

**Regulations for Implementation of  
the Children with Exceptionalities  
Act (R.S. 17:1941 et seq.)**

**Title 28 Part XLIII  
Bulletin 1706  
Subpart A - Regulations for  
Students with Disabilities**

Louisiana Department of Education  
Cecil J. Picard  
State Superintendent of Education

Effective 7/01/04



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**Chapter 1. RESPONSIBILITIES OF THE STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION**

§101. Free Appropriate Public Education (FAPE)

A. The Louisiana State Board of Elementary and Secondary Education (the State Board) shall be responsible for the assurance of a free appropriate public education to all students with disabilities - ages three through twenty-one years, including students with disabilities who have been suspended or expelled from school - and, at the discretion of the local educational agency (LEA) and with parental consent, to students with disabilities before age three years if their third birthday occurs during the school year; and it shall exercise supervision and control of public elementary and secondary education.

B. The State Board shall be directly responsible for the provision of a free appropriate public education to students with disabilities, ages three through twenty-one years, who are within the jurisdiction of either Special School District or in a State Board Special School (Louisiana School for Visually Impaired, Louisiana School for the Deaf, or Louisiana Special Education Center).

C. The State of Louisiana shall ensure the use of whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of these regulations. For example, if it is necessary to place a student with a disability in a residential facility, the State could use joint agreements among the agencies involved for sharing the cost of that placement.

1. Nothing in this requirement relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a student with a disability.

2. The State of Louisiana ensures that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student has yet been determined.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:639 (April 2000).

§102. Issuance of Regulations

A. The State Board shall adopt, amend, or repeal rules, regulations, standards, and policies necessary or proper for the provision of a free appropriate public education developed pursuant to L.R.S.17:1942.1.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000).

§103. Compliance with Federal Rules

A. The State Board has not only the responsibility of complying with rules and regulations governing grants for educational purposes from the Federal government or from any other

person or agency, which are not in contravention to the Constitution and laws, but also the authority to take all action necessary to achieve compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000).

§104. Approval of Private Schools

A. The State Board shall approve each participating private school that provides special education in accordance with standards established by the State Board.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000).

§105. Approval of IDEA - Part B Application

A. The State Board will review and approve the State policies and procedures required by the IDEA application before their submission to the U.S. Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000), amended LR: 29:867 (June 2003).

§106. Notification of LEA in Case of Ineligibility

A. The State Board shall provide a reasonable notice and an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 34 CFR 76.401 before the State Department of Education (Department) disapproves any LEA application for federal entitlement funds for special education under IDEA - Part B or before the Department finds that an LEA is failing to comply with any requirements of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000).

§107-129. Reserved.

§130. State Advisory Panel (Panel)

A. The Advisory Panel shall be appointed and approved by the State Board and shall be representative of the state population. Procedures shall follow existing State Board procedures for appointing such panels (councils).

B. Membership of the Panel will be composed of persons involved in or concerned with the education of students with disabilities and shall include at least one person representing

each of the following groups. A majority of the members of the panel shall be individuals with disabilities or parents of students with disabilities.

1. Individuals with disabilities
2. Teachers
3. Representatives of private schools and public charter schools
4. Parents of students with disabilities
5. State and local education officials
6. Administrators of programs for students with disabilities
7. Representatives of other state agencies involved in the financing or delivery of related services to students with disabilities
8. Representatives from the state juvenile and adult corrections agencies
9. Representatives of institutions of higher education that prepare special education and related service personnel
10. At least one representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities

C. The Panel shall perform prescribed duties in matters concerning the education of students with disabilities.

1. The Panel shall advise the State Board and the Department of unmet needs within the state in the education of students with disabilities.
2. The Panel shall comment publicly on rules or regulations proposed by the State Board and the Department regarding the education of students with disabilities.
3. The Panel shall advise the State Board and the Department in developing evaluations and reporting on data to the Secretary of Education.
4. The Panel shall advise the State Board and the Department in developing corrective action plans to address findings identified in federal monitoring reports.
5. The Panel shall advise the State Board and the Department in developing and implementing policies related to the coordination of services for students with disabilities.
6. The Panel shall advise the State Board and the Department on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons.
7. The Panel shall consider items referred by the State Board as well as items initiated by the panel and approved by the Board through its regular procedures.

D. The Advisory Panel shall conduct its activities according to procedures prescribed by the State Board.

1. The Panel shall meet as often as necessary to conduct its business.
2. By July 1 of each year, the Panel shall submit an annual report of its activities, including its recommendations to the Department. This report shall be made available to the public in a manner consistent with other public reporting requirements of these Regulations.
3. Official minutes shall be kept on all Panel meetings and shall be made available to the public on request.
4. All Panel meetings and agenda items shall be announced in a timely manner in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings shall be open to the public.
5. Interpreters and other necessary services shall be provided at Panel meetings for Panel members or participants. The State Board may pay for these services from funds under IDEA - Part B, State Administration.

6. The Panel shall serve without compensation, but the State Board shall reimburse the Panel members for reasonable and necessary expenses for attending meetings and performing duties. The State Board may use funds under IDEA - Part B, State Administration for this purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000), amended LR: 29:867 (June 2003).

§131-199. Reserved.

## **Chapter 2. RESPONSIBILITIES OF THE SUPERINTENDENT OF PUBLIC ELEMENTARY AND SECONDARY EDUCATION AND OF THE DEPARTMENT OF EDUCATION**

### §201. General Responsibilities and Authorities

A. The State Superintendent of Public Elementary and Secondary Education (the State Superintendent) and the State Department of Education (the department) shall administer those programs and policies necessary to implement L.R.S.17:1941, et seq.

1. The Department shall approve, in accordance with standards approved by the State Board, each public school program that delivers special education.

2. The Department shall recommend to the State Board, in accordance with standards approved by the State Board, the approval of each participating private school program that delivers special education.

3. The Department shall receive, administer, and direct distribution of Federal funds for the education of students with disabilities, except those federal funds received directly by LEAs.

4. The Department shall recover any funds made available under IDEA-B for services to any student who has been determined to be classified erroneously as eligible to be counted as a student with a disability.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000), amended LR 29:867 (June 2003).

§202-204. Reserved.

