements must be filed with the LEA in which the private school is located, and a copy must be forwarded to the SEA.

**(c) State complaints.**

(1) Complaints that an LEA has failed to meet the requirements of 34 C.F.R. §§ 300.132 – 300.135 and 300.137 – 300.144 and 6 CAR §§ 130-1405 – 130-1412 must be filed under the procedures in 34 C.F.R. §§ 300.151 – 300.153 and 6 CAR § 130-1201 et seq., State Complaint Procedures.

(2) A complaint filed by a private school official under 34 C.F.R. § 300.136(a) must be filed with the SEA in accordance with the procedures in 34 C.F.R. § 300.136(b).

**6 CAR § 130-1410. Separate classes prohibited.**

An LEA may not use funds available under Section 611 or Section 619 of the Individuals with Disabilities Education Act for classes that are organized separately on the basis of school enrollment or religion of the students if the classes:

- (1) Are at the same site; and
- (2) Include students enrolled in public schools and students enrolled in private schools.

**6 CAR § 130-1411. Requirement that funds not benefit a private school.**

(a) An LEA may not use funds provided under Section 611 or Section 619 of the Individuals with Disabilities Education Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Individuals with Disabilities Education Act to meet the special education and related services needs of parentally placed private school children, but not for meeting the:

- (1) Needs of a private school; or
- (2) General needs of the students enrolled in the private school.

**6 CAR § 130-1412. Use of school personnel.**

An LEA may use funds available under Sections 611 and 619 of the Individuals with Disabilities Education Act to make public school personnel available in other than public facilities:

- (1) To the extent necessary to provide services under 34 C.F.R. §§ 300.130 – 300.144 and 6 CAR §§ 130-1401 – 130-1414 for parentally placed private school children with disabilities; and
- (2) If those services are not normally provided by the private school.

**6 CAR § 130-1413. Use of private school personnel.**

An LEA may use funds available under Section 611 or Section 619 of the Individuals with Disabilities Education Act to pay for the services of an employee of a private school to provide services under 34 C.F.R. §§ 300.130 – 300.144 and 6 CAR §§ 130-1401 – 130-1414 if the employee performs the services:

- (1) Outside of his or her regular hours of duty; and
- (2) Under public supervision and control.

**6 CAR § 130-1414. Requirements concerning property, equipment, and supplies.**

(a) A public agency must control and administer the funds used to provide special education and related services under 34 C.F.R. §§ 300.137 – 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Individuals with Disabilities Education Act.

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

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

(1) Are used only for Part B of the Individuals with Disabilities Education Act purposes; and

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

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

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

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

(e) No funds under Part B of the Individuals with Disabilities Education Act may be used for repairs, minor remodeling, or construction of private school facilities.

**6 CAR § 130-1415. Children with disabilities enrolled by their parents in private schools when FAPE is at issue.**

**(a) General.**

(1) 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.

(2) However, the public agency must include that child in the population whose needs are addressed consistent with 34 C.F.R. §§ 300.131 – 300.144 and 6 CAR §§ 130-1401 – 130-1414.

**(b) Disagreements about FAPE.** Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the

question of financial reimbursement, are subject to the due process hearing procedures of:

- (1) 6 CAR § 130-1001 et seq., Mediation and Hearings; and
- (2) 34 C.F.R. §§ 300.504 – 300.520.

**(c) Reimbursement for private school placement.**

(1) 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:

(A) Agency had not made FAPE available to the child in a timely manner prior to that enrollment; and

(B) Private placement is appropriate.

(2) 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.

**(d) Limitation on reimbursement.** The cost of reimbursement described in 34 C.F.R. § 300.148(c) and this subsection may be reduced or denied:

(1) If:

(A) At the most recent IEP team 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

(B) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in 34 C.F.R. § 300.148(d)(1)(i) and subdivision (d)(1)(A) of this section;

(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 34

C.F.R. § 300.503(a)(1) and 6 CAR § 130-904(a)(1), prior notice, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

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

**(e) Exception.**

(1) Notwithstanding the notice requirement in 34 C.F.R. § 300.148(d)(1) and subdivision (d)(1) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(A) Compliance with 34 C.F.R. § 300.148(d)(1) and subdivision (d)(1) of this section would likely result in physical harm to the child; and

(B) The school prevented the parent from providing the notice; or

(C) The parents had not received notice, pursuant to 34 C.F.R. § 300.504, of the notice requirement in paragraph 34 C.F.R. § 300.148(d)(1) and subdivision (d)(1) of this section.

(2) The cost of reimbursement may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

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

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

**6 CAR § 130-1416. Children with disabilities in private schools placed or referred by public agencies.**

(a) This section applies 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.

(b) Each public agency shall ensure that each child with a disability who is placed in or referred to a private school or facility by a public agency:

(1) Is provided special education and related services:



(A) In conformance with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 – 300.325 and 6 CAR § 130-801 et seq.; and

(B) At no cost to the parents;

(2) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs (including the requirements of this part, except for 34 C.F.R. § 300.18 and § 300.156(c)); and

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

## **Subpart 15. Surrogate Parents**

### **6 CAR § 130-1501. Generally.**

Each public agency must ensure that the rights of a child are protected when:

(1) No parent (as defined in 34 C.F.R. § 300.30 and 6 CAR § 130-246) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State of Arkansas under the laws of this state; or

(4) The child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(6)).

### **6 CAR § 130-1502. Duties of public agency.**

(a) The duties of a public agency under 34 C.F.R. § 300.519(a) and 6 CAR § 130-1501 include the assignment of an individual to act as a surrogate for the parents.

(b) This must include a method for:

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

### **6 CAR § 130-1503. Wards of the state.**

In the case of a child who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate

meets the requirements in 34 C.F.R. § 300.519(d)(2)(i) and (e) and 6 CAR § 130-1504(b)(1) and 6 CAR § 130-1505.

**6 CAR § 130-1504. Criteria for selection of surrogates.**

(a) The public agency may select a surrogate parent in any way permitted under state law.

(b) Public agencies must ensure that a person selected as a surrogate:

- (1) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
- (2) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
- (3) Has knowledge and skills that ensure adequate representation of the child.

**6 CAR § 130-1505. Nonemployee requirement — Compensation.**

A person who otherwise qualifies to be surrogate parent under 34 C.F.R. § 300.519(d) and 6 CAR § 130-1503 is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

**6 CAR § 130-1506. Unaccompanied homeless youth.**

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 34 C.F.R. § 300.519(d)(2)(i), until a surrogate parent can be appointed that meets all the requirements of 34 C.F.R. § 300.519(d).

**6 CAR § 130-1507. Responsibilities.**

The surrogate parent may represent the child in all matters relating to the:

- (1) Identification, evaluation, and educational placement of the child; and
- (2) Provision of FAPE to the child.

### **6 CAR § 130-1508. SEA responsibility.**

The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than thirty (30) days after a public agency determines that the child needs a surrogate parent.

## **Subpart 16. Confidentiality**

### **6 CAR § 130-1601. Access rights.**

(a)(1) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under Part B of the Individuals with Disabilities Education Act and this part.

(2) The agency must comply with a request:

(A) Without unnecessary delay;

(B) Before any:

(i) Meeting regarding an IEP;

(ii) Hearing pursuant to 34 C.F.R. §§ 300.507 and 300.530 – 300.532

or 6 CAR § 130-1001 et seq.; or

(iii) Resolution session pursuant to 34 C.F.R. § 300.510; and

(C) In no case more than forty-five (45) days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to 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:

- (1) Guardianship;
- (2) Separation; and
- (3) Divorce.

**6 CAR § 130-1602. Education records.**

(a) Education records are broadly defined as those records, files, documents, and other materials that:

- (1) Contain information directly related to the student; and
- (2) Are maintained by an educational agency or institution or by a person acting for such agency or institution.

(b)(1) Educational records are the type of records covered under the definition of “education records” in 34 C.F.R. pt. 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g).

(2) According to interpretation provided by the Family Policy Compliance Office, which administers the Family Educational Rights and Privacy Act of 1974:

(A) Any record, such as a permanent record, report card, a student’s work, or a teacher’s grade book, is an “education record” under the Family Educational Rights and Privacy Act of 1974 if it is maintained by a school and directly related to the student;

(B) A psychological evaluation or assessment, as well as test protocols, would be education records under the Family Educational Rights and Privacy Act of 1974 if they contain information that is directly related to the student; and

(C) Any test protocols or test question booklets that do not contain information directly related to the student are not education records under the Family Educational Rights and Privacy Act of 1974.

(c) Records maintained by an agency or institution that are not directly related to the student are not “educational records” under the Family Educational Rights and

Privacy Act of 1974, and parents do not have a right to inspect and review such records under the Family Educational Rights and Privacy Act of 1974.

(d)(1) Family Educational Rights and Privacy Act of 1974 requires that an educational agency or institution respond to reasonable requests for explanations and interpretations of education records, such as test answer sheets not accompanied by the question booklets.

(2) A school district should, upon request, provide:

(A) An opportunity for a parent to review the education records; and

(B) Any explanations and interpretations necessary, which may include the interpretation of standardized test scores, such as reviewing the test questions with the parent.

#### **6 CAR § 130-1603. Record of access.**

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Individuals with Disabilities Education Act and this part (except access by parents and authorized employees of the participating agency), including the:

(1) Name of the party;

(2) Date access was given; and

(3) Purpose for which the party is authorized to use the records.

#### **6 CAR § 130-1604. Records on more than one child.**

If any education record includes information on more than one (1) 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.

#### **6 CAR § 130-1605. List of types and location of information.**

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

**6 CAR § 130-1606. 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.

**6 CAR § 130-1607. 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 must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must:

- (1) Inform the parent of the refusal; and
- (2) Advise the parent of the right to a hearing under 34 C.F.R. § 300.619 (opportunity for a hearing) and 6 CAR § 130-1608.

**6 CAR § 130-1608. Opportunity for a hearing.**

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not:

- (1) Inaccurate;
- (2) Misleading; or
- (3) Otherwise in violation of the privacy or other rights of the child.

**6 CAR § 130-1609. Result of hearing.**

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must:

- (1) Amend the information accordingly; and
- (2) So inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the records it maintains on the child a statement:

- (1) Commenting on the information; or
- (2) 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.

#### **6 CAR § 130-1610. Hearing procedures.**

A hearing held under 6 CAR § 130-1608 and 34 C.F.R. § 300.619 must be conducted according to the procedures under 34 C.F.R. § 99.22 and the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.

#### **6 CAR § 130-1611. Consent.**

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsections (c) and (d) of this section, unless the:

- (1) Information is contained in education records; and
- (2) Disclosure is authorized without parental consent under 34 C.F.R. pt. 99.

(b) Except as provided in subsections (c) and (d) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(c) Parental consent, or the consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 C.F.R. § 300.321(b)(3).

(d) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

#### **6 CAR § 130-1612. Safeguards.**

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One (1) official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures pertaining to confidentiality of personally identifiable information under 34 C.F.R. § 300.123 and 34 C.F.R. pt. 99.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

#### **6 CAR § 130-1613. Destruction of information.**

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.



(b)(1) The information must be destroyed at the request of the parents.

(2) However, a permanent record of the 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.

#### **6 CAR § 130-1614. Children's rights.**

(a) Under the regulations of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, in 34 C.F.R. § 99.5(a), the rights of parents regarding education records are transferred to the student at age eighteen (18).

(b)(1) If the rights accorded to parents under Part B of the Individuals with Disabilities Education Act are transferred to a student who reaches the age of majority, consistent with 34 C.F.R. § 300.520 and 6 CAR § 130-907, Transfer of parental rights at age of majority, the rights regarding educational records in 34 C.F.R. §§ 300.613 – 300.624 and this section must also be transferred to the student.

(2) However, the public agency must provide any notice required under Section 615 of the Individuals with Disabilities Education Act to the student and the parents.

#### **6 CAR § 130-1615. Disciplinary information.**

(a) Each public agency must include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children in accordance with state policy.

(b) The statement may include a description of any behavior engaged in by the child with a disability 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, to the extent that such information is required to be included in the records of nondisabled children.

(c) To the extent that state policy requires inclusion of disciplinary information in the records of a child, should the child transfer from one school to another, the transmission of any of the child's records must include both:

- (1) The child's current individualized education program; and
- (2) Any statement of current or previous disciplinary action that has been taken against the child.

## **Subpart 17. Program Standards**

### **6 CAR § 130-1701. Academic facilities.**

#### **(a) General.**

(1) Barriers that limit child access to special education services must be eliminated.

(2) Toilet areas, building and classroom entrances, etc., must conform to specifications for the accessibility of individuals with disabilities in conformance with the Americans with Disabilities Act of 1990, Pub. L. No. 101-336.

(3) Classrooms should be located within an age-appropriate school building that houses classrooms for nondisabled peers of children with disabilities.

#### **(b) Space requirements and other considerations.**

(1) Academic facilities used for the provision of special education and related services, or their components of FAPE, to a child with a disability must meet the standards set forth in the Arkansas Division of Public School Academic Facilities and Transportation Custodial and Maintenance Manual.

(2) **Exception.** Facilities used to provide special education and related services constructed prior to the promulgation of the manual referenced in subdivision (b)(1) of this section must meet standards previously set forth in the Division of Elementary and Secondary Education's Special Education rules promulgated in 2000.

### **6 CAR § 130-1702. Least restrictive environment.**

#### **(a) General.**

(1) Each public agency shall ensure that:

(A) 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

(B) 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.

(2) Determination of least restrictive environment is made on an individual basis, taking into account both the:

(A) Service or services needed; and

(B) Placement in which the child's IEP can be implemented appropriately.

**(b) Continuum of alternative placements.**

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

(2) The continuum required in subdivision (b)(1) of this section must:

(A) Include the alternative placements listed in the definition of "special education", which includes:

(i) Instruction in regular classes;

(ii) Special classes;

(iii) Special schools;

(iv) Home instruction; and

(v) Instruction in hospitals and institutions; and

(B) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(3) The continuum of alternative placements displayed on chart #1-17 of this section delineates service delivery systems.

(4) Any child three (3) to twenty-one (21) years of age who, because of the severity or nature and/or extent of the disability, requires homebound or hospital instruction must have the:

(A) IEP implemented within the facility of confinement for as long as the disability adversely impacts the health, safety, and/or well-being of the child and prevents school attendance; and

(B) IEP and subsequent placement reviewed every three (3) months.

**CHART #1-17**

**CONTINUUM OF ALTERNATIVE PLACEMENTS**

Regular Class	Regular Class	Regular Class	Some/or no Instruction in Regular Class	Some/or no Instruction in Regular Class	No Instruction in Regular Class			
Indirect Service	Some Direct Instruction  More than 80% of time in the classroom for general education	40% to 79% of the Instructional Day in General Education	Less than 40% of the Instructional Day in General Education	School-based Day Treatment	Special Day School Facility  Greater than 50% of time at the facility	Residential School	Hospital Program	Homebound Instruction
1	2	3	4	5	6	7	8	9

**6 CAR § 130-1703. Maximum teacher–pupil caseload.**

**(a) General.**

(1) When calculating the number of children being served, each child is counted only one (1) time.

(2) The following chart illustrates the maximum teacher–pupil caseloads for various service settings and disabilities.

CHART # 2-17 MAXIMUM TEACHER/PUPIL CASELOAD								
	REGULAR EDUCATION/ SPECIAL EDUCATION CO- TEACHING CLASSROOM	REGULAR EDUCATION/ SPECIAL EDUCATION INTEGRATED CLASSROOM	*INDIRECT SERVICES	ITINERANT INSTRUCTION	RESOURCE SERVICES	SPECIAL CLASS SERVICES OPTIONS		
Noncategorical	1:30 ****	1:24 (2/3 Reg. to 1/3 Spec.)	1:40	1:35	1:25	1:15	1:1 0	1:6 ***
Categorical			1:40	1:25	1:25	1:15	1:1 0	1:6 ***
** 1. Speech/ Language Impairment			1:45	1:45				
2. Hearing Impairment				1:20	1:15			
3. Visual Impairment				1:20	1:15			

\* See subsection (g) of this section for additional information regarding part-time teacher/pupil caseload.