### §205. Preparation of Annual Budget

A. The Department shall prepare and submit to the State Board for review and approval for the next fiscal year a comprehensive budget that at a minimum proposes the appropriations by the Louisiana Legislature of whatever State funds are needed by the Department, Special School District, and LEAs to comply fully with all of the requirements established by the *Regulations for the Implementation of the Children with Exceptionalities Act* (with due regard to Federal maintenance of effort, nonsupplanting, commingling, comparability, and excess cost requirements).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000).

### §206. Preparation of Reports

A. The Department shall prepare, publish and submit all reports as required under 34 CFR 300.139 and 300.750-755.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary

Education, LR 26:641 (April 2000).  
§207-219. Reserved.

§220. Personnel Standards

A. The Department shall develop, as needed, Louisiana standards for all personnel who provide special education, administrative, ancillary, pupil appraisal and related services to students with disabilities (birth through age 21) under Part B and Part C of IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000).

§221-229. Reserved.

§230. Review of Enforcement Recommendations

A. The State Superintendent, after review of the recommendations from the Division of Special Populations, shall submit to the State Board at its next regularly scheduled meeting all recommendations of the Department to withhold State or Federal funds for special education or to take other necessary enforcement action in accordance with the procedures described in 34 CFR 76.401.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000).

§231-239. Reserved.

§240. Impartial Hearing Officers

A. The Department and each LEA shall maintain a list of qualified and impartial hearing officers. The list shall include a statement of the qualifications of each of those persons.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000), amended LR 29:867 (June 2003).

§241-250. Reserved.

§251. Relationship Between Special Education and Competency-Based Education

A. No provision of the Louisiana competency-based education program shall be construed to interfere with the provision of a FAPE to students with disabilities under these Regulations (R.S.17:24.4(D)). All students with disabilities shall be included in the Louisiana Competency-Based Education Program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000).

§252. Louisiana Educational Assessment Program

A. Students with disabilities shall be included in the Louisiana Educational Assessment Program with appropriate accommodations and modifications in administration, if necessary, as documented in the students' IEPs.

B. Alternate assessments shall be provided for and administered to only those students with disabilities who meet specific eligibility criteria. A determination of whether any student meets the eligibility criteria shall be made by the student's IEP team.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000).

§253-259. Reserved.

§260. Full Educational Opportunity Goal - Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000), repealed LR 29:867 (June 2003).

§261. Program Options

A. The Department shall ensure that each LEA shall take steps to ensure that the students with disabilities residing in the area served by the LEA have available to them the variety of educational programs and services available to nondisabled students, including but not limited to art, music, industrial arts, consumer and homemaking education, and vocational education.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000).

§262-269. Reserved.

§270. Interagency Agreements and Methods for Ensuring Services

A. The Department is authorized to enter into any agreement developed with another public or private agency, or agencies, which is in accordance with prescribed guidelines.

1. The agreement shall be consistent with Chapter 8 of these Regulations.
2. The agreement shall be essential to the achievement of full compliance with these Regulations.
3. The agreement shall be designed to achieve or accelerate the achievement of the full educational goal for all students with disabilities.

4. The agreement shall be necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the State.

5. The agreement shall be necessary to promote the successful transition of youths with disabilities into adult services and agencies.

B. The Department through the Governor shall ensure that an interagency agreement or other mechanism is in effect between each noneducational public agency to ensure a FAPE is provided, including the provision of these services during the pendency of disputes. The agreement shall include prescribed components.

1. An identification of or a method for defining the financial responsibility of each agency for providing services shall be provided.

2. Conditions and terms of the reimbursement for which an LEA shall be reimbursed by other agencies shall be explained fully.

3. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) shall be delineated.

4. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services shall be described in detail.

C. The requirements of this section may be met through only the legal documents that are listed below.

1. State statute or regulation;

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

3. Other appropriate written methods as determined by the Governor or designee.

D. The State shall have on file with the Secretary of Education at the U. S. Department of Education information to demonstrate that the requirements of this section have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000).

### §271 Nondiscrimination

A. The Department shall, in the operation of programs funded by the IDEA, comply with all statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability and age.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000).

§272-299. Reserved.

## **Chapter 3. RESPONSIBILITIES AND ACTIVITIES OF THE DIVISION OF SPECIAL POPULATIONS**

### §301. General Supervision

A. The Division of Special Populations (Division) is established within the Department to provide general supervision of all education programs for students with disabilities within the State, including all participating private school programs and all education programs administered by other State or local agencies. *General Supervision* is defined as the responsibility to perform functions prescribed by the State Board.

1. The Division shall ensure that all necessary State standards for implementation of the IDEA are established. Any State standard affecting other State agencies and established under the general supervision requirement shall be developed in cooperation with such agencies.

2. The Division shall disseminate such standards and revisions to all public and private agencies bound by them and provide parents and all citizens with information requested regarding implementation of such State standards.

3. The Division shall provide technical assistance to all public and private agencies bound by such standards in their proper implementation.

4. The Division shall monitor according to written procedures the implementation of State standards in each public agency and in each participating private agency. Such monitoring shall include not only child identification, but also programmatic, administrative, and fiscal issues.

5. The Division shall institute a system for complaint management and investigation regarding the implementation of State standards.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000).

### §302. Monitoring, Complaint Management and Investigation

A. The Division is authorized to establish a system of monitoring, complaint management, and investigatory provisions of these Regulations.

B. The Division shall monitor in accordance with established procedures all public and participating private schools and other education agencies for compliance with these and other applicable federal regulations, state statutes and standards.

C. The Division shall receive and review complaints concerning suspected noncompliance of regulations concerning the education of students with disabilities. It shall conduct this requirement through prescribed procedures.

1. The Division shall investigate allegations of failure to comply with any provision of these regulations and other applicable State or Federal laws, regulations or state standards.

2. The Division shall conduct hearings in accordance with provisions of IDEA and the Louisiana Administrative Code.

3. The Division, in carrying out its investigatory responsibilities, may require LEAs and participating private education agencies to keep certain records and submit to the Division complete and accurate reports at such time, in such form and containing such information as are determined necessary to enable the Division to fulfill its responsibilities for ensuring compliance.

D. The Division shall perform the following responsibilities prescribed below when students with disabilities are placed or referred by an LEA in a private school or facility.