\*\* When a Speech/Language Pathologist has an approved Speech/Language Pathology Aide or Assistant the maximum caseload is left to the discretion of the Speech/Language Pathologist.

\*\*\* For a classroom with a 1:6 teacher/pupil caseload, a full-time paraprofessional is required.

\*\*\*\* See 6 CAR § 130-1706(d)(2) for part-time co-teacher.

**(b) Exceptions to the stated maximum teacher–pupil caseloads.**

(1) For each child receiving special class services within a resource setting, not to exceed a total of three (3) children, the maximum teacher–pupil caseload will be reduced by one (1) child.

(2)(A) Up to a maximum of five (5) children may receive resource services in a self-contained classroom with a teacher–pupil caseload of 1:15.

(B) Each child receiving resource services, up to the maximum of five (5) resource children, count the same as a self-contained child for figuring total teacher–pupil caseload, not to exceed an overall caseload of fifteen (15) children.

(3) For each child with a hearing impairment receiving services on a noncategorical basis in a resource setting, the teacher–pupil caseload will be reduced by two (2) children.

(4) For each child receiving braille instruction from an itinerant instructor, the maximum teacher–pupil caseload will be reduced by two (2) children.

**(c) Waiver of the maximum teacher–pupil caseload.**

(1)(A) Should an emergency situation arise creating the need to request a waiver from the maximum teacher–pupil caseload, the public agency must submit a letter to the Administrator for Monitoring and Program Effectiveness of the Division of Elementary and Secondary Education stating the reason or reasons for exceeding the maximum teacher–pupil caseload and outlining a plan to correct the problem.

(B) The administrator will respond in writing, either approving or disapproving the variance.

(2) A ten percent (10%) variance (upward caseload adjustment) of the maximum teacher–pupil caseload is the maximum variance approvable before federal funding is affected.

**Example:** The noncategorical resource setting teacher–pupil caseload is 1:25 with a ten percent (10%) allowable variance equal to 2.5. When approved, this teacher–pupil caseload may then increase to 1:28. For a special class setting with a maximum teacher–pupil caseload of 1:15, a ten percent (10%) variance

equals 1.5. When approved, the teacher–pupil caseload may increase to 1:17.

(3)(A) Prior to approval of the ten percent (10%) variance, a full-time paraprofessional must be employed for that class by the requesting district.

(B)(i) For a 1:6 special class setting, a full-time paraprofessional is already required.

(ii) Therefore, an additional paraprofessional must be employed before a district’s waiver will be approved.

(4)(A) If a district fails to secure approval for a variance of the teacher–pupil caseload, yet exceeds the teacher–pupil caseload as stated on the Maximum Teacher/Pupil Caseload Chart contained in this section, the district’s special education program will not be considered an approved program.

(B) Consequently, federal funds cannot be generated by the nonapproved program.

(5) Under no circumstances will a waiver be granted for an increase in maximum teacher–pupil caseloads for speech-language pathologists (SLP) unless the speech-language pathologist has an approved SLP assistant or SLP aide.

(6) Special education personnel serving children in indirect services will not be granted any waivers of the maximum teacher–pupil caseloads.

**(d) Teacher–pupil caseload — Per period class size.**

(1) For itinerant instruction (excluding speech therapy) and resource services, a maximum of five (5) children per period is the guideline.

(2) Where scheduling does not permit an even flow of five (5) children per period, the number served should be as near to five (5) as possible.

(3)(A) Districts will not be cited for noncompliance with state standards when the per period class size is eight (8) children without a paraprofessional.

(B) However, the adopted guideline of five (5) children per period is considered to be the best educational practice and should be adhered to whenever possible.

**(e) Exceptions to the adopted guideline of five (5) children.**

(1) When the special education teacher teaches one (1) class per day in the area of personal/social adjustment as a prevocational or vocational class, the per period load may be adjusted upward not to exceed the maximum caseload.

(2)(A) When the teacher has a paraprofessional to assist in follow-through activities, the per period class load may be adjusted upward not to exceed forty percent (40%) of the teacher–pupil caseload listed on the Maximum Teacher/Pupil Caseload Chart contained in this section.

(B) For example, the per period load may be increased to ten (10) children for noncategorical resource classes.

(3) The number of children served per period may not be increased beyond the allowable adjustments noted in the two (2) exceptions in subdivisions (e)(1) and (2) of this section regardless of the approved maximum caseload, inclusive of waivers granted.

(4)(A) When special education class services are delivered in a departmentalized manner (configured to group children by specific deficit areas, including but not limited to, course/subject content areas), under no circumstances will the teacher's total number of child contacts per day be allowed to exceed forty-eight (48) different children.

(B) Guidelines for per period class size apply to departmentalized service delivery.

(5) The per period class size must be reduced when the square footage of the classroom is less than stated facility requirements.

**(f) Noncategorical classrooms.**

(1)(A) At any time children with differing disabilities may be provided services within the same setting.

(B) For example, children with mild disabilities across categories of disability served within the same service setting, and children with moderate to severe disabilities across disability categories may be served within the same service setting.

(2) Such a setting is designated as a noncategorical class.



(3) Refer to the Maximum Teacher/Pupil Caseload Chart to determine the caseload for such classes.

**(g) Indirect instructional services caseload.**

**(1) Full-time consulting teacher.**

(A) The maximum teacher–pupil caseload for a full-time consulting teacher is 1:40.

(B) For the full-time consulting teacher, the following apply:

(i) May serve only children with disabilities on indirect services in accordance with an IEP;

(ii) May not serve any children with disabilities receiving resource services;

(iii) May not receive a waiver or approval for a variance on the maximum caseload (cap) of forty (40) children; and

(iv) A paraprofessional is recommended, but is not required.

**(2) Half-time resource/half-time consulting teacher.**

(A) The maximum teacher–pupil caseload for this teacher is thirty-two (32) children.

(B) The caseload composition is a maximum of twelve (12) resource children and twenty (20) indirect children.

(C) The following apply:

(i) May not seek a waiver for a ten percent (10%) variance from the maximum caseload; and

(ii) A paraprofessional is recommended, but is not required.

**(3) Part-time resource/consulting teacher.**

(A)(i) In this situation, a resource teacher may serve children on indirect by adjusting the resource room caseload.

(ii) The resource teacher may swap resource children for indirect children at the ratio of two (2) indirect for each resource child, up to a maximum of fourteen (14) indirect children.

(iii) A swap of more than this increases the caseload more than what is allowable for a teacher who is half resource and half consulting teacher.

(iv)(a) This combination of resource/consulting teacher is particularly helpful for school districts where the population of children with disabilities is small and staff are fewer in number to serve these children.

(b) Thus, a mixed service pattern is allowable.

(B)(i) The maximum teacher-pupil caseload for the part-time resource/consulting teacher described above is thirty-two (32) children.

(ii) The caseload composition is a maximum of eighteen (18) resource children and fourteen (14) indirect children.

(iii) The following apply:

(a) May not seek a waiver for a ten percent (10%) variance from the maximum caseload; and

(b) If more than fourteen (14) children need indirect services and this teacher is the only one available to provide the services, then the teacher must convert to the half-time resource/half-time consulting teacher status, and its maximum caseload requirements must be followed (twelve (12) resource children and twenty (20) indirect children for a total caseload of thirty-two (32)).

**(4) Half-time direct/half-time indirect speech-language pathologist.**

(A) The maximum teacher–pupil caseload for this split position is forty-five (45) children.

(B) The caseload composition is a maximum of twenty-five (25) children on direct services and twenty (20) children on indirect services.

(C) The following apply:

(i) The maximum caseload of twenty-five (25) children receiving direct speech therapy services is a maximum, not a minimum;

(ii) May not seek a waiver for a variance on the maximum caseload of forty-five (45) children; and

(iii) An SLP assistant or aide is recommended, but is not required.

#### **6 CAR § 130-1704. Related services — General.**

(a)(1) Related services, by definition, do not stand alone in the absence of special education instruction.

(2) See 6 CAR § 130-201 et seq., for the full federal definition and 34 C.F.R. § 300.34 for examples of related services.

(b) The examples of related services at 34 C.F.R. § 300.34 are not exhaustive and may include other developmental, corrective, and supportive services if they are required to assist a child with a disability to benefit from special education.

(c) A child's need for related services must be determined on an individual basis.

(d) Not every child with a disability needs a related service in order to benefit from special education.

(e) Children with disabilities who need one (1) or more related services in order to benefit from special education do not necessarily need all related services that may be available or that are listed as examples in 34 C.F.R. § 300.34.

#### **6 CAR § 130-1705. Indirect services.**

##### **(a) General.**

(1) Children with disabilities who receive special education in the general education classroom are considered to be receiving indirect services if these services are provided by the general education classroom teacher in consultation with qualified special education personnel (consulting teacher).

(2) Indirect services should consist of consultation with, and technical assistance to, the teacher, which could be in the form of communication, observation, monitoring, and maintenance of a child's skills (i.e., program/content, modifications, modeling of instruction, etc.).

##### **(b) Eligibility criteria.**

(1) The child has been determined to be an eligible child with a disability under this part.

(2) The IEP team has:

(A) Developed an IEP for the child; and

(B) Determined the extent to which indirect services are to be provided for the child to achieve his or her goals and objectives in the regular classroom.

(3)(A) By selecting the indirect services delivery model the IEP team has determined that there is no compelling instructional reason why the child's instruction cannot be provided in the general education classroom with the assistance of a consulting teacher.

(B) The general education classroom teacher should be an active participant in the IEP conference.

(4)(A) The child is not receiving direct services in the same placement (service setting) in which indirect services are being provided.

(B) For example, a child may not receive both direct and indirect services for speech therapy or for special education, etc.

(C) However, the child may be receiving indirect services in lieu of resource services but continue to receive direct speech therapy or vice versa.

(5)(A) Children receiving indirect services will have their progress reviewed and documented a minimum of twice each semester.

(B) Program reviews should coincide with grading periods.

(6) Indirect services can be provided on a part-time basis by any designated special education instructor, consistent with caseload guidelines in 6 CAR § 130-1703(g), but must be provided during the instructional day and without interruption to the special education provided to direct services children assigned to that instructor.

(7)(A) A 2:1 child-to-teacher equivalency ratio can be used to determine the upward caseload adjustment for itinerant and resource teachers who are assigned consulting teacher duties for part of the instructional day.

(B) See 6 CAR § 130-1703(g).

(8)(A) Children receiving indirect services on December 1 are eligible to be included in the federal child count.

(B) Costs associated with the consulting teacher may be applied to meeting the district's special education expenditure requirements.

(C) Costs associated with the general education program may not be treated as special education expenditures.

**(c) Procedures for reviewing progress.**

(1)(A) The consulting teacher will, at a minimum, review and document each child's progress in indirect services twice each semester.

(B) Progress reports are to be filed in the child's due process folder.

(C) Such program reviews should coincide with grading periods.

(2)(A) If the child does not pass a content area course or courses or satisfactorily complete goals and objectives set out in the IEP for two (2) consecutive progress reviews, the consulting teacher will initiate a program review conference in accordance with established due process procedures.

(B) The committee will document its decision as to either the continuation of indirect services or placement in direct services, consistent with any revision of the child's IEP.

(C) For secondary children, should a progress review at any grading period indicate that a child is in danger of failing a content area course or courses, a formal review conference should be scheduled immediately.

**(d) Standards for indirect instructional services.**

**(1) Location.**

(A) The child will receive regular classroom instruction with the majority of the direct instruction being provided by general education personnel.

(B) Implementation of indirect services will be within the regular education environment.

(2) **Total amount of time.** The total amount of time that indirect services will be provided per week (a minimum of thirty (30) minutes and a maximum of ninety (90) minutes per week) must be reflected on each child's IEP.

(3) **Grading responsibilities.** Regular education personnel are responsible for assigning the child's grade or grades.

**(4) Teacher–pupil caseload.**

(A) The teacher–pupil caseload for a full-time consulting teacher is 1:40.

(B) A 2:1 child to teacher equivalency ratio can be used to determine the upward caseload adjustment for itinerant and resource teachers who are assigned consulting teacher duties for part of the instructional day.

(e) **Consulting teachers.**

(1) **General.**

(A) Consulting teachers are special education personnel who have the primary role of consulting with general and special education teachers regarding the modification and/or adaptation of instruction for specific children with disabilities.

(B) The consulting teacher may provide limited direct instruction to the child.

(2) **Consulting teacher responsibilities.**

(A) The consulting teacher provides a minimum of thirty (30) minutes per week and a maximum of ninety (90) minutes per week of consultation/technical assistance (i.e., communication, observation, monitoring, and maintenance of skills) for each child served in indirect services.

(B) On a regularly scheduled basis, the child's program will be reviewed in conjunction with the general education teacher or teachers serving the child.

(C) Consultation with the regular teacher or teachers regarding modifications in instructional methods or pacing that may be necessary for a child with a disability in the general education classroom may include, but is not limited to:

(i) Assisting the regular teacher or teachers in modifying existing materials or in locating alternate materials for use by the child;

(ii) Assisting the children and teachers with special modifications, such as test construction and administration, on an as-needed basis;

(iii) Providing limited demonstration, diagnostic, or team teaching to model alternative instructional approaches for integrating the child with a disability into the regular classroom; and

(iv) Providing consultation in the development of behavioral intervention plans, use of learning strategies, etc.

(D) Consulting teachers should participate, as appropriate, in meetings regarding the children they serve, such as the evaluation/programming conference to develop the child's IEP.

#### **6 CAR § 130-1706. Co-teaching.**

(a) **General.** Children with disabilities who receive special education in the general education classroom are considered to be receiving direct services if these services are provided by both the general education classroom teacher and qualified special education personnel.

(b) **Eligibility criteria.**

(1) The child has been determined to be an eligible child with a disability under this part.

(2) The IEP team has:

(A) Developed an IEP for the child; and

(B) Determined the extent to which co-teaching services are to be provided for the child to achieve his or her goals and objectives in the regular classroom.

(3)(A) By selecting the co-teaching services delivery model the IEP team has determined that there is no compelling instructional reason why the child's instruction cannot be provided jointly in the general education classroom.

(B) The general education classroom teacher must be an active participant in the IEP conference.

(4)(A) The child is not receiving co-teaching services in the same placement (service setting) in which indirect or other direct services are provided.

(B) For example, a child may not receive both co-teaching and indirect services for speech therapy or for special education, etc.

(C) However, the child may be receiving co-teaching services in lieu of resource services but continue to receive direct speech therapy or vice versa.

(5) Co-teaching services can be provided on a part-time basis by any designated special education personnel and general education teacher, consistent with caseload guidelines in subdivision (d)(2) of this section, but must be provided:

(A) During the instructional day; and

(B) Without interruption to the special education provided to direct services children assigned to that instructor.

(6) Children receiving co-teaching instructional services on December 1 are eligible to be included in the federal child count.

(7) Costs associated with the co-teaching special education teacher may be applied to meeting the district's special education expenditure requirements.

(8) Costs associated with the general education program may not be treated as special education expenditures.

**(c) Procedures for reviewing progress.**

(1)(A) The general education and special education teachers will review and document each child's progress in co-teaching services.

(B) Progress reports are to be filed in the child's due process folder.

(2)(A) If the child does not pass a content area course or courses or satisfactorily complete goals set out in the IEP for two (2) consecutive progress reviews, the special education teacher will initiate a program review conference in accordance with established due process procedures.

(B) The committee will document its decision as to either the continuation of co-teaching services or placement in other direct services, consistent with any revision of the child's IEP.

(3) For secondary children, should a progress review at any grading period indicate that a child is in danger of failing a content area course or courses, a formal review conference must be scheduled immediately.

(4) **Grading responsibilities.** General education personnel in consultation with the special education co-teacher or co-teachers are responsible for assigning a child's grade or grades.



(5) The total amount of time that co-teaching services will be provided per week is to be divided equally between the general education teacher and the special education teacher as documented on the child's IEP.

(d) **Teacher–pupil caseload.**

(1) **Full-time co-teacher.** The teacher–pupil caseload for a full-time co-teaching special education teacher is 1:30.

(2) **Part-time co-teacher.** The teacher–pupil caseload for a part-time co-teaching special education teacher is 1:30 split between co-teaching duties and other direct services provision.

**6 CAR § 130-1707. Inclusion of nondisabled children in school-based day treatment.**

(a) **Purpose.** It is the purpose of this part to set out the general guidelines for the inclusion of a limited number of children who, while not found to be eligible in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., definition, have been otherwise diagnosed as having an emotional disturbance and are in need of a school-based day treatment program.

(b) **Definitions.** As used in this section:

(1) "Day treatment program" means a cooperative program that includes the provision of both education and mental health services for each participating child in a coordinated, therapeutic manner;

(2) "DSM-IV-R" means the Diagnostic and Statistical Manual of Mental Disorder IV-Revised;

(3) "Mental health professional" means a person whose credentials allow them to diagnose and/or treat individuals with mental health needs and who may be:

(A) Employed by:

(i) A mental health facility (public or private);

(ii) A public school; or

(iii) An educational service agency cooperative; or

(B) Engaged in private practice;

(4) "Properly diagnosed" means the child has been determined to have an emotional disturbance on the basis of a DSM-IV-R classification by professionals qualified to make such a diagnosis, which includes:

(A) Psychiatrist (licensed in the State of Arkansas and having completed an accepted residency in psychiatry);

(B) Psychologist (licensed in the State of Arkansas);

(C) Psychological examiner (licensed in the State of Arkansas);

(D) Master of social work (licensed in the State of Arkansas);

(E) Licensed professional counselor (licensed in the State of Arkansas);

(F) Registered nurse (licensed in the State of Arkansas) with one (1) year supervised experience in a mental health setting;

(G) Physician (licensed in the State of Arkansas); and

(H) Persons in a related profession (licensed in the State of Arkansas and practicing within the bounds permitted by their licensing authority) with at least a master's degree and appropriate experience in a mental health setting, including documented, supervised training and experience in diagnosis and therapy of a broad range of mental disorders; and

(5) "School-based services" means services located on a school campus in an age-appropriate general education school building.

**(c) Child eligibility.**

(1)(A) Children who are not eligible in accordance with Individuals with Disabilities Education Act eligibility criteria, but who are eligible for inclusion in the school-based day treatment program funded with special education funds includes those children diagnosed as having emotional disturbance under recognized criteria (such as the DSM-IV-R).

(B) These children may have a diagnosis such as:

(i) Adjustment disorders;

(ii) Disorders of impulse control;

(iii) Conduct disorders;

(iv) Suicidal;

(v) Substance abuse; and/or

(vi) Affective disorders.

(C)(i) Such children may exhibit characteristics of:

(a) Juvenile delinquency;

(b) Truancy; and

(c) Runaway behavior.

(ii) However, juvenile delinquency, truancy, and runaway behaviors alone do not qualify a child for this program.

(2) The child's need for the day treatment program must be determined by a team comprising, at a minimum, the following:

(A) Mental health professional;

(B) Teacher in the day treatment program;

(C) Principal;

(D) Parent; and

(E) Other persons knowledgeable about the day treatment program and/or the child, as appropriate.

(3) The child's needs must be compatible with the services offered.

(4) When the placement of a child who is not eligible under the Individuals with Disabilities Education Act is foreseen or determined to be disruptive to the delivery of services to children who are eligible under the Individuals with Disabilities Education Act, then the child who is not eligible under the Individuals with Disabilities Education Act must be removed and served elsewhere.

**(d) District eligibility for inclusion of nondisabled children in school-based day treatment.**

(1)(A) The school district must have in place a school-based day treatment program that has been approved as such by the Special Education Unit of the Division of Elementary and Secondary Education.

(B) If such approval is not in place, see 6 CAR § 130-1706(d)(2).

(2) If the district is anticipating the opening of a school-based day treatment program, then, prior to the issuance of approval as a day treatment program by the Special Education Unit, the district must demonstrate that it has:

(A) Participated in a planning process including mental health professionals;

(B) Conducted staff development for both the staff of the school-based day treatment program and staff in the regular education program in the building, to include bus drivers and cafeteria personnel; and

(C) Developed a written agreement with mental health professionals, if they are not employees of the school district or ESA, as to their participation in the program.

(3)(A) At least one-third ( $1/3$ ) of the total teacher–pupil caseload must be children who:

(i) Are eligible under the Individuals with Disabilities Education Act; and

(ii) Need a school-based day treatment program.

(B) If the teacher–pupil caseload is 1:6, then at least two (2) children must be eligible under the Individuals with Disabilities Education Act.

(C) If the teacher–pupil caseload is 1:8 with three (3) additional staff (including mental health professionals), then at least three (3) children must be eligible under the Individuals with Disabilities Education Act.

(4)(A) The school district must submit a letter to the Administrator for Monitoring and Program Effectiveness in the Special Education Unit requesting approval for the inclusion of nondisabled children in the school-based day treatment program.

(B) The letter must include the:

(i) Number of children not eligible under the Individuals with Disabilities Education Act;

(ii) Number of children eligible under the Individuals with Disabilities Education Act; and

(iii) Number and type of personnel in the program.

(5) The administrator will provide the district with written notice as to whether the request is approved or disapproved.

(e) **Funding.**

(1)(A) This provision is intended to allow the expenditure of federal special education funds for children who are not eligible under the Individuals with Disabilities Education Act, but who:

(i) Have been otherwise properly diagnosed with emotional disturbance; and

(ii) Need a school-based day treatment program.

(B) No additional funds accompany this provision.

(2) Children who are not eligible under the Individuals with Disabilities Education Act are to be counted in the district's regular average daily membership report.

(3) Children who are not eligible under the Individuals with Disabilities Education Act shall not be counted on the district's December 1 child count for funds under Part B of the Individuals with Disabilities Education Act.

(f) **Program guidelines.** The Division of Elementary and Secondary Education Guidelines for School-Based Day Treatment Programs are located at 6 CAR § 132-801 et seq., the companion document to this part, and are to be followed in implementing school-based day treatment programs.

**6 CAR § 130-1708. Standards for integrated classroom model (ICM) (regular/special education).**

(a) **Description.**

(1) The ICM is designed to educate children with mild disabilities in the general education classroom with their nondisabled peers on a full-time basis for the entire school day.

(2)(A) For the purpose of this model, "mild" is defined as children with disabilities who receive resource services for not more than two (2) hours.

(B) Where integrated therapy (i.e., speech therapy, physical therapy, and/or occupational therapy) is clearly an inappropriate method of service delivery, children may receive such therapies in a pull-out program.

(3) The integrated classroom is highly structured, with clear behavioral and academic expectations.

(4) Special education children are completely integrated in all classroom activities, with the majority of teacher time being spent on active instruction.

(5) High positive reinforcement levels are established and maintained and materials are adapted to meet all children's needs.

(6) ICM teachers use a variety of teaching methods to meet child needs and abilities as indicated by the goals and objectives specified in children's individualized education programs (IEPs).

(7) District-adopted curricula and materials are also used in the integrated classroom and are modified to meet the needs of the children.

(8) The district curricula are supplemented by differentiated materials when needed.

**(b) Teacher–pupil caseload and class composition.**

(1) Integrated classrooms are composed of up to one-third (1/3) children with mild disabilities with appropriate IEPs and two-thirds (2/3) children who are nondisabled.

(2) The maximum teacher–pupil caseload of an integrated classroom cannot exceed a total of twenty-four (24) children.

**(c) Child selection.**

(1) Children with disabilities whose IEPs can be implemented in an integrated general education classroom, and for whom this type of setting is determined to be the child's least restrictive environment, may be selected for the integrated classroom.

(2) The selection of this model on the continuum of alternative options is “regular class/some direct instruction”.

(3) All eligible children are assigned to the integrated classroom at the appropriate grade level and, whenever possible, in the building they would normally attend if not disabled.

(4) The assignment of nondisabled children to the integrated classroom is made on the same basis as all other class assignments.

(5) Nondisabled children should be performing academically in the average to above average range.

(6) Participation in pull-out programs should be limited for both the child with disabilities and his or her nondisabled peers.

(d) **Facilities.** The integrated classroom must meet state facility standards established for regular classrooms.

(e) **Personnel.**

(1) Teachers participating in the ICM should be selected jointly by the building principal and special education administrator.

(2) The ICM teacher must be dually licensed in special education and general education or be fully licensed in either special education or general education and have a current additional licensure plan for completion of licensure in the collateral area.

(3) A paraprofessional must be assigned to the integrated classroom for a minimum of fifty percent (50%) of the day.

(f) **Funding.**

(1) A child with disabilities whose IEP is implemented in an integrated classroom on December 1 may be included in the December 1 federal child count.

(2)(A) The costs associated with the provision of special education by the integrated classroom teacher may be considered as special education expenditures.

(B) Such costs include materials and supplies needed to implement the IEPs of children with disabilities.

(3) Up to one-third (1/3) of the teacher's salary and benefits may be charged as special education expenditures.

(4) The costs associated with the general education program may not be considered a special education expenditure.

(5) The total cost of the half-time paraprofessional in the integrated classroom may be considered as a special education expenditure.

**(g) Related services.**

(1) Related services must be provided as specified in each child's IEP.

(2) It may be necessary to provide related services in a location other than the general education classroom.

**(h) Staff development.**

(1) Prior to implementing the integrated classroom model, the ICM staff must receive at least five (5) hours of in-service training before the classroom is operational.

(2) During the first year of operation, an additional five (5) hours of in-service training must be provided for the ICM staff.

(3) A minimum of five (5) hours of staff development must be provided annually following the first year of implementation.

(4) At least one-half (1/2) of the required training must be selected from the following areas:

(A) Classroom management;

(B) Teaching strategies, such as cooperative learning, peer tutoring, learning strategies, etc.;

(C) Learning styles/modalities;

(D) Roles and responsibilities of teachers and paraprofessionals;

(E) Communication skill training/team building;

(F) Teaching social skills;

(G) Coping/self-esteem strategies for children; and

(H) Study skills for children.

(5) Additional staff development topics should be identified and training provided based upon needs assessment.

(6) Training must be provided in the context of regular staff development at the building or district level, provided it is identifiable.

**6 CAR § 130-1709. Use of dually licensed teachers to implement IEPs.**



(a) **Purpose.** The purpose of this provision is to verify that dually licensed teachers used to implement the IEPs of children with disabilities are considered to be qualified providers.

(b) **Conditions.**

(1) When a district has a teacher or teachers who are dually licensed in general education and special education, then it may be determined that the IEP for a particular child can be fully implemented within the general education classroom with no additional assistance from a certified special education teacher.

(2) The maximum number of children with disabilities for whom a dually licensed teacher is solely responsible for implementing their IEPs is limited to two (2).

(3) When a district has more than two (2) children with disabilities for whom it is appropriate for a dually licensed teacher to implement their IEPs, the district must comply with the requirements of the integrated classroom model described at 6 CAR § 130-1707.

(4) A paraprofessional is required to be in the classroom.

(5) The total teacher–pupil caseload must conform to maximum class size for a general education classroom in accordance with the Division of Elementary and Secondary Education’s standards for accreditation of schools.

**6 CAR § 130-1710. Homebound children.**

(a) **Purpose.**

(1)(A) The purpose of this section is to provide the criteria governing the conditions under which a school district may count a homebound child to generate Formula Foundation Aid.

(B) These criteria were adopted by the State Board of Education at its September 1982 meeting.

(2) The application of these criteria is required in order for a school district to count children with disabilities who are on homebound services on its December 1 federal child count.

(b) **Criteria.**

- (1) The child is absent from school because of:
  - (A) An illness;
  - (B) An accident resulting in serious injury;
  - (C) Pregnancy;
  - (D) Other physically disabling conditions; or
  - (E) In the case of a child with disabilities, the IEP team has determined that the child's LRE is a homebound placement.
- (2) The school district must provide a licensed teacher for the homebound child for at least four (4) hours per week on at least two (2) different visits to the child's home each week.
- (3) The school may use an aide (paraprofessional) to work with the child if the aide (paraprofessional) works under the supervision of:
  - (A) The regular teacher or teachers; or
  - (B) In the case of a child with a disability, the teacher or teachers responsible for implementing the child's IEP.
- (4) The child's attendance record should show the child as being absent but on roll and a note should be entered in the (child) register or the form being used, indicating that the child was (is):
  - (A) Receiving instruction at home; and
  - (B) Being counted as a homebound child for the purpose of generating Formula Foundation Aid.
- (5) For a child with disabilities who is homebound, the district must implement the child's IEP using an appropriately qualified provider, i.e., for speech therapy a licensed speech-language pathologist, or for instruction implementing goals and objectives in the IEP, a special education-licensed teacher.
- (6) For a child with disabilities who is homebound, the district must provide the related services identified in the IEP during the duration of the period of the child's confinement.

**6 CAR § 130-1711. Braille assessment and instruction.**

(a) **General.**

(1) Arkansas Code §§ 6-41-403 and 6-41-404 provide for the:

(A) Annual assessment of child progress of children with visual impairments; and

(B) Identification of the need for and corresponding provision of braille instruction.

(2) Arkansas Code §§ 6-41-403 and 6-41-404 further require that the Division of Elementary and Secondary Education:

(A) Develop procedures to determine when a child with a visual impairment needs braille instruction; and

(B) Establish requirements to become qualified as a braille instructor.

(b) **Definitions.** As used in this section:

(1) "ADE" means the Arkansas Department of Education;

(2)(A) "Braille" means a tactual symbol system for reading and writing used by individuals who are visually impaired.

(B) Braille codes are available in:

(i) Literacy;

(ii) Math;

(iii) Science;

(iv) Music; and

(v) Computer;

(3) "Compliance citation" means a citation issued by the division that documents a school's failure to comply with state or federal education laws;

(4) "Conventional literacy program" means an instructional program of reading and writing in print or braille that generally begins in kindergarten and continues throughout the school years;

(5) "Core academic subjects" means:

(A) English;

(B) Reading or language arts;

(C) Mathematics;

- (D) Science;
- (E) Foreign languages;
- (F) Civics and government;
- (G) Economics;
- (H) Arts;
- (I) History; and
- (J) Geography;

(6) "Functional literacy program" means an instructional program that focuses on survival reading and writing skills needed for increased independence in daily life;

(7) "IDEA" means the Individuals with Disabilities Education Act;

(8) "IEP" means individualized education program;

(9) "Learning media assessment" means an objective process of systematically selecting learning and literacy media for children with visual impairments;

(10) "Learning medium" means the broad range of general instructional materials used to teach children with visual impairments in literacy and other academic programs;

(11) "LMA" means learning media assessment; and

(12)(A) "Visually impaired", including blindness, means an impairment in vision that, even with correction, adversely affects a child's educational performance.

(B) The term includes both partial sight and blindness.

(C)(i) Children with partial sight are those whose vision, although impaired, is still the primary channel of learning and, with adjustments, are able to perform the visual tasks required in the usual school situation.

(ii) Generally, their visual acuity with correction is 20/70 or less.

(D) Children with blindness are those with no vision or with little potential for developing vision as a primary channel for learning and, therefore, must rely upon tactile and auditory senses to obtain information.

**(c) Assessment of child progress.**

(1) The assessment shall:

(A) Address the child's need for braille instruction, using procedures developed by the division, and specify the learning medium most appropriate for the child's educational progress;

(B) Identify the child's strengths and weaknesses in braille skills when that medium is used for instruction; and

(C) Identify appropriate and necessary related services and technologies for use in combination with braille instruction.

(2) The results of the assessment shall be used to develop the child's IEP.

(3) The assessment team may include:

(A) Reading specialist;

(B) General education teacher (including the preschool teacher);

(C) Teachers of the visually impaired;

(D) Certified educational vision consultant;

(E) Medical specialist;

(F) Parent or parents; and

(G) Other personnel, as appropriate.

(4) Data collected by the team will provide information to:

(A) Determine if further assessment is warranted; or

(B) Develop and/or revise the IEP.

**(d) Process for assessment for "reading" children.**

(1)(A) **Step 1.** Screening to determine the child's reading speed and rate and grade level.