1. The Division shall ensure that a student with a disability who is placed in or referred to a private school or facility by an LEA is provided special education and related services in conformance with an IEP that meets the requirements of §§440 - 446 of these Regulations; and at no cost to the parent, is provided an education that meets the standards that apply to education provided by the LEA; and has all rights of a student with a disability served by the LEA.

2. The Division shall monitor compliance of this subsection through written procedures; disseminate copies of applicable standards to each private school and facility to which a student with a disability has been referred or placed; and provide opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

E. The monitoring of least restrictive environment (LRE) requirements shall be a responsibility of the Division.

1. The Division shall carry out activities to ensure that the LRE requirements as found in §446 of these Regulations are implemented by each LEA. If there is evidence that an LEA has made placements that are inconsistent with §446, the Division shall review the LEA's justification of its actions and assist in planning and implementing any necessary corrective actions.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:643 (April 2000), amended LR 29:867 (June 2003).

### §303. Approval of Out of District Placement

A. The Division shall approve or disapprove each request made by an LEA to place or refer a student with a disability outside the geographic boundaries of that LEA unless the placement in another LEA is by mutual agreement of the two agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:643 (April 2000).

§304-328. Reserved.

### §329. State Eligibility under the Individuals with Disabilities Education Act

A. The Division shall prepare for submission to the State Board the State policies and procedures required under IDEA according to applicable Federal requirements for such policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:643 (April 2000).

### §330. The State Policies and Procedures: Public Notice and Participation

A. In the preparation of the policies and procedures required by states under IDEA - Part B, the Division shall ensure that prescribed activities are performed.

1. The Division shall receive input from the State Advisory Panel regarding proposed changes in policies and procedures.

2. The Division shall submit proposed revisions of policies and procedures to the State Board of Elementary and Secondary Education for advertisement, and as appropriate, as a Notice of Intent in the Louisiana Register.

3. The Division shall publish in newspapers of general circulation throughout the state, other media, or both, the timetable for final approval, the procedures for submitting written comments, and a list of the dates, times and places of public meetings to be held; the proposed policies and procedures shall be available for comment for at least forty-five calendar days following the date of the notice.

4. The Division shall distribute to interested parties and shall post the policies and procedures on the Department's official Internet Website for public comment for a period of at least forty-five calendar days.

5. The Division shall hold a series of open public meetings in which parents and other interested persons throughout the State are afforded a reasonable opportunity to comment on the proposed policies and procedures.

6. The Division shall review and consider all public comments that might warrant modification of the policies or procedures.

7. The Division shall attach a summary of the comments made during the public meetings or received by the State Board to the proposed final policies or procedures submitted to the State Board.

B. Upon approval, the Division shall distribute to interested parties and shall post the final policies and procedures on the Department's official Internet Website.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:643 (April 2000).

§331-339. Reserved.

#### §340. Review and Approval of Annual Applications of LEAs

A. The Division shall establish submission requirements for eligibility for Federal and/or State funds.

B. The Division, in concert with other Divisions within the Department, shall review each LEA's application to ensure that the use of funds is in compliance with all applicable Federal and State requirements. Written notice shall be provided to the agency within forty-five days of receipt of the application as to whether an application is or is not in substantially approvable form (and if not, the reason(s) shall be stated).

C. If the State educational agency determines that an LEA is not eligible under IDEA, the Department shall notify the LEA of that determination and shall provide such LEA with reasonable notice and an opportunity for a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:644 (April 2000).

§341. Provisions for FAPE by the Department

A. When the Department does not distribute IDEA - Part B funds to an LEA in accordance with §230 and §373.B, the Division shall use those funds to ensure the provision of a free appropriate public education to students with disabilities residing in the area served by the LEA either directly, by contract, or through other arrangements.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:644 (April 2000).

§342-354. Reserved.

§355. Confidentiality of Records

A. The Division shall comply with all of the requirements of §517 pertaining to confidentiality of personally identifiable information contained in educational records.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:644 (April 2000).

§356. Notification of Child Identification Effort

A. Notice of the child identification effort regularly undertaken by the Department and LEAs shall be published or announced in newspapers or other media with circulation adequate to notify parents throughout the state.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:644 (April 2000).

§357. Performance Goals and Indicators

A. The Division's goals for the performance of students with disabilities shall be consistent, to the maximum extent appropriate, with other goals and standards established by the State for all students.

B. The Division's performance indicators shall assess progress toward achieving the goals that, at a minimum, address the performance of students with disabilities on assessment, dropout rates, and graduation rates.

C. The Division shall report to the public every two years on the progress toward meeting the goals.

D. The Division shall revise its State Improvement Plan as needed to improve its performance.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:644 (April 2000).

§358 - 368. Reserved.

§369. Personnel Standards

A. Personnel of State and local public and private educational agencies, including local agency providers, who deliver special education services (including instructional, appraisal, related, administrative, and support services) to children and youth with disabilities (3 through 21) shall meet appropriate entry level requirements that are based on the highest requirements in Louisiana applicable to the profession or discipline in which the person is providing special education or related services.

1. *The highest requirements in Louisiana applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline. *Profession or discipline* means a specific occupational category that provides special education or related services to students with disabilities under these regulations, that has been established or designated by the State, and that has a required scope of responsibility and degree of supervision.

2. *State-approved or State-recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in the state.

B. The Department shall have on file with the U. S. Secretary of Education policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of these Regulations are appropriately and adequately prepared and trained. These policies and procedures shall be consistent with subsection A. above.

C. To the extent that the Department's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the Department shall provide the steps and the procedures for notifying public agencies and personnel of those steps and the time lines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

D. The Department shall determine, based on current information that accurately describes each profession or discipline in which personnel are providing special education or related services, whether the applicable standards in all State statutes are consistent with the highest requirements in the state for that profession or discipline. The determination shall be on file in the Department and available to the public.

E. Para-educators, paraprofessionals, and assistants who are appropriately trained and supervised in accordance with the State law, regulations, or written policy in meeting the requirements may be used to assist in the provision of special education and related services.

F. The Department shall require LEAs and other public and private agencies providing services to children and youth with disabilities to make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services. In geographic areas of the state where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet established standards may be hired as entry level personnel, consistent with State law, but shall attain appropriate certification credentials within three years.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:644 (April 2000), amended LR 29:867 (June 2003).