(B) **Tools.** Informal reading inventories administered by a reading specialist and/or general education classroom teacher.

(C) **Results.** Data regarding reading rate, comprehension, and grade level are obtained.

(D) **Action to be taken.** The child either continues with current established reading medium or the child is referred for a LMA.

(2)(A) **Step 2.** Administer the LMA to determine the appropriateness/need for braille instruction and strengths and weaknesses.

(B) **Tools.** Forms 2, 6, and 7 from the LMA Resource Guide for Teachers and a braille skills inventory administered by a:

- (i) Teacher of the visually impaired; or
- (ii) Certified educational vision consultant.

(C) **Results.** Data regarding current level of literacy functioning, strengths and weaknesses, and literacy tools (visual, tactual, auditory) are obtained.

(D) **Action to be taken.** Convene the IEP team to:

- (i) Decide if a media change is warranted; and
- (ii) Review and revise the IEP, if appropriate.

(e)(1)(A) Process for assessment for children with no established reading medium (pre-readers) who will more than likely be taught to read through a conventional literacy program.

(B) Typically these children are in:

- (i) Preschool;
- (ii) Kindergarten; or
- (iii) First grade.

(2)(A) **Step 1.** Determine the readiness level for braille instruction.

(B) **Tools.** Forms 2, 4, and 5 from the LMA Resource Guide for Teachers administered by a:

- (i) Teacher of the visually impaired; or
- (ii) Certified educational vision consultant.

(C) **Results.** Data regarding use of sensory channels, indicators of readiness for a conventional literacy program, and initial selection of literacy medium are obtained.

(D) **Action to be taken.** Convene the IEP committee to develop or revise the IEP, if appropriate.

(3) **Step 2.** Once the child becomes a "reading" child, go to Step 1, screening for "reading" children in subdivision (d)(1) of this section.

(f)(1) Process for assessment for children with no established reading medium (non-readers and/or children with additional disabilities) who will more than likely be taught to read through a functional literacy program.

(2)(A) **Step 1.** Screening to determine readiness for braille instruction.

(B) **Tools.** Forms 2, 9, and 10 from the LMA Resource Guide for Teachers administered by a:

- (i) Teacher of the visually impaired; or
- (ii) Certified educational vision consultant.

(C) **Results.** Data regarding use of sensory channels, readiness indicators for a functional literacy program, and selection of functional literacy program are obtained.

(D) **Action to be taken.** Convene the IEP committee to:

- (i) Determine readiness level for appropriate braille instruction or select an alternate medium; and
- (ii) Develop or revise the IEP, if appropriate.

(g) **Braille instruction.** Individuals providing braille instruction must:

- (1) Hold current teacher licensure designated as “visually impaired” issued by the division; or
- (2) Hold current teacher licensure and have an approved additional licensure plan in the area of visually impaired.

## **6 CAR § 130-1712. Use of reading specialists to implement IEPs — General.**

(a) Individuals who hold a reading endorsement or who are licensed as reading specialists by the Division of Elementary and Secondary Education may be considered to be qualified providers to implement the goals and objectives related to reading that are stated in an IEP for a child with disabilities.

(b) A pro rata portion of the salary of such individuals may:

- (1) Count toward meeting the special education state/local expenditure requirement; or

(2) Be funded with federal special education monies.

(c) Materials and supplies that are needed by children with disabilities may be purchased with special education funds.

## **Subpart 18. Residential Placement**

### **6 CAR § 130-1801. Purpose.**

(a) It is the purpose of this subpart to allocate public school funds for the education of residentially placed students.

(b) It is further the purpose of this subpart to define the educational services in such placements.

### **6 CAR § 130-1802. Definitions.**

In addition to the definitions provided in 6 CAR § 130-201 et seq., the following definitions apply specifically to this subpart:

(1) "Juvenile" means a person who is eighteen (18) years old or younger;

(2)(A) "Juvenile detention facility" means any facility operated by a political subdivision of the state for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility.

(B) Under Arkansas Code § 9-27-330(a)(11), such facility shall afford opportunities for education, recreation, and other rehabilitative services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period not to exceed ninety (90) days;

(3)(A) "Residential placement in state" means one (1) of the following licensed facilities that has a special education component approved by the Special Education Unit of the Division of Elementary and Secondary Education on an annual basis:

(i) Inpatient psychiatric treatment facilities licensed by the Department of Human Services;



(ii) Alcohol and drug treatment facilities licensed by the Department of Human Services;

(iii) Easterseals Arkansas;

(iv) Arkansas State Hospital;

(v) Facilities licensed as Intermediate Care Facilities for Individuals with Intellectual Disabilities by the Department of Human Services;

(vi) Residential facilities licensed as sexual rehabilitation programs for children by the Department of Human Services; and

(vii) Psychiatric hospitals licensed by the Department of Health.

(B) Such placement does not include the:

(i) Arkansas School for the Blind;

(ii) Arkansas School for the Deaf; or

(iii) Arkansas School for Mathematics, Sciences, and the Arts;

(4) "Residential placement out of state" means:

(A) For a student with disabilities, a facility outside the State of Arkansas that has a special education component approved by the Special Education Unit of the Division of Elementary and Secondary Education on an annual basis that is operating under the appropriate licensure of the state in which it is located; and

(B) For a student without disabilities, a facility in a state that borders Arkansas that is:

(i) Operating under the appropriate licensure of the state in which it is located; and

(ii) Approved by the Special Education Unit of the Division of Elementary and Secondary Education;

(5) "Student with disabilities" means a student age three (3) to twenty-one (21) who qualifies as disabled under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and Arkansas Code § 6-41-202 et seq.; and

(6) "Student without disabilities" means a student who has not been identified as disabled in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and Arkansas Code § 6-41-202 et seq., including any student not

previously enrolled in an Arkansas public school but who meets the residency requirements of Arkansas Code § 6-18-202 upon entering the residential facility and enrolls in the resident district.

**6 CAR § 130-1803. Residential placement in state — Students without disabilities.**

**(a) Assignment of responsibility.**

(1)(A) When a nondisabled student is placed for noneducational reasons in a residential treatment facility for treatment, the district where the residential treatment facility is located is the student's resident district.

(B) This district is responsible for educating the student.

(2) When a nondisabled student who is a ward of the state is placed in a residential treatment facility, the district where the facility is located is responsible for educating the student.

(3) When a nondisabled student is placed in a residential treatment facility for educational purposes by a parent or agent other than the school district, the parent or agent remains responsible for the education of the student.

**(b) Procedures for educational management.**

(1)(A) Each school district must designate an individual who will be responsible for ensuring compliance with this part.

(B) This may be the district superintendent or a designee.

(2)(A) When a nondisabled student is placed in a residential facility, the facility must notify the responsible school district (superintendent or designee) within seven (7) calendar days of the student's admission.

(B) Failure of the facility to notify the responsible district in a timely fashion may result in loss of reimbursement funding.

(3)(A) The district superintendent or designee shall convene a conference by a review team within seven (7) calendar days of notice by the residential treatment facility that the student is in a residential program.

(B) This conference may be conducted in person or through technology.

(4)(A) The review team shall be composed of, at a minimum, a representative from the district and a representative from the residential treatment facility.

(B) A Department of Human Services representative shall also be invited if the student is receiving services from one (1) or more Department of Human Services divisions.

(5) The review team shall review information available on the student and determine whether a referral for consideration of eligibility for special education and related services is warranted.

(6) When the review team determines the student should be referred for consideration of eligibility for special education, a referral form must be completed and a referral conference conducted following the process in 6 CAR § 130-401 et seq.

(7) When the review team determines that the student should not be referred for consideration for special education and related services, it must identify the general educational and noneducational needs of the student.

(8)(A) Based on the identified needs of the nondisabled student, the review team will determine and document where the educational program of the student will be implemented.

(B) The inter-linkage of the treatment program needs and educational programming must be discussed in reaching a decision on an appropriate educational setting.

**(c) Assignment of costs.**

(1) For nondisabled students, educational costs are limited to only those costs incurred for direct educational instruction of the student.

(2)(A) All other services provided for the student are considered noneducational and are not reimbursable under this part.

(B) Such other costs will be borne by:

- (i) The Department of Human Services;
- (ii) Medicaid;
- (iii) Private insurance;
- (iv) The parent; or

(v) Any combination thereof.

(3)(A) Residential treatment facilities must submit a written request to the school district identifying the costs of education and services provided.

(B) The request must be submitted to the school district by the deadline established by the Division of Elementary and Secondary Education in order for the district to seek reimbursement from the Special Education Unit of the Division of Elementary and Secondary Education.

(4)(A) The Division of Elementary and Secondary Education, a public school district, or an open-enrollment charter school shall not be liable for any educational costs or other related costs associated with the placement of a juvenile in an in-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:

(i) The Division of Elementary and Secondary Education authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the Division of Elementary and Secondary Education has approved the facility's education program; and

(ii) Each program authorization precedes the placement.

(B) If the program is not authorized prior to the placement, the Division of Elementary and Secondary Education, public school districts, or open-enrollment charter schools shall not be responsible for education or other related costs, nor shall they be subject to any order to pay for educational or other related costs.

(5) The liability of the Division of Elementary and Secondary Education, a public school district, or an open-enrollment charter school for the educational costs or other related costs shall be limited to the reimbursement rate established by the Division of Elementary and Secondary Education for a juvenile placed in a residential or inpatient facility.

**(d) Funding.**

(1) A local school district may request reimbursement from the Special Education Unit for the educational costs of nondisabled students placed in residential treatment facilities.

(2) The local school district shall not be responsible for educational costs exceeding the maximum reimbursement rate for nondisabled students receiving educational services in a residential treatment facility, as determined by the Division of Elementary and Secondary Education.

(3) When the requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.

**(e) Extended school year services (ESY).**

(1)(A) There is no provision for extended school year (educational) services to nondisabled students when schools are not in session.

(B) This applies to nondisabled students in residential placements, as well as their nondisabled peers who attend the local public school.

(C) Therefore, there is no need for a district to convene a review team during the summer months when school is not in session.

(2) Residential treatment facilities cannot bill school districts for educational services provided to nondisabled students during the summer months.

**6 CAR § 130-1804. Residential placement in state — Students with disabilities.**

**(a) Assignment of responsibility.**

(1) For students with disabilities in state-operated human development centers, the facility is responsible for procedural safeguards and the provision of FAPE.

(2)(A) When a student with a disability is placed for noneducational reasons in a residential treatment facility for treatment, the district where the facility is located is the student's resident district.

(B) The district shall be responsible for procedural safeguards and the provision of FAPE.

(3) When a student with a disability who is a ward of the state is placed in a residential treatment facility, the district where the residential treatment facility is located is responsible for educating the student.

(4) When a student with a disability is placed in a residential treatment facility for educational purposes by a school district, the placing district remains responsible for procedural safeguards and the provision of FAPE.

(5) When a student with a disability is placed in a residential treatment facility for educational purposes by a parent or agent other than the school district, the parent may petition the district where the student permanently resides (home district, usually that of the student's parent or guardian) for provision of procedural safeguards and FAPE.

(b) **Procedural safeguards.** The procedural safeguards specified in 6 CAR § 130-901 et seq., governing due process, shall be followed.

(c) **Procedures for educational management.**

(1) When a student with a disability is placed in a residential facility, the facility must notify the responsible school district (superintendent or designee) within seven (7) calendar days of the student's admission.

(2) Failure of the facility to notify the responsible district in a timely fashion may result in loss of Division of Elementary and Secondary Education approval of the residential treatment facility's special education program.

(3) Procedures for children who transfer from public agencies in the same state as outlined in 6 CAR § 130-803(c), governing IEPs, should be followed.

(d) **Assignment of costs.**

(1)(A) The division, a public school district, or an open-enrollment charter school shall not be liable for any educational costs or other related costs associated with the placement of a juvenile in an in-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:

(i) The division authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the division has approved the facility's education program; and

(ii) Each program authorization precedes the placement.

(B) If the program is not authorized prior to the placement, the division, public school districts, or open-enrollment charter schools shall not be responsible for

education or other related costs, nor shall they be subject to any order to pay for educational or other related costs.

(2) The liability of the division for the educational costs or other related costs for a student placed by a parent or agent other than the school district shall be limited to the reimbursement rate established by the division for a juvenile placed in a residential or inpatient facility.

(3)(A) For identified students with disabilities, those costs defined as being educational in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., will be borne by the district responsible for provision of procedural safeguards and FAPE.

(B) For students in state-operated human development centers, the facility assumes those costs.

(4) All other costs will be borne by either:

(A) The Department of Human Services;

(B) Medicaid;

(C) Private insurance;

(D) The parent; or

(E) Any combination thereof.

**(e) Funding.**

(1) A school district may request reimbursement for the educational costs of students with disabilities who have been placed in approved residential treatment facilities, as defined by the Special Education Unit of the Division of Elementary and Secondary Education.

(2) When the requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.

**(f) Extended school year services (ESY).**

(1) Not all students with disabilities receiving educational services in residential placement will be eligible for or in need of ESY services.

(2) Determination of student eligibility for ESY services is made by the resident school district based on the rules governing ESY in 6 CAR § 130-1901 et seq.

**6 CAR § 130-1805. Residential placement out of state — Students with disabilities.**

**(a) Assignment of responsibility.**

(1) When a student with a disability is placed in a residential treatment facility for educational purposes by a school district, the placing school district remains responsible for procedural safeguards and the provision of FAPE.

(2) When a student with a disability is unilaterally placed in a residential facility for educational purposes by a parent or agent other than the school district, the parent may petition the school district where the student permanently resides (home school district, usually that of the student's parent or guardian) for the provision of procedural safeguards and FAPE.

(3) When a child with a disability is a ward of the state and is placed in a residential treatment facility outside the boundaries of the State of Arkansas, the Department of Education is responsible for procedural safeguards and FAPE.

**(b) Procedural safeguards.** The procedural safeguards specified in 6 CAR § 130-901 et seq., governing due process, shall be followed.

**(c) Assignment of costs.**

(1) The Division of Elementary and Secondary Education, a public school district, or an open-enrollment charter school shall not be liable for any educational costs or other related costs associated with the placement of a juvenile in an out-of-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:

(A) At the time of placement:

(i) The juvenile qualifies as disabled under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.;

(ii) Payment is required under the Individuals with Disabilities Education Act; and

(iii) The juvenile's physician determines that the out-of-state placement is medically necessary and is the most appropriate placement available;



(B) The Department of Education authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the division has approved the facility's education program;

(C)(i) Each program authorization precedes the placement.

(ii) If the program is not authorized prior to placement, the department, public school districts, or open-enrollment charter schools shall not be responsible for education or other related costs, nor shall they be subject to any order to pay for educational or other related costs; and

(D) The out-of-state residential or inpatient facility is located within a state that borders Arkansas.

(2) Nothing in this section shall be construed to require payment by the division, a public school district, or an open-enrollment charter school for education costs and other related costs associated with the placement of a juvenile in an out-of-state residential or inpatient facility for any care or treatment, including psychiatric treatment, prior to April 7, 2005.

(3) For identified students with disabilities, those costs defined as being educational in accordance with the Individuals with Disabilities Education Act will be borne by the district/agency responsible for provision of procedural safeguards and FAPE.

(4) All other costs will be borne by either:

(A) The Department of Human Services;

(B) Medicaid;

(C) Private insurance;

(D) The parent; or

(E) Any combination thereof.

(5) The liability of the division for the educational costs or other related costs for a student placed in a residential facility by a parent or agent other than the school district shall be limited to the lesser of the:

(A) Reimbursement rate established by the division for a juvenile placed in a residential or inpatient facility; or

(B) Normal and customary educational cost reimbursement rate of the state in which a juvenile is placed in an out-of-state residential or inpatient facility as determined by the division.

**(d) Funding.**

(1)(A) A school district may request reimbursement for the educational costs of a student with disabilities placed in an approved residential treatment facility located outside the boundaries of Arkansas.

(B) Reimbursement may be used to fund the cost of such placement incurred by a school district.

(2) When requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.

**(e) Extended school year services (ESY).**

(1) Not all students with disabilities receiving educational services in residential placement will be eligible for or in need of ESY services.