#### §370. Comprehensive System of Personnel Development

A. The Department shall develop and implement a comprehensive system of personnel development that meets the requirements of a State Improvement Plan; that is designed to ensure an adequate supply of qualified special education, general education, and related services personnel, and early intervention service providers; and that meets the requirements of §371 and §372 below. The needs assessment for personnel development, under this section, shall be updated (at least) every five years.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:645 (April 2000).

#### §371. Adequate Supply of Qualified Personnel.

A. The Department shall analyze state and local needs for professional development for personnel to serve students with disabilities: the number of personnel providing special education and related services; relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals with temporary certification); and to the extent possible, the training or retraining necessary to eliminate the shortages based, to the maximum extent possible, on existing assessments of personnel needs.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:645 (April 2000).

#### §372. Improvement Strategies

A. The Department shall describe the strategies the State shall use to address the needs identified. The strategies will include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with students with

disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of students with disabilities. The plan will include a description of how the Department will accomplish this goal.

1. The Department shall prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of students with disabilities, including how the State will work with other States on common certification criteria.

2. The Department shall prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with special needs.

3. The Department shall work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with students with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs.

4. The Department shall develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single state to justify support or development of such a program of preparation.

5. The Department shall work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel.

6. The Department shall enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of students with disabilities that impedes the learning of students with disabilities and others.

7. The Department shall acquire and disseminate to teachers, administrators, school board members, and related services personnel significant knowledge derived from educational research and other sources, and describe how the State will, if appropriate, adopt promising practices, materials, and technology.

8. The Department shall encourage LEAs to recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under represented in the fields of regular education, special education, and related services.

9. The Department shall develop a plan that is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training.

10. The Department shall provide for the joint training of parents and special education, related services, and general education personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:645 (April 2000).

### §373. Administration of Funds

A. The Division shall use any funds it retains in accordance with 34 CFR 300.602, 300.620-621, and 300.370.

B The Division, in concert with other Divisions within the Department shall ensure the proper receipt and disbursement of all State and Federal funds administered by the Department specifically for the provision of special education and related services for students with disabilities. The Federal funds shall be distributed in accordance with 34 CFR 300.620-624 and at §106 of these Regulations.

C. Funds shall not be distributed to an LEA in any fiscal year if the Department determines that the LEA has not complied with the State or Federal mandates concerning the education of students with disabilities. The reasons are listed below.

1. The LEA has not submitted an annual application that meets the requirements of §487 of these regulations. AND/OR

2. The LEA is unable to establish and maintain programs of free appropriate public education. AND/OR

3. The LEA is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain those programs. AND/OR

4. The LEA has one or more students who can best be served by a regional or state program or service delivery system designed to meet the needs of these students.

D. Fiscal review and compliance monitoring shall be conducted in accordance with the Compliance Monitoring Procedures and with auditing procedures established by the Department.

E. Determination of eligibility of students shall be accomplished through the verification procedures of the department regarding the accuracy of the Child Count as detailed in §491. In order to verify the accuracy of each Count submitted, the Division will conduct prescribed activities:

1. The current Child Count from each LEA shall be compared with the previous count.

2. The current Child Count incidence figures from each LEA shall be compared with incidence figures from the previous State Child Count.

3. An on-site Child Count review shall be conducted in accordance with the Compliance Monitoring Procedures. If necessary, each system may be monitored for previous years to verify the accuracy of the Child Count. During fiscal monitoring of each LEA, the monitors will randomly select at least 10, but not more than 20, names from the Child Count report. For each name, the LEA shall provide the student name, date of birth, evaluation report, IEP, class rolls, and any other information that may be necessary to verify the accuracy of the Count.

4. Administrative on-site reviews shall be conducted in accordance with the Compliance Monitoring Procedures. Any multidisciplinary evaluation reviewed and found not to be in compliance with State guidelines, to the extent that it cannot be determined that the student is disabled, shall result in the exclusion of that student from the Child Count.

5. If a student's IEP is monitored during the on-site administrative review process and it is determined that the student has not been receiving all the special education and related services specified on the IEP, the student shall be excluded from Child Count.

6. The LEA shall be afforded an opportunity to present supportive or explanatory documentation to refute the Department and shall be formally accepted. If the evidence cannot justify the Count, the Count shall be disallowed.

F. If the LEA has received funds based on an erroneous Child Count and the Division has documented the extent of the error, the Department shall reduce the grant award if the

error occurred in the current budget and all of the funds have not been expended or shall request that the LEA return such funds. Recovery of funds will follow the procedures in accordance with the Compliance Monitoring Procedures.

G. The monitoring of disproportionality shall be the responsibility of the Department.

1. The Division shall collect and analyze data to determine whether significant disproportionality based on race exists in the State with respect to a particular impairment and with respect to the placement in particular educational settings of these students.

2. When a significant disproportionality is determined, the Division shall provide for the review and, if necessary, the revision of its policies, procedures and practices or require the affected LEA to revise its policies, procedures and practices to ensure it complies with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:647 (April 2000), amended LR 30:778 (April 2004).

#### §374. Nonbias of Testing and Evaluation Materials

A. The Division shall, with the approval of the SBESE, establish procedures as found in §434 to ensure that testing and evaluation materials used for evaluation and placement are free of racial, cultural, and/or sexual bias.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:646 (April 2000).

#### §375. Suspension and Expulsion Rates

A. The Division shall examine data to determine whether there are significant discrepancies in the rate of long-term suspensions and expulsions of students with disabilities among the LEAs and compared with the rates for nondisabled students within the LEAs.

B. If significant discrepancies are determined, the Division shall review and, if appropriate, revise its policies, procedures, and practices or require the affected LEA to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards to ensure they comply with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:646 (April 2000).

§376-399. Reserved.

### **Chapter 4. RESPONSIBILITIES OF LOCAL EDUCATIONAL AGENCIES**

#### §401. Responsibilities of LEAs

A. Each LEA shall identify and locate each student suspected of having a disability

(regardless of the severity of the disability), birth through twenty-one years of age, residing within its jurisdiction.

B. Each LEA is responsible for providing or causing to be provided a free appropriate public education to each eligible student with a disability, three through twenty-one years of age, who resides within its jurisdiction except those students enrolled by their parents in a private school program.