(2) Determination of student eligibility for ESY services is made by the resident school district or agency based on the rules governing ESY in 6 CAR § 130-1901 et seq.

**6 CAR § 130-1806. Residential placement out of state — Students without disabilities.**

**(a) Assignment of responsibility.**

(1) When a nondisabled student is placed in an out-of-state residential treatment facility for educational purposes by a school district, the placing school district remains responsible for educating the student.

(2) When a nondisabled student is placed in an out-of-state residential treatment facility for noneducational reasons and the juvenile's physician determines that the out-of-state placement is medically necessary and is the most appropriate placement available, the student's resident district, as determined by Arkansas Code § 6-18-202, is responsible for educating the student.

(3) When a nondisabled student who is a ward of the state is placed in an out-of-state residential treatment facility and the juvenile's physician determines that the out-of-state placement is medically necessary and is the most appropriate placement available, the Department of Education is responsible for educating the student.

(4) When a nondisabled student is placed in an out-of-state residential treatment facility for educational purposes by a parent or agent other than the school district, the parent or agent remains responsible for the education of the student.

**(b) Procedures for educational management.**

(1)(A) Each school district must designate an individual who will be responsible for ensuring compliance with this part.

(B) This may be the district superintendent or a designee.

(2)(A) When a nondisabled student is placed in an out-of-state residential facility, the facility must notify the responsible school district (superintendent or designee) within seven (7) calendar days of the student's admission.

(B) Failure of the facility to notify the responsible district in a timely fashion may result in loss of reimbursement funding.

(3)(A) The district superintendent or designee shall convene a conference by a review team within seven (7) calendar days of notice by the residential treatment facility that the student is in a residential program.

(B) This conference may be conducted in person or through technology.

(4)(A) The review team shall be composed of, at a minimum, a representative from the district and a representative from the residential treatment facility.

(B) A Department of Human Services representative shall also be invited if the student is receiving services from one (1) or more Department of Human Services divisions.

(5) The review team shall:

(A) Review information available on the student; and

(B) Determine whether a referral for consideration of eligibility for special education and related services is warranted.

(6) When the review team determines the student should be referred for consideration of eligibility for special education, a referral form must be completed and a referral conference conducted following the process in 6 CAR § 130-401 et seq., governing referrals.

(7) When the review team determines that the student should not be referred for consideration for special education and related services, it must identify the general educational and noneducational needs of the student.

(8)(A) Based on the identified needs of the nondisabled student, the review team will determine and document where the educational program of the student will be implemented.

(B) The inter-linkage of the treatment program needs and educational programming must be discussed in reaching a decision on an appropriate educational setting.

**(c) Assignment of costs.**

(1) For nondisabled students, educational costs are limited to only those costs incurred for direct educational instruction of the student.

(2)(A) All other services provided for the student are considered noneducational and are not reimbursable under this part.

(B) Such other costs will be borne by:

- (i) The Department of Human Services;
- (ii) Medicaid;
- (iii) Private insurance;
- (iv) The parent; or
- (v) Any combination thereof.

(3)(A) Residential treatment facilities must submit a written request to the responsible school district identifying the costs of education and services provided.

(B) The request must be submitted to the school district by the deadline established by the Special Education Unit of the Division of Elementary and Secondary Education in order for the district to seek reimbursement.

(4) The Special Education Unit, a public school district, or an open-enrollment charter school shall not be liable for any educational costs or other related costs associated with the placement of a juvenile in an out-of-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:

(A) At the time of placement, the juvenile's physician determines that the out-of-state placement is medically necessary and is the most appropriate placement available;

(B) The Special Education Unit authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the Special Education Unit has approved the facility's education program;

(C) Each educational program authorization precedes the placement; and

(D) The out-of-state residential or inpatient facility is located within a state that borders Arkansas.

(5) If the program is not authorized prior to the placement, the Division of Elementary and Secondary Education, public school districts, or open-enrollment charter schools shall not be responsible for education or other related costs, nor shall they be subject to any order to pay for educational or other related costs.

(6) The liability of the Division of Elementary and Secondary Education, a public school district, or an open-enrollment charter school for the educational costs or other related costs, shall be limited to the lesser of the reimbursement rate established by the Division of Elementary and Secondary Education for a juvenile placed in a residential or inpatient facility or the normal and customary educational cost reimbursement rate of the state in which a juvenile is placed in an out-of-state residential or inpatient facility determined by the Division of Elementary and Secondary Education.

(7) Reimbursement for students without disabilities in an out-of-state facility shall be limited to twenty (20) students at any one (1) time during a calendar year.

(8) Nothing in this section shall be construed to require payment by the Division of Elementary and Secondary Education, a public school district, or an open-

enrollment charter school for education costs and other related costs associated with the placement of a juvenile in an out-of-state residential or inpatient facility for any care or treatment, including psychiatric treatment, prior to April 7, 2005.

**(d) Funding.**

(1) The responsible school district may request reimbursement from the Special Education Unit for the educational costs of nondisabled students placed in residential treatment facilities.

(2) The school district shall not be responsible for educational costs exceeding the maximum reimbursement rate for nondisabled students receiving educational services in a residential treatment facility, as determined by the Division of Elementary and Secondary Education.

(3) When the requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.

**(e) Extended school year services (ESY).**

(1)(A) There is no provision for extended school year (educational) services to nondisabled students when schools are not in session.

(B) This applies to nondisabled students in residential placements, as well as their nondisabled peers who attend the local public school.

(C) Therefore, there is no need for a district to convene a review team during the summer months when school is not in session.

(2) Residential treatment facilities cannot bill school districts for educational services provided to nondisabled students during the summer months.

**6 CAR § 130-1807. Juvenile detention facilities.**

**(a) General.**

(1) For the purposes of this part, juvenile detention facilities are designated as approved residential treatment facilities.

(2) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's resident school district of his or her whereabouts.

(3) The juvenile detention facility shall certify the detention dates to the juvenile's resident school district within five (5) days after the juvenile is released.

**(4) Students detained in a juvenile detention facility for nine (9) days or less.**

(A) The juvenile detention facility and the district where the juvenile detention facility is located are designated as responsible for educating the student consistent with federal and state laws for any period of time the student is being detained in the facility.

(B) The resident district of a student who is being detained in a juvenile detention facility shall work cooperatively with the juvenile detention facility and the district where the juvenile detention facility is located to provide the student with the curriculum, textbooks, or other materials necessary to educate the student for the first nine (9) days that the student is being detained in the facility either awaiting adjudication or pursuant to court order.

(C) The resident district shall keep the student enrolled in the district for the first nine (9) days that the student is being detained in the facility.

(D) The juvenile detention facility must provide the student's resident school district a weekly attendance record for each of that district's students in the facility, regardless of length of stay.

**(5) Students detained in a juvenile detention facility for ten (10) days or more.**

(A) The juvenile detention facility and the district where the juvenile detention facility is located are designated as responsible for educating the student consistent with federal and state laws for any period of time the student is being detained in the facility.

(B) The district where the juvenile detention facility is located shall work cooperatively with the juvenile detention facility to provide the student with the curriculum, textbooks, or other materials necessary to educate the student.

(C) Immediately upon receiving notice that a student has been detained in a juvenile detention facility for ten (10) days or more, the resident district shall drop the student from enrollment.

(6) The resident district of a student who is being detained in a juvenile detention facility is designated as responsible for the timely transfer of a student's educational records to the district where the juvenile detention facility is located upon notification by the court or district where the facility is located of the student's placement in a juvenile detention facility.

(7) Juvenile detention facilities must meet all standards required by the Department of Finance and Administration in addition to this part.

**(b) Educational services for nondisabled students.**

(1) In order to be eligible for public school funds, each juvenile detention facility must provide the following educational services for nondisabled students:

(A) The teachers employed by the juvenile detention facility must hold a valid teaching license from the Division of Elementary and Secondary Education;

(B) The maximum teacher–student caseload must be 1:15 without a paraprofessional and 1:24 with a full-time paraprofessional;

(C) The juvenile detention facility must provide instruction that addresses the state's curriculum standards and educational skills needed by students and appropriately address the age ranges and the abilities of the students in the facility; and

(D)(i) The juvenile detention facility must provide appropriate instructional and supplemental materials and media as are needed to enhance student instruction.

(ii) Such materials include, but are not limited to:

(a) Reference materials;

(b) Dictionaries;

(c) Maps;

(d) Reading materials;

(e) Computer-enhanced instructional software; and/or

(f) Internet access.



(2) A school district that receives a student after attendance at a juvenile detention facility shall not use absences incurred as a result of detention as a basis for denial of credit.

(c) **Educational services for disabled students.** In order to be eligible for public school funds, each jurisdictional school district and juvenile detention facility must provide the following educational services for disabled students:

- (1) FAPE consistent with the student's IEP;
- (2) The teacher, employed by the JDF or local school district, who is implementing the IEP of a student with a disability must hold a valid teaching license as a special education teacher; and
- (3) The procedural safeguards specified in this part shall be followed for those students:
  - (A) Identified as disabled; and
  - (B) Suspected of being disabled.

(d) **Funding for students in juvenile detention facilities.**

(1) The resident district of a student detained in a juvenile detention facility for nine (9) days or less shall continue to receive funding based on the student's enrollment (average daily membership) in the district for those nine (9) days or less for the costs of providing educational services to students in the facility in cooperation with the juvenile detention facility and the district where the facility is located.

(2) The juvenile detention facility may receive reimbursement from the local school district in which the facility is located for the costs of providing educational services to students in the facility, based upon the following:

(A) For nondisabled students, educational costs are costs incurred for direct educational instruction and include salaries and benefits of teachers and paraprofessionals, staff development costs, and substitute pay;

(B) For students with disabilities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., educational costs include all costs incurred in the provision of FAPE; and

(C) For students suspected of having disabilities as defined by the Individuals with Disabilities Education Act, educational costs shall include costs incurred in the evaluation process.

(3) The juvenile detention facility and the local school district in which the juvenile detention facility is located must jointly determine the education costs incurred by the facility.

(4)(A) The juvenile detention facility and the local school district in which the juvenile detention facility is located shall jointly complete an application for funding based on the approved student capacity of the facility and shall submit the application to the division.

(B) The application for funding shall include an itemized statement of educational costs incurred.

(5) The local school district in which the juvenile detention facility is located must reimburse the juvenile detention facility for the amount approved by the division for educational costs incurred up to an amount not to exceed the Formula Foundation Aid, times the approved student capacity of the facility.

(6) If the juvenile detention facility and the local school district cannot agree on an amount for reimbursement, an appeal shall be made by either entity, or both, to the division for a final decision.

(7)(A) The division must reimburse local school districts that have juvenile detention facilities on a quarterly basis based upon the district requesting such reimbursements.

(B) The quarterly reimbursement amount will be determined by dividing the amount identified in subdivision (d)(5) of this section by four (4).

(C) Should costs decrease, the local school district in which the facility is located must notify the Special Education Unit of the Division of Elementary and Secondary Education within thirty (30) days of revised costs.

(D) Any adjustments to reimbursements will be made in the fourth quarter.

(8) The jurisdictional local school district may request reimbursement for the costs of educational services provided to students in juvenile detention facilities and incurred by the local school district.

(9) The juvenile detention facility must provide the jurisdictional local school district a quarterly attendance record for each student in the facility, regardless of length of stay.

**6 CAR § 130-1808. Juvenile treatment centers (formerly known as serious offender programs).**

(a) It shall be the responsibility of each juvenile treatment center that is part of the Division of Youth Services' system of education to report the attendance of its students in the education program by providing quarterly attendance reports to the Division of Youth Services.

(b) The Division of Youth Services will provide the quarterly attendance information to the Division of Elementary and Secondary Education.

(c) Funding will be disbursed to the Division of Youth Services in support of education services within Division of Youth Services juvenile treatment centers based upon a legislative appropriation for this purpose.

**Subpart 19. Extended School Year**

**6 CAR § 130-1901. Purpose.**

(a) It is the purpose of this subpart to define extended school year services and delineate the criteria for eligibility for such services.

(b) It is further the purpose of this subpart to define the manner in which funds will be provided to local school districts for the provision of ESY services.

**6 CAR § 130-1902. Definitions.**

As used in this subpart:

(1) "Extended school year services (ESY)" means special education and related services that are:

(A) Provided to a child with a disability beyond the normal school year of the public agency;

(B) In accordance with the child's IEP;

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

(D) Meet the standards of the Division of Elementary and Secondary Education;

(2) "Prospective performance review" means that, based on a review of the amount of time that it takes a child to acquire a skill, it can be expected/anticipated that even short breaks in programming will likely result in regression of a previously acquired skill that exceeds typical regression experienced by other children, or that acquisition of a new skill will be delayed beyond a reasonable time;

(3) "Recoupment" means the ability to regain or recover the level of skills attained prior to interruption of programming;

(4) "Regression" means a reversion to a lower level of functioning, as evidenced by a decrease in the performance level of previously attained skills, which occurs as a result of an interruption in educational programming;

(5) "Regression/recoupment disability" means the demonstration of regression beyond a reasonable recoupment period, for which there is assessed and/or demonstrated recoupment capacity; and

(6) "Self-sufficiency" means the demonstration of independence evidenced by the ability to acquire skills commensurate with assessed potential.

## **6 CAR § 130-1903. General.**

(a) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with subsection (b) of this section.

(b) Extended school year services must be provided only if a child's IEP team determined, on an individual basis, in accordance with 34 C.F.R. §§ 300.320 – 300.324, that the services are necessary for the provision of FAPE to the child.

- (c) In implementing the requirements of this section, a public agency may not:
  - (1) Limit extended school year services to particular categories of disability; or
  - (2) Unilaterally limit the type, amount, or duration of those services.
- (d) ESY services for eligible children with disabilities must be:
  - (1) Determined and documented through the IEP process; and
  - (2) Provided at no cost to parents.
- (e) Not all children with disabilities need ESY services, nor does the provision of ESY services to a child mean that the child needs such services each year.
- (f)(1) It is not required that all children with disabilities receive ESY services.
  - (2) The provision of ESY services is the exception and not the rule.
- (g)(1) Most children with disabilities, like their nondisabled peers, benefit from school vacations.
  - (2) Breaks in formal programming allow most students to generalize school-learned skills and behaviors to their home and community, thereby facilitating new learning outside of the school environment.
- (h) For children who have limited recoupment capacity, a break in programming may be detrimental rather than beneficial to the overall learning process.
- (i) The key provision is that all children with disabilities, regardless of classification or severity level, have the opportunity for their IEP team to consider their need for ESY services in the provision of FAPE.
- (j) The purpose of ESY services is to prevent regression relative to previously learned skills that cannot be recouped in a reasonable length of time when:
  - (1) Assessed and/or demonstrated recoupment capacity is present; or
  - (2) It can be expected/anticipated that even short breaks in programming will likely result in regression of previously acquired skills that exceeds typical regression experienced by other children, or that acquisition of a new skill will be delayed beyond a reasonable time.
- (k)(1) If a child with disabilities does or will experience severe or substantial regression during the summer months in the absence of special education and related services, that child with disabilities may be eligible for ESY services.

(2) The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he or she is not provided an educational program during the summer months.

(l)(1) ESY services for eligible children with disabilities should not be confused with traditional summer school or with summer services typically made available to all children.

(2) ESY services provide a different focus from general summer school programs.

(m) ESY services provide for an extension of the IEP from the regular school year, in order to allow the child to maintain the progress achieved during the regular school year.

(n)(1) In providing ESY services to an eligible child, the public agency is acknowledging that the child's program does not end with the close of the regular school year.

(2) Further, the public agency acknowledges that the amount of time and services provided are to be determined on an individual basis.

#### **6 CAR § 130-1904. Guidelines for reasonable recoupment periods.**

(a) An analysis of materials pertaining to recoupment suggests a six-week interruption in educational programming may be detrimental to a child's progress.

(b)(1) The review further suggests the general guideline for a reasonable recoupment period may be five (5) or more instructional days for each two-week period of interruption in educational programming.

(2) This guideline may be used to compute reasonable recoupment periods according to the length of interruption in an educational program.

(c)(1) The length of interruption in instructional programming that causes a detrimental effect may vary, because regression/recoupment patterns vary greatly among similarly disabled children.

(2) While generalities are helpful, it is imperative that each child's functioning be considered individually.

**6 CAR § 130-1905. General criteria and eligibility.**

(a) An ESY program must be provided when it is determined by a child's IEP team that the child has regressed, or is predicted to regress, to such a substantial degree in a critical skill area that recoupment of such skill loss following a break in programming (typically summer breaks, but may include breaks during holidays) is unlikely or would require an unusually long period of time.

(b) ESY services would be appropriate to prevent significant regression in skills necessary for progress toward a child's self-sufficiency.

(c) The analysis of whether a child's level of progress would be jeopardized by a break in educational programming (typically summer breaks, but may include breaks during holidays) should proceed by applying not only retrospective data, such as regression and rate of recoupment, but also by considering predictive (prospective) data.

(d)(1) A child's ESY eligibility is premised on a construct of skill regression and a limited capacity for recoupment.

(2) The amount of regression experienced by a child during breaks in programming, considered along with the amount of time required to recoup those lost skills when school resumes in the fall, is an important consideration in assessing a need for continuation of educational programming during breaks in the school year or during the summer.

(e)(1) A regression/recoupment disability provides a basis for establishing criteria and eligibility standards for ESY services.

(2) A regression/recoupment disability, whether determined by retrospective means and/or predictive data, shall be relative to:

(A) The child's current IEP instructional goals and objectives; and

(B) His or her current functioning levels.

(f)(1) Regression/recoupment analysis is not the only measure used to determine the need for ESY services.

(2) A decision as to a child's need for ESY services must be based upon a multifaceted inquiry.

(g) Determination of the need for ESY services must be the result of a thorough analysis by an IEP team of formal and informal assessment data.

#### **6 CAR § 130-1906. Determination of ESY eligibility.**

(a)(1) The question of a child's need for ESY services may be raised at any time by an IEP team/parent, including during any scheduled IEP meeting or annual review conference.

(2) For a child whose current IEP calls for ESY services, the question of a continuing need for such services should be included in any subsequent meeting held to review, evaluate, and/or revise the IEP.

(b)(1) The child's need for an ESY service or services must be stated in the IEP.

(2) The IEP team must specify which annual goal or goals, short-term objectives, and related services are to be implemented in the ESY program.

(c)(1) Eligibility for an ESY service or services must be determined on an individual basis by an IEP team.

(2) Public agencies must not invoke local guidelines and practices, which have the effect of considering eligibility for ESY services based upon a category, classification, or severity of disability.

#### **6 CAR § 130-1907. Factors to be considered.**

(a)(1) The following factors must be considered by a child's IEP team in determining his or her eligibility for ESY services.

(2) This list is not exhaustive, nor is it intended that each factor would impact on the planning for each child's IEP.

(b) Factors to be considered:

(1) Degree (nature and severity) of the child's impairment;

(2) Degree of regression experienced by the child (relative to IEP annual goals and short-term instructional objectives);



- (3) Recovery/recoupment time from this regression;
- (4) Ability of the child's parents to provide the educational structure at home;
- (5) Child's rate of progress;
- (6) Child's behavioral problems;
- (7) Child's physical problems;
- (8) Availability of alternative resources;
- (9) Ability of the child to interact with nondisabled children/youth;
- (10) Area or areas in the child's curriculum that need continuous attention;
- (11) Child's vocational (training) needs;
- (12) Whether the requested service or services are extraordinary for the child's condition, as opposed to an integral part of a program for those with the child's condition; and
- (13) Other relevant factors as determined by an IEP team.

**6 CAR § 130-1908. Data collection.**

(a) The IEP team must determine a child's eligibility for ESY services by collecting and analyzing a variety of data, including, but not limited to, the child's:

- (1) Disability;
- (2) Educational history; and
- (3) Present educational functioning.

(b) Such an analysis would necessitate a review of the following:

- (1) Current IEP, in particular, progress toward attainment of the annual goals and/or short-term instructional objectives, and related services;
- (2) Criterion-referenced and norm-referenced tests, including pretest and post-test data of a student's progress;
- (3) Activity on the part of professionals and/or parents that specifically addressed the maintenance of learned skills while programming was interrupted;
- (4) Functional assessments used in natural environments (e.g., home, community, work, school);
- (5)(A) Consideration of a database of regression/recoupment.

(B) Data will be gathered and documented periodically during the regular school year that reflect the child's regression/recoupment pattern following interruptions of instructional services;

(6) Parent, child, and/or service provider information, which must include success or potential success of ESY services;

(7) Consideration of pertinent medical data and additional psychological and educational data; and

(8) Areas of learning that are identified as an integral part of a skill area to reach the child's assessed potential, such as social, motoric, behavioral, academic, self-help, and communicative abilities.

## **6 CAR § 130-1909. Standards.**

### **(a) Personnel.**

(1) ESY services personnel shall comply with the same licensure standards of the Division of Elementary and Secondary Education or other licensure boards, as appropriate, as they apply to regular school year personnel.

(2) The teacher–pupil ratios for instructional programs shall comply with those defined in 6 CAR § 130-1701 et seq.

### **(b) Duration.**

(1)(A) The period of ESY services shall be defined annually on an individual basis, in consideration of each child's needs, and shall be the responsibility of the IEP committee.

(B) Such services shall be provided within either:

(i) The period of time between the close of one (1) academic year and the beginning of the succeeding academic year; or

(ii) During the time period of any other breaks, such as Christmas or spring vacation.

(2)(A) The length of the school day for ESY services shall:

(i) Be defined by the public agency; and

(ii) Reflect the combined programming needs of its eligible children.

(B) However, adequate provision of services must be assured.

(c) **Least restrictive environment.** The educational setting for delivery of a child's ESY services:

- (1) Shall be chosen from a continuum of settings; and
- (2) Must be listed in each child's IEP.

(d) **Special education instruction.**

(1) ESY services are required to be provided only in the area or areas of a child's IEP identified by the team as meeting the criteria for receipt of ESY services.

(2) Thus, a child may require only a specific goal and objectives be addressed through an ESY program, as compared to another child's need for several or all areas of the IEP to be addressed.

(e) **Related services.**

(1) Related services are only provided to children with disabilities when it is required in order for the child with a disability to benefit from special education.

(2) Related services do not stand alone.

(3) A child with a disability may be eligible for an ESY service or services in an area of the IEP designated as a related service only if:

(A) The related service is identified as an area requiring ESY; and

(B) ESY service is provided in the corresponding special education instructional area for which the related service is provided.

## **6 CAR § 130-1910. Funding.**

(a) Funds will be disbursed to local school districts on an established per-child per-day rate, to the extent that funds are available.

(b)(1) The Special Education Unit of the Division of Elementary and Secondary Education will calculate the average cost of a nine-month school program for children with multiple or severe disabilities, which include related services.

(2) The average cost of a nine-month program will be divided by one hundred seventy-eight (178) days (the average school term) to arrive at an average per-child per-day cost rate.

## **Subpart 20. Time-out Seclusion Room**

### **6 CAR § 130-2001. General.**

(a) The time-out seclusion room is an extension of such techniques as turning a chair away from a group or placing a student in a corner or in the hallway.

(b) Time-out is only effective if the classroom environment from which the student is removed is more reinforcing than the isolation area in which he or she is placed.

### **6 CAR § 130-2002. Definition — Time-out.**

As used in this subpart, “time-out” means the removal of the opportunity to engage in reinforced behavior.

### **6 CAR § 130-2003. Restrictions on the use of a time-out seclusion room.**

(a)(1) Time-out seclusion should be used only for behaviors that are:

- (A) Destructive to property;
- (B) Aggressive toward others; or
- (C) Severely disruptive to the class environment.

(2) General noncompliance, self-stimulation, academic refusal, etc., can be responded to with less stringent and restrictive techniques.

(b) The time-out seclusion room should be used only as a last resort if and when less restrictive means of controlling behavior have proven ineffective.

(c)(1) The necessity of using physical force to place a student in a time-out seclusion room is inappropriate beyond that reasonably managed by the classroom teacher.

(2) Involuntary time-out must not be used with such students and, in general, time-out is not an appropriate intervention for classroom use with any students older than twelve (12) unless they have made a contractual agreement for its use.

(3) It is important that teachers realistically evaluate their ability to physically remove a student to the time-out room.

(4)(A) If there is a reasonable doubt concerning the capability of the teacher to physically remove the resistant student, the teacher should not begin to attempt the time-out procedure.

(B) In such a case, an alternative strategy should be implemented.

(d)(1) Time-out seclusion rooms must meet structural guidelines and provide for continuous monitoring, visually and auditorily, of the student's behavior by an adult.

(2) Refer to 6 CAR § 130-2004(i) for structural guidelines.

**6 CAR § 130-2004. Guidelines for appropriate use of a time-out seclusion room.**

(a) The teacher or behavioral specialist should have documentation that milder forms of time-out or other reduction techniques have proven ineffective in suppressing the inappropriate behavior.

(b)(1) The use of seclusion time-out and the behaviors that will result in its use must be explicitly stated in the student's IEP.

(2) Parent consent for the use of a time-out seclusion procedure should be documented.

(c)(1) Time-out must be paired with a behavioral plan to provide positive reinforcement for appropriate behaviors.

(2) This must also be included in the student's IEP.

(d) Written procedures must be developed and followed for each student whose IEP includes the use of time-out.

(e) The following guidelines should be adhered to for effective use of the timeout seclusion room:

(1)(A) Avoid lengthy verbal explanations.

(B) Behaviors resulting in time-out should be clearly explained prior to implementing the time-out program.

(C) Explanations provided during use of time-out should be brief, but should adequately inform the student of his or her misbehavior, such as, "Because you \_\_\_\_\_, you must go to time-out for \_\_\_\_\_ minutes."

(D) All other verbal interaction should be avoided;

(2)(A) To maximize opportunities to exercise self-control, students should be given the opportunity to take their own time-out after receiving instructions from the teacher.

(B)(i) However, if students refuse to take their own time-out, or if they fail to respond to the teacher's instructions within a reasonable time interval (five (5) to ten (10) seconds), the teacher should physically remove them to the time-out area.

(ii) Refer to 6 CAR § 130-2003(c) regarding physically removing the child to the time-out area; and

(3) For high intensity behavior (e.g., kicking, screaming), the student should immediately be escorted to the time-out room.

**(f) Time spent in time-out seclusion room.**

(1) Length of time spent in the time-out seclusion room must be documented and kept within the specified time limits:

(A) **Preschool.** No more than five (5) minutes for each exclusion;

(B) **Lower elementary.** No more than fifteen (15) minutes for each exclusion; and

(C) **Middle/upper elementary.** No more than twenty (20) minutes for each exclusion.

(2)(A) At the end of the prescribed time, the student should be offered the opportunity to rejoin the class.

(B) If the student chooses to stay in time-out, the door must be left open at this time.

(C)(i) When a student consistently chooses to stay in the time-out seclusion room beyond the prescribed time limit, the use of this procedure must be reviewed.

(ii) The time-out room may be providing more reinforcement than the environment from which the student was removed.

(3) Should there be a need for a time-out period to extend past the prescribed time limits, the appropriateness of continuing the time-out procedure should be

evaluated immediately by knowledgeable professionals (i.e., principal, counselor, special education staff).

(4)(A) Careful consideration must be taken in extending the prescribed length of the time-out seclusion.

(B) The effectiveness of the time-out procedure is the result of its consistent use, rather than the length of stay in the timeout seclusion room.

(g) **Records must be kept of each occasion when time-out seclusion is used.** The records should include the:

- (1) Student's name;
- (2) Behavior for which time-out is being used, as specified in the IEP; and
- (3) Time of day the student was placed in and released from time-out.

(h)(1) When the use of time-out seclusion is included in a student's IEP, it is recommended that the use of time-out to address specific student behaviors be reviewed by a knowledgeable professional or professionals twice monthly.

(2) The use of the time-out seclusion procedure shall be altered or discontinued as a behavioral management technique if data do not support its effectiveness.

(3) The continued and/or frequent need for this type of behavioral intervention could indicate that behavioral objectives, management techniques, or other factors affecting the learning environment are not appropriately matched with the student's needs and behaviors.

(i) If a time-out room is to be employed, the time-out room should:

(1) Be at least four feet by four feet (4' x 4') and no larger than six feet by six feet (6' x 6') in size;

(2)(A) Be properly lighted (preferably recessed lighting, with switches outside the room).

(B) Lighting should remain on at all times;

(3) Be properly ventilated;

(4) Be free of objects and fixtures;

(5) Provide the means by which an adult can continuously monitor, visually and auditorily, the student's behavior;

(6) The door should be such that it cannot be locked; and

(7) Meet state and county fire and safety codes.

(j)(1) In addition, it is necessary that all personnel involved in designing and implementing behavioral management procedures, including the use of time-out seclusion, be adequately trained and supervised.

(2) It is imperative that these persons have attained levels of skill and competency so that their qualifications correspond to their responsibilities.

## **Subpart 21. Transition**

### **6 CAR § 130-2101. Transition of children from Part C to preschool programs.**

#### **(a) Applicability.**

(1) This section applies only to the transition of eligible children with disabilities from the Part C Early Intervention Program, to the Early Childhood Special Education Program under Section 619 of Part B of the Individuals with Disabilities Education Act.

(2) Participation in the Early Intervention Program does not automatically make a child eligible for inclusion in the Early Childhood Special Education Program.

(3) One (1) purpose of the transition process is to determine the continued eligibility of a child with disabilities exiting the Early Intervention Program in order for the child to receive special education and related services in the Early Childhood Special Education Program.

#### **(b) General.**

(1) Transition from the Early Intervention Program (Part C) to the Early Childhood Special Education Program (Section 619) will occur upon the child's third birthday, consistent with an IEP for the child.



(2) A child with disabilities can enter an Early Childhood Special Education Program provided by or in conjunction with an educational service agency/local education agency (LEA) provided that he or she is an eligible child with disabilities under the Division of Elementary and Secondary Education's eligibility criteria for preschoolers with disabilities.

(3) The pretransition process will be initiated by the sending agency (Part C agency) ninety (90) calendar days prior to the child's third birthday.

(4) Upon receipt of notice of a child's impending transition from the Early Intervention Program to the Early Childhood Special Education Program, a transition team will meet to define the activities to take place throughout the transitional process, the time frames in which they will occur, and the person or persons responsible for carrying out these activities, consistent with required due process.

(5) At a minimum, the transition team will consist of the following individuals:

(A) The parent or parents;

(B) A representative or representatives from the Early Intervention Program; and

(C) A representative of the Early Childhood Special Education Program to which the child is anticipated to transition (either the Early Childhood Coordinator from the educational services agency representing the affected LEA or other LEA representative).

(6) The sending and receiving agencies are obligated to implement and adhere to the transition process and procedures as jointly developed by the Division of Elementary and Secondary Education and the Part C lead agency in an effort to ensure transition of services.

## **6 CAR § 130-2102. Transition from Early Childhood Special Education Programs to kindergarten.**

(a) **Applicability.**

(1) These rules apply only to the transition of eligible children with disabilities from the Early Childhood Special Education Program to school-aged programs upon eligibility for school entry at age five (5).

(2) Participation in the Early Childhood Special Education Program does not make a child with disabilities automatically eligible for special education and related services upon entry to a school-aged program.

(3) One (1) purpose of the transition process is to determine the continued eligibility of a child with disabilities exiting the Early Childhood Special Education Program in order for the child to receive special education and related services in the school-aged program.

(b) **General.**

(1) Transition from the Early Childhood Special Education Program to the school-aged program will occur upon the child attaining the age of five (5) and becoming eligible for kindergarten enrollment.

(2) A child with disabilities exiting the Early Childhood Special Education Program may receive special education and related services in the school-aged program only if the child is determined to be a child with a disability under the Division of Elementary and Secondary Education's eligibility criteria governing school-aged programs.

(3) The pretransition process will begin in January prior to the child enrolling in kindergarten.