C. *Free appropriate public education (FAPE)* means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet SBESE standards, including these Regulations and all applicable bulletins approved by the SBESE (i.e., *Bulletin 741, Bulletin 746*); that include preschool, elementary school, or secondary school education in the state; and that are provided in conformity with an individualized education program (IEP) that meet the requirements at §§440-445.

1. Nothing in these Regulations shall relieve in any way an insurer, similar third party, or other public State or local agency from an otherwise valid obligation to provide or to pay for services to which a student with a disability is entitled as a client or beneficiary of such third party under State or Federal entitlement or laws or under policies or contracts. This regulation does not prohibit the use of insurance payments or private donations for use in the provision of a free appropriate public education as described in §497 of these Regulations.

2. Whatever State, local, Federal, and private sources of support are available may be used to provide a free appropriate public education, including the use of joint agreements between agencies for sharing the costs of those services.

3. Consistent with §440 and §443 of these Regulations, the LEA shall implement a student's IEP with no delay, including any case in which the payment source for providing or paying for special education and related services to the student has yet to be determined.

D. *Jurisdiction* is the right of an LEA to exercise authority over all students residing within its geographic area and over each student placed by the LEA in an educational program within the geographic area of another LEA or in an approved educational program out of the state.

1. For city/parish school systems, the geographic area is the boundary of the school district as defined in the Louisiana Revised Statutes.

2. For SSD, the geographic area is the boundary of the State-operated treatment and care residential facilities.

3. For a State Board Special School, the geographic area is the boundary of the educational facility.

4. For a charter school that is considered an LEA, the geographic area is the boundary of the educational facility.

5. If there is a transfer of jurisdiction from one system to another for the provision of a free appropriate public education initiated by an LEA, this action is indicated by using the word "referral." According to these Regulations, such a referral culminates in the establishment of responsibility for a FAPE for the student by the receiving LEA. All transfers of jurisdiction are considered significant changes in placement.

6. If there is a placement of a student in another LEA or an approved private school, the student so placed remains within the jurisdiction of the placing LEA. The responsibility for a FAPE remains with the placing LEA and, in the case of placement in an approved private school or facility, also with the State Board.

E. Students who are eligible to receive a free appropriate public education are described below.

1. Free appropriate public education shall be available to all students with disabilities reaching the age of three years, regardless of when the birthday occurs during the school year; an IEP shall be in effect by that date. If a student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the IEP will begin. At the discretion of the LEA and with parental approval, a FAPE may be provided to an eligible student before age three years if his or her third birthday occurs during the school year.

2. A student with a disability shall remain eligible until reaching age twenty-two unless such student has graduated from high school with a regular high school diploma. A student with a disability whose twenty-second birthday occurs during the course of the regular school year (as defined by the LEA) shall be allowed to remain in school for the remainder of the school year.

3. Free appropriate public education shall be available to students expelled or suspended in accordance with §519.D. of these Regulations.

4. A student with a disability who needs special education and related services shall remain eligible, even though he or she is advancing from grade to grade.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:647 (April 2000), amended LR 29:868 (June 2003).

§402. Reserved.

§403. Students with Disabilities in Public Charter Schools.

A. Students with disabilities who attend public charter schools and their parents shall retain all rights under these Regulations.

B. If the public charter school is an LEA, as defined in §904, and receives funding under §487, the charter school shall be responsible for ensuring that the requirements of these Regulations are met.

C. If the public charter school is a school of an LEA that receives funding under §487 and includes other public schools, the LEA shall be responsible for ensuring that the requirements of these Regulations are met. The LEA shall ensure it will serve students with disabilities attending these schools in the same manner as it serves students with disabilities in its other schools and shall provide funds under the Regulations to these schools in the same manner as it provides those funds to its other schools.

D. If the public charter school is not an LEA receiving funding under §487 or is not a school that is part of an LEA receiving funding under §487, the Department shall be responsible for ensuring that the requirements of these Regulations are met by assigning initial responsibility for ensuring the requirements of these Regulations are met to another entity; however, the Department shall maintain the ultimate responsibility for ensuring compliance with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:647 (April 2000).

§404. Reserved.

§405. Special Education and Early Intervention Services for Infants and Toddlers with Disabilities Less Than Three Years of Age

A. LEAs have the option of providing special education and early intervention services to infants and toddlers with disabilities who are from birth to three years of age.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

§406 - 409. Reserved.

§410. Child Search (Child Find) Activities for Infants and Toddlers with Disabilities - Birth through Two Years of Age

A. If, in the process of implementing these Regulations, any LEA locates a child within these ages ranges who is suspected of having a disability shall be referred to the Lead Agency's designated point of entry.

B. For children 2.6 years of age or older, follow the procedures in §415.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:868 (June 2003).

§411. Child Search (Child Find) Activities for Students 3 through 21 Years of Age

A. Each LEA, in accordance with the requirements of this subpart, shall document that the effort of ongoing identification activities is conducted to identify and locate each student who is under its jurisdiction, suspected of having a disability, in need of special education and related services, and meets the criteria listed below

1. is enrolled in an educational program operated by an LEA;
2. is enrolled in a private school program;
3. is enrolled in a public or private preschool or day care program; or
4. is not enrolled in a school, except for students who have graduated with a regular high school.

B. On-going identification activities apply to highly mobile students with disabilities (such as migrant and homeless students) and to students who are suspected of having disabilities and in need of special education, even though they are advancing from grade to grade.

C. If, in the process of implementing these Regulations, any LEA locates a student who is suspected of being in need of treatment, care, or habilitation and rehabilitation, the LEA

should request that the agency designated by the State to provide such assistance explore this suspected need with the parents.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

#### §412. Responsibilities of the Child Search Coordinator

A. Each LEA shall designate an individual as a Child Search Coordinator who shall be held accountable for certain responsibilities prescribed by the SBESE, as listed below.

1. The Child Search Coordinator shall ensure that the progress of referrals and evaluation activities required by §411, §§413-414, and §§430-436 for each student suspected of having a disability is tracked and that the collection and use of data to meet these requirements are subject to the confidentiality requirements in §517 of these Regulations.

2. The Child Search Coordinator shall ensure that the parent of each student initially identified as suspected of having a disability and in need of special educational services is provided a copy of all safeguards as defined in §504 of these Regulations. The parents shall also be afforded an opportunity for an explanation of these rights.

3. The Child Search Coordinator shall ensure the activities assigned under IDEA - Part C are performed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000).

#### §413. Students in an Educational Program Operated by the LEA

A. An LEA shall identify a student as suspected of having a disability by the School Building Level Committee (SBLC). This committee shall coordinate and document the results, as appropriate, of educational screening, sensory screening, health screening, speech and language screening, or motor screening, and the results of the intervention efforts.

B. The SBLC, with the parent as an invited participant, shall review all screening results to reach a decision whether to refer the student to pupil appraisal for an individual evaluation. Parents shall be provided a report or summary by the SBLC on the status of the referral intervention at least once each grading period until a decision has been reached. If the parents disagree with the SBLC decision, the parents shall be provided a copy of their rights, which include a right to a due process hearing.

C. The SBLC's referral to pupil appraisal for an evaluation, which determines eligibility for services under IDEA, shall be made through the principal or designee for pupil appraisal services and shall include documentation of all screening activities. An immediate referral may be made to pupil appraisal services for an individual evaluation of any student suspected of a severe or low-incidence impairment or for whom there is substantial documentation that the student is likely to injure himself or others. Screening activities - such as educational, sensory, health, speech and language screening, and motor screening - should be completed as part of the evaluation for these students.

D. Within 10 business days after receipt of the referral by the pupil appraisal office for an individual evaluation, the evaluation coordinator shall complete required initial activities.

E. For an initial evaluation and the re-evaluation, the LEA shall obtain informed parental consent according to §505 of these Regulations. Receipt of parental consent for an individual evaluation by pupil appraisal begins the sixty business-day time line.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

§414. Child Find for Students in Private School Programs

A. Students enrolled in private school programs shall be identified, according to the procedures noted in §413 A. and §462.A., of these Regulations and shall be referred to the LEA's Child Search Coordinator.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000).

§415. Students Out of School and/or Former Special Education Students Residing in the State

A. Students out of school, including students ages 3 through 5 who are suspected of having a disability and former special education students who have left a public school without completing their public education by obtaining a State diploma, shall be referred to the LEA's Child Search Coordinator, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Students may be enrolled with the development of an interim IEP based on their individual need following the enrollment process in §416 below. If the Louisiana evaluation is current, students may be enrolled with the development of a review IEP within five school days.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:868 (June 2003).

§416. Students with a Documented Severe or Low-Incidence Impairment; Students Who May Be Transferring from Out of State; or Infants and Toddlers with Disabilities

A. Students who have a documented severe or low-incidence impairment documented by a qualified professional shall be initially enrolled in a special education program concurrent with the conduct of the evaluation. This enrollment process, from the initial entry into the LEA to placement, shall occur within ten school days and shall include the steps, as listed below.

1. A review of all available evaluation information by pupil appraisal personnel
2. Approval by the LEA's special education administrator
3. The development of an interim IEP in accordance with §§440-446
4. Informed parental consent for the interim placement
5. The duration of the completion of the evaluation and the interim placement shall not exceed the evaluation time lines specified in §436, with the initial IEP/Placement

document developed within thirty calendar days from the date of dissemination of the written evaluation report to the LEA's special education administrator.

B. Students who have been receiving special education services in another state may be initially enrolled in a special education program, on an interim IEP, concurrent with the conduct of the evaluation. The enrollment process shall be the same as in §416.A.

1. If no mutually agreeable placement can be determined, the LEA is not obligated to adopt the former IEP or to provide the former services. Pending the resolution of the dispute, placement should be in regular education in accordance with the "stay-put" provisions at §514 of these Regulations.

C. For toddlers transitioning from Part C programs to preschool special education programs, the LEA shall follow federally mandated time lines and procedures to ensure a smooth and effective transition between programs. The LEA is required to participate in transition planning conferences at least 90 days, and at the discretion of the parties, up to 6 months prior to the age the student is eligible for preschool special education services. The purpose of this conference is to discuss services the student may receive after his or her third birthday. The LEA shall have the multidisciplinary evaluation completed and the IEP developed for all eligible students for implementation by the student's third birthday to ensure the continuity of services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:868 (June 2003).

#### §417. Students with Disabilities Transferring from one LEA to another LEA Within Louisiana

A. Students who have been receiving special education in one LEA in Louisiana and who transfer to another LEA within Louisiana shall be enrolled in the appropriate special education program in the new LEA with the current IEP or the development of a review IEP within five school days of the transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:869 (June 2003).

#### §418. Evaluation and Re-evaluation

A. A full and individual evaluation shall be conducted for each student being considered for special education and related services under these Regulations to determine whether the student is a "student with a disability" as defined in these Regulations and to determine the educational needs of the student. The evaluation shall be conducted as mandated; and, if it is determined the student is a "student with a disability," the results of the evaluation shall be used by the student's IEP team.

B. A re-evaluation of each student with a disability shall be conducted as mandated; and the results of any re-evaluations shall be addressed by the student's IEP team in reviewing and, as appropriate, revising the student's IEP.

C. Informed parental consent shall be obtained before conducting an evaluation or a re-evaluation according to prior notice and consent at §504 and §505 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000) amended LR 29:869 (June 2003).

§419-429. Reserved.

§430. Pupil Appraisal Personnel

- A. LEAs shall regularly employ pupil appraisal personnel to conduct individual evaluations.
- B. LEAs may, when necessary, use qualified examiners who are available from the Department of Health and Hospitals, the Department of Public Safety and Corrections, the State Board Special Schools, or other public agencies.
- C. LEAs may, when necessary, contract with individuals or organizations to provide specialized assessments needed to provide a comprehensive individual evaluation of an identified student.
- D. LEAs may, when necessary, use a combination of the approaches listed above.
- E. Regardless of the approach used for conducting individual evaluations, LEAs retain full responsibility. Any failure by an employee or contractor to meet any requirements of this section shall constitute a failure by the LEA to comply with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000).