(4) Beginning in January of each year, the Early Childhood Special Education Program will notify each LEA of the preschool children with disabilities in the LEA's jurisdiction that will be eligible to enter kindergarten the following school year, in order to begin transition planning for each child.

(5) Upon receipt of notice of a child's impending transition from the Early Childhood Special Education Program to the school-aged program, a transition team will meet to define the:

(A) Activities that will take place throughout the transition process;

(B) Time frames in which these activities must be accomplished; and

(C) Person or persons responsible for carrying out these activities.

(6) At a minimum, the transition team will consist of the following individuals:

(A) The parent or parents;

(B) A representative of the Early Childhood Special Education Program;

and

(C) A representative of the LEA where the child will enter the school-aged program.

(7)(A) Responsibility for implementing the transition guidelines established by the Division of Elementary and Secondary Education is jointly shared by the Early Childhood Special Education Program and the LEA.

(B) Failure on the part of either party to implement the guidelines will result in a finding of noncompliance for the nonparticipating party.

## **6 CAR § 130-2103. Transition from school to adult life.**

### **(a) Definition.**

(1) "Transition services" means a coordinated set of activities for a child with a disability that:

(A) Is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post school activities, including:

(i) Post-secondary education;

(ii) Vocational education;

(iii) Integrated employment (including supported employment);

(iv) Continuing and adult education;

(v) Adult services;

(vi) Independent living; or

(vii) Community participation;

(B) Is based upon the individual child's needs, taking into account the child's preferences and interests; and

(C) Includes:

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(2) Transition services for children with disabilities may be:

- (A) Special education, if provided as specially designed instruction; or
- (B) A related service, if required to assist a child with a disability to benefit from special education.

**(b) Content of the IEP.**

**(1) Transition services.**

(A) For each child with a disability, beginning not later than the first IEP to be in effect when the child turns sixteen (16) (or younger, if determined appropriate by the IEP team) and updated annually thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to:

- (a) Training;
- (b) Education;
- (c) Employment; and
- (d) Where appropriate, independent living skills; and

(ii) The transition services (including courses of study) needed to assist the child in reaching those goals.

(B)(i) The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

(ii) The requirements in 34 C.F.R. § 300.320(b) (related to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Individuals with Disabilities Education 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.

**(2) Transfer of rights.**

(A) In Arkansas, beginning not later than one (1) year before a child reaches the age of majority under state law, age eighteen (18), except for a child with a disability who has been determined to be incompetent under state law, the child's IEP must include a statement that the child has been informed of his or her rights under Part B of the act, if any, that will transfer to the child on reaching the age of majority, consistent with 34 C.F.R. § 300.520 and 6 CAR § 130-901 et seq.

(B) All rights accorded to parents under Part B of the act transfer to the children who are incarcerated in an adult or juvenile, state or local correctional institution.

(C) The public agency must provide any notice required by this part to both the child and the parents, and all other rights accorded to the parent under Part B of the act transfer to the child.

(3) The LEA must use the procedures established by the state for appointing the parent of a child with a disability or, if the parent is not available, another appropriate individual to represent the education interests of the child throughout the period of the child's eligibility under Part B of the act if, under state law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

**(c) Participants in meetings.**

(1) **Child.** Under this part, the public agency must invite a child with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the child's post-secondary goals and transition services needed to assist the child in reaching those goals under 34 C.F.R. § 300.320(b).

(2) **Child does not attend.** If the child does not attend the IEP meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(3) **Agency participation.** To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of 34 C.F.R. § 300.321(b) and subdivision (b)(1)(A) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(d) **Parent participation.** In implementing the requirements of 34 C.F.R. § 300.322 and 6 CAR § 130-806, the public agency must take steps to ensure that one (1) or both of the parents of a child with a disability are:

- (1) Present at each IEP team meeting;
- (2) Afforded the opportunity to participate; and
- (3) Notified of the meeting early enough to ensure that they will have an opportunity to attend.

(e) **Agency responsibilities for transition services.**

(1) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with 34 C.F.R. § 300.320(b), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in that IEP.

(2) Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of the agency.

## **Subpart 22. Special Education High-Cost Occurrences**

### **6 CAR § 130-2201. Purpose.**

(a) It is the purpose of this subpart to set forth the criteria for determining local school district eligibility for seeking reimbursement for special education high-cost occurrences as defined under Arkansas Code § 6-20-2303(22).

(b) This subpart defines the process for local school district access to funds for special education high-cost occurrences.

**6 CAR § 130-2202. Definitions.**

For the purpose of this subpart:

- (1) "IDEA" means the Individuals with Disabilities Education Act;
- (2) "IEP" means the individualized education program for a student with disabilities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; and
- (3) "Special education high-cost occurrences" means those individual cases where special education and related services required by the individualized education program (IEP) of a particular child with disabilities are unduly expensive, extraordinary, and/or beyond the routine and normal costs associated with special education and related services provided by the local education agency.

**6 CAR § 130-2203. Administration.**

- (a) The Special Education High-Cost Occurrences Fund will be administered by the Department of Education.
- (b) In the event that requests for reimbursement exceed the amount of funds available in the Special Education High-Cost Occurrences Fund, reimbursements will be prorated.

**6 CAR § 130-2204. Eligibility criteria for high-cost occurrence.**

- (a) A district is deemed eligible to apply for reimbursement under this part for a high-cost occurrence when the costs associated with an individual student, after offsets from other available revenue sources, equal or exceed fifteen thousand dollars (\$15,000).
- (b) In calculating costs associated with an individual student, the costs must be incurred solely as a result of the provision of special education and related services to the individual student.
- (c) Ineligible costs include, but may not be limited to, the basic costs of the classroom, such as the maintenance and operation of the classroom, basic materials

and supplies, basic transportation, and other routine and normal costs associated with the provision of special education and related services to children with disabilities.

(d)(1) Eligible costs include any other costs not excluded in subsection (c) of this section that the district is incurring solely as a result of the provision of special education and related services to this student.

(2) Examples include:

- (A) Private duty nursing services;
- (B) Special transportation aide;
- (C) Specialized equipment;
- (D) Specific staff development;
- (E) Occupational therapy;
- (F) Physical therapy;
- (G) Speech language pathology;
- (H) Personal care assistance;
- (I) Extended school year services;
- (J) The pro rata share of the costs of a teacher whose primary assignment is the student; and
- (K) Medicaid match.

(e) The district must demonstrate and document that it has fully accessed, to the maximum extent possible, other available revenue sources, including Medicaid and Title VI-B, or provide documentation as to why these other revenue sources were unavailable to the district for this high-cost occurrence.

(f) Other available revenue sources, including Medicaid and Title VI-B, are to be applied by the district as offsets to reimbursable costs for each high-cost occurrence reimbursed through the Special Education High-Cost Occurrence Fund.

**6 CAR § 130-2206. Reimbursement for high-cost occurrence based on individual student.**

(a) The Special Education Unit of the Division of Elementary and Secondary Education will provide local education agencies with a format for requesting high-cost



occurrence reimbursement to be completed and submitted to the Special Education Unit no later than April 1 of each school year.

(b) Reimbursement requests will be reviewed to determine whether the district has incurred a high-cost occurrence as defined in this part.

(c) After offsets from other revenue sources as specified in subsection (e) of this section, the maximum amount of reimbursement for each high-cost occurrence will be the sum of the following:

(1) One hundred percent (100%) of the amount above the fifteen thousand-dollar threshold up to sixty-five thousand dollars (\$65,000); and

(2) Eighty percent (80%) of the amount above sixty-five thousand dollars (\$65,000).

#### **6 CAR § 130-2207. Limitation on reimbursement.**

No individual high-cost occurrence shall be eligible for reimbursement of more than one hundred thousand dollars (\$100,000) from this fund per year.

### **Subpart 23. Educational Services for Students in Youth Shelters**

#### **6 CAR § 130-2301. Purpose.**

(a) It is the purpose of this subpart to set forth the criteria for determining local school district eligibility for seeking reimbursement for educational services for students in youth shelters.

(b) This subpart defines the process for local school district access to funds for educational services for students in youth shelters.

#### **6 CAR § 130-2302. Definitions.**

For the purpose of this subpart:

(1) "Educational services" means those services typically provided by local school districts, including, but not limited to, transportation, instruction, food services, counseling, etc.;

(2) "IDEA" means the Individuals with Disabilities Education Act;

(3) "IEP" means the individualized education program for a student with disabilities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; and

(4) "Youth shelters" means facilities under contract to or supervision of either the Division of Youth Services or the Division of Children and Family Services, both under the Department of Human Services.

**6 CAR § 130-2303. Administration.**

(a) The appropriation for educational services for students in youth shelters will be administered by the Special Education Unit of the Division of Elementary and Secondary Education.

(b) In the event that requests for reimbursement exceed the amount of funds available in the appropriation for educational services for students in youth shelters, reimbursements will be prorated.

**6 CAR § 130-2304. Eligibility criteria for reimbursement for educational services for students in youth shelters.**

(a) A district is deemed eligible to apply for reimbursement under this subpart for the provision of educational services for students in youth shelters when:

(1) The district has within its jurisdiction a facility that meets the definition of a "youth shelter" as defined in 6 CAR § 130-2302; and

(2) Students in such facilities are receiving educational services.

(b)(1) To the extent appropriate, students shall receive educational services on-site at the local school district.

(2) The provision of educational services at a site other than in one (1) of the district's school buildings should be the exception rather than the norm.

(c) For eligible students with disabilities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., the district shall implement the services in the student's most recent IEP.

(d)(1) The district may use funds acquired under this reimbursement for any costs associated with the provision of educational services to students in youth shelters.

(2) The costs may include, but are not limited to, transportation, materials and supplies, maintenance and operation of the classroom, salaries and benefits for instructional staff, special education and related services, costs incurred for evaluations to determine eligibility for special education and related services, etc.

**6 CAR § 130-2305. Reimbursement for educational services for students in youth shelters.**

(a) The Special Education Unit of the Division of Elementary and Secondary Education will provide local education agencies with an educational services for students in youth shelters reimbursement request form to be completed and submitted to the Special Education Unit no later than May 15 of each school year.

(b) The amount of reimbursement will be calculated by dividing the total number of available beds in youth shelters that meet the definition in 6 CAR § 130-2302 into the available appropriation to determine a per student reimbursement rate.

(c) The local school district will receive an amount equal to the per student reimbursement rate times the number of available beds in the youth shelter (or shelters if there is more than one (1) in the district in the jurisdiction of the local school district).

**Subpart 24. Personnel Development and Standards**

**6 CAR § 130-2401. Personnel development.**

**General.** Each public agency must:

(1) Implement personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and

(2) Ensure that all personnel necessary to carry out Part B of the Individuals with Disabilities Education Act within the jurisdiction of the agency are appropriately and adequately prepared, subject to the requirements of 34 C.F.R. § 300.156 (related

to personnel qualifications) and Section 2122 of the Elementary and Secondary Education Act of 1965.

**6 CAR § 130-2402. Personnel standards.**

(a) **General.** In the provision of special education and related services, each public agency shall employ and/or enter into a professional services contract with individuals who hold a valid license from the State Board of Education or, as appropriate, another licensure board with authority under state statute to issue such a license.

**(b) Paraprofessionals, speech-language pathology assistants/aides, and educational interpreters for the deaf.**

(1) Public agencies may only use paraprofessionals in the provision of special education and related services who are appropriately trained and supervised in accordance with guidelines established by the Division of Elementary and Secondary Education.

(2) Public agencies may only use speech-language pathology aides and speech-language pathology assistants who have been approved by the Special Education Unit of the Division of Elementary and Secondary Education in accordance with a written agreement between the Special Education Unit and the Board of Examiners in Speech-Language Pathology and Audiology.

(3) Public agencies employing educational interpreters for the deaf must comply with guidelines published by the division.

**(c) Additional licensure plan (ALP).**

(1) When a public agency cannot employ a teacher who holds a valid teaching license in special education from the State Board of Education, the public agency may use a teacher who is not licensed in special education to provide special education and related services when the:

(A) Public agency can demonstrate that it has made a good faith effort to recruit and hire appropriately and adequately trained teachers to provide special education and related services;

(B) Individual holds a valid teaching license from the State Board of Education in an area other than special education;

(C) Individual has a current ALP from the Office of Professional Licensure of the Division of Elementary and Secondary Education and has a copy on file with the Special Education Unit; and

(D) Individual is making progress toward completion of the ALP in accordance with division policies.

(2) Program approval by the Special Education Unit for the use of individuals on a ALP to provide special education and related services is not to be confused with accreditation of a school or school district.

(3) The purpose of program approval by the Special Education Unit is to verify that the special education and related services provided by a public agency meet state and federal requirements for the provision of special education and related services and, thus, the public agency may count students receiving those services to generate federal funds under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

(d) **Substitute teachers.** When a public agency uses a substitute teacher, the public agency must follow the rules and procedures established by the division.

## **Subpart 25. Rules to Implement the Accessible Instructional Materials Loan Program**

### **6 CAR § 130-2501. Purpose.**

(a) It is the purpose of this subpart to set forth the criteria for determining a child's eligibility for materials in an accessible instructional format (i.e., braille, large print, audio or video, or other electronic media).

(b) This subpart defines the process for local school districts to access such accessible instructional materials for children with visual impairments.

### **6 CAR § 130-2502. Definitions.**

For the purpose of this subpart:

(1) "Adaptive textbooks and other instructional materials" means:

(A) Braille;

(B) Large print; and

(C) Other electronic media;

(2) "Braille skills inventory" means an assessment that provides teachers of children who are visually impaired or blind, who read braille, with a tool that promotes meaningful assessment of braille literacy skills;

(3) "Functional vision assessment" means data gathered by a certified teacher of the visually impaired that provides evidence of a child's use of visual ability in near and distance tasks;

(4) "IDEA" means the Individuals with Disabilities Education Act;

(5) "IEP" means the individualized education program for a child with disabilities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.;

(6) "Informal reading inventories (IRIs)" means commercially available IRIs that are adapted into braille and large print and used as a part of continuing assessment to determine child progress in reading as measured by reading comprehension and reading rate;

(7) "Learning Media Assessment (LMA)" authored by Koenig, A. & Holbrook, C., 1995, is a structured systematic procedure used to gather information and document decisions regarding the selection of reading and writing media for children who are visually impaired; and

(8) "Reading rates" are measured using informal reading inventories and content texts and are one (1) component of the data needed to determine efficiency in a child's current literacy media.

### **6 CAR § 130-2503. Administration.**

The accessible format instructional materials program for children with visual impairments shall be:

(1) Administered by the Instructional Resource Center at the Arkansas School for the Blind; and

(2) Supervised by the Special Education Unit of the Division of Elementary and Secondary Education.

**6 CAR § 130-2504. Eligibility for adaptive textbooks.**

The following criteria should be considered when determining the appropriate reading medium for children with visual impairment:

- (1) Observations made by, but not limited to, the:
  - (A) Classroom teacher;
  - (B) Parent;
  - (C) Teacher of the visually impaired; and
  - (D) Certified educational vision consultant;
- (2) Assessment by a regional vision consultant, vision teacher, or reading teacher, to include the following, as appropriate:
  - (A) Learning Media Assessment;
  - (B) Braille skills inventory;
  - (C) Functional vision assessment; and
  - (D) Reading rates;
- (3) Eye specialist report detailing acuity, pathology and prognosis, and low vision needs; and
- (4) Child's IEP team recommendation.

**6 CAR § 130-2505. School district access to accessible instructional materials.**

(a) Local school districts must assess any child whose visual impairment adversely affects his or her educational performance as to the child's need for accessible instructional materials.

(b) For the purpose of this part, the criteria stated in 6 CAR § 130-2504 shall be the minimum criteria for determining a child's eligibility.

(c) Local school districts may seek assistance for assessing a child's need for accessible instructional materials by calling the Educational Services for Visually Impaired.

(d) Following a determination that a child is eligible for accessible instructional materials, the certified educational vision consultant serving the local school district will approve the purchase of textbooks for each child determined eligible.

(e) The certified educational vision consultant will authorize a completed book order form and transmit the form to the Instructional Resource Center.