§431. Required Individual Evaluation

- A. An initial evaluation shall be conducted whenever the student is not enrolled in special education and at least one of the following conditions exists.
  - 1. Informed parental consent for the initial evaluation has been requested and received by the LEA. If a request was made for an evaluation during the time period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner as noted in §519.K.4.
  - 2. A direct request for an individual evaluation of an enrolled student from sources other than the SBLC shall be routed through the SBLC for the collection of the required screening information and the conduct of the pre-referral procedures. If the LEA suspects that the student has a disability, an evaluation shall be conducted. If the LEA disagrees with the referral source and does not suspect that the student has a disability, it may refuse to conduct an evaluation. When the LEA refuses to initiate an evaluation upon parental request, the parent shall be provided a copy of all procedural safeguards, which include the right to a due process hearing.
  - 3. A final written decision has been issued by a court of competent jurisdiction requiring that an individual evaluation be conducted.
  - 4. A written request for an individual evaluation has been issued by a hearing officer or the State Level Review Panel.
- B. An individual re-evaluation shall be conducted by the IEP Team and the evaluation

coordinator if conditions warrant, but at least every three years whenever the student is enrolled in special education and at least one of the following occurs:

1. it is requested in writing by the student's teacher or by the LEA's special education supervisor/director;
2. it is requested in writing by the student's parent(s) )- (a request for a reevaluation may be presented orally if the parent is illiterate in English or has a disability that prevents the production of a written statement);
3. a significant change in educational placement of a student is proposed by the LEA, the parent, or both;
4. a final written decision has been issued by a court of competent jurisdiction requiring that an individual re-evaluation be conducted; or
5. A student is suspected of no longer having a disability and no longer in need of services.

C. An LEA is not required to conduct a re-evaluation of students with disabilities who transfer with a current evaluation into its jurisdiction from another jurisdiction in Louisiana.

D. In the event a parent has privately obtained an independent educational evaluation, the LEA shall consider the individual evaluation in accordance with §503. of these Regulations.

E. Transitional needs shall be addressed as part of all evaluations occurring after the 14th birthday of a student with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

§432. Reserved.

#### §433. Evaluation Coordination

A. Upon identification of a student suspected of having a disability, a qualified pupil appraisal staff member shall be designated as evaluation coordinator.

B. The evaluation coordinator shall ensure that the evaluation is conducted including the following: initial responsibilities following receipt of referral, selection of participating disciplines, procedural responsibilities, and mandated time lines.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

#### §434. Evaluation Process and Procedures

A. Individual evaluations shall be conducted according to the procedures for evaluation for each disability.

B. The determination of a disability shall be based upon the established criteria for

eligibility before the initial delivery of special education and related services.

C. All evaluations shall be conducted according to the prescribed standards, as listed below.

1. Tests and other evaluation materials used to assess a student under these Regulations shall be selected and administered so as not to be discriminatory on a racial or cultural basis and shall be provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.

2. Materials and procedures used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.

3. A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the student, including information provided by the parent and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool student, to participate in appropriate activities). Such tools and strategies may assist in determining whether the student is a student with a disability and what content should be included in the student's IEP.

4. Any standardized tests that are given to a student shall have been validated for the specific purpose for which they are used and shall be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. 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) shall be included in the evaluation report.

5. Tests and other evaluation materials shall include those tailored to assess specific areas of educational need, not merely those that are designed to provide a single general intelligence quotient. In no event shall IQ scores be reported or recorded in any individual student's evaluation report or cumulative folder.

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

7. No single procedure shall be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.

8. The student shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

9. In evaluating each student with a disability according to established procedures, the evaluation shall be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

10. Technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, shall be selected.

11. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student shall be selected.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

§435. Determination of Eligibility and Placement

A. In interpreting evaluation data for the purpose of determining whether a student is a student with a disability and what are the educational needs of the student, the multidisciplinary team shall comply with prescribed procedures.

1. The team shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

2. The team shall ensure that information obtained from all of these sources has been documented and carefully considered.

B. Upon completing the administration of tests and other evaluation materials, the multidisciplinary team and the parent of the student shall determine whether the student is a student with a disability, as defined in these Regulations; and the LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

C. A student may not be determined to be eligible under these Regulations, if the determinant factor for that eligibility determination is a lack of instruction in reading or mathematics or limited English proficiency; and the student does not otherwise meet the eligibility criteria.

D. If a determination has been made that a student has a disability and needs special education and related services, an IEP shall be developed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000).

§436. Time lines

A. There shall be no more than ten business days from the date of receipt of the referral for an individual evaluation of an identified student by pupil appraisal to the date when the request is made for parental approval to conduct the individual evaluation.

B. Each individual evaluation shall be completed and the evaluation report disseminated within sixty business days of receipt of parental approval.

C. Extensions of evaluation time lines shall be justified by established criteria.

D. The required triennial re-evaluation shall be completed on or before the third year anniversary date.

E. The required evaluation for toddlers transitioning into preschool special education services shall be completed and the IEP developed, if eligible, by the student's third birthday.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:869 (June 2003).

§437. Determination of Needed Evaluation Data

A. In conducting re-evaluations under these Regulations and as part of an initial evaluation, if appropriate, the evaluation team shall comply with prescribed procedures as described below.

1. The team and the coordinator shall review existing evaluation data on the student, including evaluations and information provided by the parents of the student; current classroom-based assessments and observations; and observations by teachers and related services providers (the team may conduct its review without a meeting).

2. On the basis of that review and on the input from the student's parents, the team and the coordinator shall identify what additional data, if any, are needed to determine

a. whether the student continues to have such a disability;

b. the present levels of performance and educational needs of the student;

c. whether the student 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 student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general curriculum.

3. The team and the coordinator shall determine what tests and other evaluation materials shall be administered, as needed, to produce the data identified in 2. above.

4. The LEA shall notify the student's parents, if the determination under 2. above is that no additional data are needed to determine whether the student continues to be a student with a disability of that determination and the reasons for it; and of the right of the parents to request an assessment to determine whether, for purposes of services under these Regulations, their child continues to be a student with a disability.

5. The LEA is not required to conduct the assessment described in 4. above unless requested to do so by the student's parents.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:869 (June 2003).

§438. Evaluating Students with Specific Learning Disabilities

A. The procedures for evaluating a student suspected of having a specific learning disability including team members, criteria for eligibility, observation requirements, and the written report shall be conducted according to mandated procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:652 (April 2000), amended LR 29:869 (June 2003).

§439. Reserved.

§440. IEP/Placement Responsibilities

A. General Responsibilities for each LEA that develops and implements an IEP for each student with a disability served by that agency are described below.

1. Each LEA shall be responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability in accordance with all the requirements of this Subpart.