#### **6 CAR § 130-2506. Costs.**

(a) There shall be no charge to local school districts for the approved routine loan of accessible instructional materials, unless the materials are lost or are severely damaged.

(b) Should a duplicate item be requested or should loaned materials be lost or sustain such damage as to render the materials unusable, the district will be billed for the costs associated with replacements.

### **Subpart 26. Early Childhood Special Education (Ages 3 through 5 Years)**

#### **6 CAR § 130-2601. Authority and applicability.**

##### **(a) Statutory authority.**

(1) Arkansas Code § 6-41-203 defines "a child with disabilities" as an individual between the ages of three (3) and twenty-one (21) years who, because of mental, physical, emotional, or learning disabilities, requires special education services as defined by the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

(2)(A) The federal Individuals with Disabilities Education Act requires that states, as a condition of eligibility to receive federal funds under Part B of the act, provide special education and related services to eligible children with disabilities beginning at age three (3).



(B) The requirements are addressed in Part B, Section 619 of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.).

**(b) Applicability.**

(1) This subpart is applicable to all public agencies providing special education and related services to eligible children with disabilities, ages three (3) through five (5).

(2) Rules applicable to children ages three (3) through twenty-one (21), as set out in other sections of this part, must be followed by all public agencies providing special education and related services to children with disabilities ages three (3) through five (5), unless indicated as applicable only to children from five (5) to twenty-one (21) years of age.

**6 CAR § 130-2602. Early childhood special education qualified providers.**

**(a) Definitions.** As used in this subpart:

(1) "ADE" means the Arkansas Department of Education;

(2) "Direct supervision" means on-site observation and guidance provided by a supervising early childhood special education teacher while an assigned instructional activity is performed by an assistant or aide;

(3) "Early childhood special education aide" means an individual with a high school diploma/equivalent (GED) and on-the-job training who performs tasks as prescribed, directed, and supervised by the supervising early childhood special education teacher certified/licensed by the Division of Elementary and Secondary Education;

(4) "Early childhood special education assistant" means an individual with a bachelor's degree who, following academic and on-the-job training, performs tasks prescribed, directed, and supervised by the supervising early childhood special education teacher certified/licensed by the Division of Elementary and Secondary Education;

(5) "Indirect supervision" means those activities other than direct observation and guidance conducted by a supervising early childhood special education teacher that may include:

- (A) Consultation;
- (B) Demonstration;
- (C) Record review;
- (D) Review and evaluation of audiotaped or videotaped sessions; and/or
- (E) Interactive television sessions;

(6) "Paraprofessional" has the meaning given in 6 CAR § 130-237, which includes early childhood special education assistants and aides;

(7) "Qualified evaluator", see 6 CAR § 130-243;

(8) "Related services providers". Individuals providing related services must be appropriately licensed/certified by either the Division of Elementary and Secondary Education or other licensure board governing the scope of practice of the individual; and

(9) "Supervising early childhood special education teacher" means an individual who holds a valid teaching certificate/license in Early Childhood Special Education issued by the Division of Elementary and Secondary Education, or an individual who holds a valid teaching certificate/license issued by the Division of Elementary and Secondary Education and an additional licensure plan approved by the Division of Elementary and Secondary Education to obtain certification/licensure in early childhood special education and who has responsibility for the supervision of assistants/aides.

**(b) Scope of responsibilities of early childhood special education providers.**

**(1) Supervising early childhood special education teacher.**

(A)(i) The supervising early childhood special education teacher may delegate specific tasks to the assistant and/or aide.

(ii) However, responsibility to the child for all services provided or omitted cannot be delegated.

(iii) It remains the full responsibility of the supervising early childhood special education teacher to ensure that the child's IEP is implemented.

(B) Scope of responsibilities includes:

- (i) Institute and document a training program for each assistant/aide, encompassing all the procedures to be performed;
- (ii) Inform the parent or legal guardian about the use of an assistant/aide;
- (iii) Provide and document appropriate supervision of the assistant/aide in accordance with established guidelines;
- (iv) Perform evaluation;
- (v) Complete due process;
- (vi) Attend all conferences for children for whom the teacher is responsible;
- (vii) Write and modify individualized education programs developed in accordance with 6 CAR § 130-801 et seq., and 6 CAR § 130-901 et seq.;
- (viii) Develop lesson plans with the input of the assistant/aide;
- (ix) Review and sign progress notes;
- (x) Have direct contact with the child and family;
- (xi) Delegate appropriate tasks;
- (xii) Discuss and/or refer to other professionals, agencies, and/or services;
- (xiii) Provide ongoing training for the assistant/aide; and
- (xiv) Develop schedules with the assistant/aide.

**(2) Early childhood special education assistant/aide.**

(A) Although the general duties of the assistant and aide are the same, the aide will require a higher level of supervision.

(B) Provided that the training, supervision, documentation, and planning are appropriate, the following tasks may be delegated to an early childhood special education assistant/aide:

- (i) Conduct screening following specified screening protocols;
- (ii) Provide direct follow-up instruction following approved lesson plans developed by the supervising early childhood special education teacher;
- (iii) Document the provision of services and results;

- (iv) Attend conferences as necessary;
  - (v) Assist in the programming assessment (i.e., conduct programming assessments specified by protocols);
  - (vi) Prepare materials and perform other support services as directed;
  - (vii) Work with the supervising early childhood special education teacher to develop lesson plans;
  - (viii) Communicate with parent/primary caregiver, Head Start staff, private preschool/day care staff, and/or other service providers regarding activities;
  - (ix) Make referral or recommendations for additional services or programming to the supervising teacher; and
  - (x) Perform other duties as assigned.
- (C) An early childhood special education assistant/aide may not:
- (i) Perform standardized or nonstandardized diagnostic tests, formal or informal evaluation for eligibility, or interpret test results;
  - (ii) Conduct parent conferences;
  - (iii) Write, develop, or modify a child's IEP;
  - (iv) Assist with children without following the IEP as prepared by the IEP team;
  - (v) Select a child for services;
  - (vi) Dismiss a child from services;
  - (vii) Disclose confidential information either orally or in writing to anyone without being designated to do so by a supervisor; and
  - (viii) Represent himself or herself as a certified/licensed early childhood special education teacher.

**(c) Qualifications of early childhood special education providers.**

- (1) Supervising early childhood special education teacher is an individual who meets one (1) of the following criteria:
- (A) Holds a valid teaching certificate/license in early childhood special education issued by the division; or

(B) Holds a valid teaching certificate/license issued by the division and has an additional licensure plan approved by the division to obtain early childhood special education certification/licensure.

(2) Early childhood special education assistant must:

(A) Complete a minimum of a bachelor's degree in early childhood special education or a related field, which includes but is not limited to:

- (i) Child development;
- (ii) Home economics with emphasis in child development;
- (iii) Elementary education;
- (iv) Speech-language pathology;
- (v) Psychology; or
- (vi) Education of the sensory impaired;

(B) Complete the Core and Early Childhood components of the division's Special Education Paraprofessional Training within one (1) year of employment; and

(C) Obtain, in subsequent years of employment, six (6) clock hours of continuing education/in-service training annually pertaining to the designated duties of the early childhood special education assistant.

(3) Early childhood special education aide must:

(A) Hold a high school diploma or its equivalent (GED);

(B) Complete the Core and Early Childhood components of the division's Special Education Paraprofessional Training within one (1) year of employment; and

(C) Obtain, in subsequent years of employment, six (6) clock hours of continuing education/in-service training annually pertaining to the designated duties of the early childhood special education aide.

## **6 CAR § 130-2603. Instructional services.**

### **(a)(1) Teacher–pupil caseload.**

(A)(i) The maximum caseload for a full-time classroom teacher is thirty (30) children with a minimum of one (1) paraprofessional.

(ii) The maximum per section or session caseload in a center-based program for preschool children with disabilities is one (1) qualified early childhood special education teacher to fifteen (15) children (1:15).

(B) The maximum allowable caseload for a classroom teacher is based on the percentage of time the individual is employed during a forty-hour work week, as set out in the Teacher/Pupil Caseload Center-Based Program Chart, Chart # 1-26 of this section.

(C) Consideration may be given to providing additional assistants/aides and/or reducing the teacher–pupil caseload when warranted due to the adaptive behavior and/or physical needs of the children.

(D) Factors to be considered in determining any downward adjustment in the teacher–pupil caseload include the:

- (i) Ages of the children served;
- (ii) Number of preschool children in each age group;
- (iii) Nature and severity of disabilities;
- (iv) Square footage of the classroom;
- (v) Frequency and duration of services;
- (vi) Geographic location of the children served (teacher travel time);
- (vii) Objectives to be met within the setting;
- (viii) Number of developmental domains to be addressed; and
- (ix) Time spent in other duties (testing, screening, paperwork, preparation, conferences).

CHART # 1-26    TEACHER/PUPIL CASELOAD  
CENTER-BASED PROGRAM

DAYS OF SERVICE	FTE	ALLOWABLE CASELOAD
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	(40 HOUR WORK WEEK)	
5	1	30
4	.8	24
3	.6	18
2	.4	12
1	.2	6

CHART # 2-26    TEACHER/PUPIL CASELOAD  
ITINERANT/HOME TEACHER

DAYS OF SERVICE	F.T.E. (40 HOUR WORK WEEK)	ALLOWABLE CASELOAD	
		WITH PARAPROFESSIONAL	WITHOUT PARAPROFESSIONAL
5	1	60	40
4	.8	48	32
3	.6	36	24

2	.4	24	16
1	.2	12	8

(2) **Facilities.** Facilities shall meet the Arkansas childcare licensing standards.

(b) **Home training services — teacher–pupil caseload.**

(1) The maximum caseload is sixty (60) with an aide or assistant.

(2) The maximum caseload is forty (40) without an aide or assistant.

(3) The home training responsibility may be shared by one (1) or more professionals (early childhood special education teacher, occupational therapist, physical therapist, speech-language pathologist, social worker and/or counselor, etc.) depending on the child’s needs.

(4)(A) Instruction may be augmented through the use of paraprofessionals.

(B) When using an assistant, the following activities are required:

(i) Direct, on-site supervision of an assistant with each child twice per month; and

(ii) Indirect supervision of an assistant for a minimum of fifteen (15) minutes per week for each child.

(C) When using an aide, the following activities are required:

(i) Direct, on-site supervision of an aide with each child once per week; and

(ii) Indirect supervision of an aide for a minimum of thirty (30) minutes per week for each child.

(5) Factors in determining the teacher-pupil caseload include, but are not limited to, the:

(A) Age of the children served;

(B) Severity of the disabilities;

(C) Geographic location of the children served (teacher travel time);

(D)(i) Frequency and duration of home visits.



- (ii) A suggested minimum is one (1) hour per week; and
- (E) Objectives to be met within the setting.

**(c) Itinerant early childhood services.**

**(1) Definition.**

(A) "Itinerant services" means those direct early childhood special education services that are provided individually or in small group settings and include the service provider traveling to the child or the child traveling to the service provider.

(B) Itinerant services may be provided by one (1) or more professionals (early childhood special education teacher, speech-language pathologist, occupational therapist, physical therapist, social worker, counselor, etc.) depending on the child's needs.

**(2) Teacher–pupil caseload.**

(A) The maximum caseload is sixty (60) with an aide or assistant.

(B) The maximum caseload is forty (40) without an aide or assistant.

(C) The maximum allowable caseload for an itinerant teacher is based upon the percentage of time the individual is employed during a forty-hour work week, as set out in the Teacher/Pupil Caseload Itinerant/Home Teacher Chart, Chart # 2-26 of this section.

(D)(i) Instruction provided by the early childhood special education teacher may be augmented through the use of paraprofessionals.

(ii) When using an assistant, the following activities are required:

(a) Direct, on-site supervision of an assistant with each child twice per month; and

(b) Indirect supervision of an assistant for a minimum of fifteen (15) minutes per week for each child.

(iii) When using an aide, the following activities are required:

(a) Direct, on-site supervision of an aide with each child once per week; and

(b) Indirect supervision of an aide for a minimum of thirty (30) minutes per week for each child.

(E) Factors to be used in determining the teacher-pupil caseload include, but are not limited to, the:

- (i) Ages of the children served;
- (ii) Nature and severity of the disabilities;
- (iii) Geographic location of the children served (teacher travel time);
- (iv) Frequency and duration of services;
- (v) Objectives to be met within the setting;
- (vi) Number of developmental domains to be addressed; and
- (vii) Time spent in other duties (testing, screening, paperwork, and preparation).

**6 CAR § 130-2604. Federal early childhood educational environments.**

**(a) Early childhood program.**

(1)(A) A program that includes at least fifty percent (50%) nondisabled children.

(B) Early childhood programs include, but are not limited to:

- (i) Head Start;
- (ii) Kindergarten;
- (iii) Reverse mainstream classrooms;
- (iv) Private preschools;
- (v) Preschool classes offered to an eligible prekindergarten population by the public school system; and
- (vi) Group child care.

(2) Attendance at an early childhood program need not be funded by Individuals with Disabilities Education Act, Part B funds.

(3)(A) **EC: Calculating education environment.** If the student is in a classroom with more than fifty percent (50%) of his or her peers being nondisabled, calculating the time is necessary to determine the percent of time the child is with his or her nondisabled peers (time spent in regular class).

**(B) Calculations.**

(i) Percent of instruction time not spent with nondisabled peers = (hours per week spent outside of regular classroom divided by total hours of instruction per week) times one hundred (100).

(ii) Percent of instruction time spent with nondisabled peers = one hundred percent (100%) minus percent of instruction time not spent with nondisabled peers.

(C) Every child's time is based on a thirty-hour instructional week for early childhood.

**Example:** If a child receives speech for thirty (30) minutes two (2) times a week outside the regular class, the time is equal to 1.00 (hour).  $(1.0 \text{ divided by } 30) \times 100 = 3.3\%$ , then  $100 - 3.3 = 96.7\%$  of the child's day is spent with his or her nondisabled peers.

(D) **State codes for placement.**

(i) RG = Greater than eighty percent (80%) in regular preschool program.

(ii) RR = forty percent (40%) to seventy-nine and ninety-nine hundredths percent (79.99%) in the regular preschool program.

(iii) SC = Less than forty percent (40%) in the regular preschool program.

(b) **Early childhood special education program.**

(1) A program that includes less than fifty percent (50%) nondisabled children.

(2) Special education programs include, but are not limited to, special education and related services provided in:

(A) Special education classrooms in:

(i) Regular school buildings;

(ii) Trailers or portables outside regular school buildings;

(iii) Child care facilities;

- (iv) Hospital facilities on an outpatient basis; and
- (v) Other community-based settings;
- (B) Separate schools; and
- (C) Residential facilities.

(c) **Home.**

(1) A child does not attend a regular early childhood program or a special education program and receives some or all of his or her special education services in the principal residence of the child's family or caregivers.

(2) The term "caregiver" includes babysitters.

(d) **Service provider location.**

(1) A child who:

(A) Receives his or her special education and related services from a service provider; and

(B) Does not attend an early childhood program or a special education program provided in a:

- (i) Separate class;
- (ii) Separate school; or
- (iii) Residential facility.

(2) For example:

- (A) Private clinicians' offices;
- (B) Clinicians' offices located in school buildings;
- (C) Hospital facilities on an outpatient basis; and
- (D) Libraries and other public locations.

**6 CAR § 130-2605. Number of days for direct services — Calendar.**

The instructional calendar year for preschool services shall consist of one hundred seventy-eight (178) days of direct services funded by the preschool grant.

**6 CAR § 130-2606. Extended school year services — Eligibility.**

6 CAR § 130-1901 et seq., applies to preschool children with disabilities as well as school-aged children with disabilities.

**6 CAR § 130-2607. Transition.**

(a) **Early intervention to early childhood.** See 6 CAR § 130-2101.

(b) **Early childhood special education to school-aged program.** See 6 CAR § 130-2102.

(c) **Guidelines for implementation.**

(1) Transition from early childhood special education program to kindergarten, found in 6 CAR § 132-701 et seq.

(2) **Transition policy.** Early intervention to early childhood, an interagency agreement for implementing transition from Part C to Section 619 early childhood programs, can be found in 6 CAR § 132-701 et seq.