2. LEAs shall include on each IEP all special education and related services necessary to accomplish comparability of educational opportunity between students with disabilities and students without disabilities.

3. The IEP shall be developed using a format approved by the Department.

4. The LEA shall provide a copy of each completed IEP/Placement document signed by the officially designated representative of the LEA at no cost to the student's parent(s).

5. At the beginning of each school year, each LEA shall have in effect an IEP for every student with a disability who is receiving special education and related services in that LEA.

6. When the student's IEP is in effect, it shall be accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.

7. Each teacher and service provider shall be informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.

8. An IEP shall be developed and implemented for eligible students by their third birthday that is consistent with a FAPE.

B. Each LEA shall comply with the prescribed time lines as described below.

1. Each initial IEP/Placement document shall be completed within thirty calendar days from the date of dissemination of the written evaluation report to the special education director/supervisor.

2. Implementation of educational placement shall begin as soon as possible, but no later than ten calendar days following receipt by the LEA of formal parental approval.

C. IEPs shall be reviewed and revised following prescribed procedures described below.

1. Each LEA shall ensure each IEP/Placement review meeting is conducted at least annually.

2. Each LEA shall ensure that the team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

3. Each LEA shall ensure the team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general curriculum, if appropriate, as well as concerns in any areas noted in §444.

4. More than one IEP/Placement review meeting may be conducted at the discretion of the LEA. If a parent makes a written request for an IEP/Placement review meeting, the LEA shall respond in ten calendar days in writing to that request.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:652 (April 2000), amended LR 29:869 (June 2003).

#### §441 IEP Team Participants

A. Each LEA shall ensure that the IEP team for each student with a disability includes

all of the required participants, as listed below.

1. One or both of the parents of the student.
2. At least one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); the teacher shall to the extent appropriate, participate in the development, review and revision of the student's IEP, including
  - a. the determination of appropriate positive behavioral interventions and strategies for the student;
  - b. the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student; and
  - c. when a regular education teacher calls for a reconvening of the individualized education program team for any student with a disability assigned to his or her classroom on a full time basis in which the IEP requires an adjustment in the curriculum, instruction or services to be provided by the regular education teacher, this teacher shall participate on the IEP team and shall participate continuously thereafter for as long as the student is assigned to his or her classroom.
3. At least one special education teacher, or when appropriate, at least one special education provider of the student. For review IEP meetings, this participant should be a special education teacher of the student or a service provider of the student.
4. An officially designated representative of the LEA who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; who is knowledgeable about the general curriculum; and who is knowledgeable about the availability of resources of the LEA. The LEA may designate another LEA member of the IEP team to serve also as the agency representative, if the above criteria are satisfied.
5. An individual who can interpret the instructional implications of evaluation results. This person may be a member of the team as described in 2, 3, 4, and 6. For the Re-evaluation/IEP meeting, the evaluation coordinator who conducted the activities for the re-evaluation of the student shall be present.
6. At the discretion of the parent or LEA, other individuals who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the parent or LEA who invited the individual to be a member of the IEP team.
7. If appropriate, the student.
  - a. The LEA shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the student's transition service needs under §444.M.1., the needed transition services for the student under §444.M.2., or both.
  - b. If the student does not attend the IEP meeting involving transition planning, the LEA shall take other steps to ensure that the student's preferences and interests are considered.
  - c. Beginning at least one year before a student reaches the age of majority under State law, the student's IEP shall include a statement that the student has been informed of his or her rights under these Regulations, if any, that will transfer to the student on his or her reaching the age of majority, consistent with §518.
8. For LEAs planning transition services, a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited. If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:653 (April 2000), amended LR 29:869 (June 2003).

§442. Parent Participation

A. LEAs shall take steps to ensure that one or both of the parents of the student with a disability are present at each IEP/Placement meeting or are afforded an opportunity to participate. LEAs shall contact the parent(s) in writing regarding each meeting early enough to ensure that they will have an opportunity to attend and schedule the meeting at a mutually agreed upon time and place.

1. This notice shall indicate the purpose, time, and location of the meeting; it shall also indicate who shall be in attendance.

2. This notice shall inform the parents of the participation of other individuals on the IEP team who have knowledge or special expertise about the student.

B. For a student with a disability beginning at age fourteen, or younger, if appropriate, the notice shall indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student and indicate that the LEA will invite the student.

C. For a student with a disability beginning at age sixteen, or younger, if appropriate, the notice shall indicate that a purpose of the meeting is the consideration of needed transition services for the student and indicate that the LEA will invite the student; the notice shall also identify any other agency that will be invited to send a representative.

D. If neither parent can attend a scheduled IEP/Placement meeting for which arrangements have been made in accordance with these Regulations, other methods shall be used by the LEA to ensure parental participation, including making individual or conference telephone calls.

E. The meeting may be conducted without a parent in attendance providing that certain procedures are followed, as described below.

1. Another method for parental participation is used and documented; or

2. The LEA has documented 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/or

c. detailed records of visits to the parents' home or place of employment and the results of those visits.

F. The LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at a meeting, including arranging for an interpreter for parent(s) who are deaf or whose native language is other than English.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:653 (April 2000).

§443. Parental Approval of IEP/Placement

A. When securing parental approval of the initial IEP/Placement document, prescribed procedures shall be followed, as described below.

1. Each LEA shall obtain informed parental consent prior to providing initial special education and related services. The IEP shall be considered in effect after the parent(s) provides formal written approval by signing the IEP/Placement document.

2. If the parent(s) withholds written approval of the educational placement, the LEA special education supervisor shall within ten business days either

a. recommend a modified educational placement to which the parent(s) will provide approval; or

b. indicate to the parent(s) in writing that no placement modification will be made. In this case the student shall be maintained in the present placement or be offered placement in the LEA with approval of parent(s) until the matter is resolved.

3. The parent(s) may request a hearing in accordance with §507 of these Regulations in order to resolve any disagreement over the proposed IEP/Placement of the student.

4. If the LEA wishes to override the parental decision to withhold a formal written approval for the initial placement of the student in special education, the LEA may appeal to the appropriate State court within the time prescribed by State law.

B. In conducting a review of the IEP/Placement, the IEP team may make decisions without the involvement of the parents, when the LEA is unable to obtain the parents participation in the decision. In this case, the public agency shall have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of §442.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:653 (April 2000).

#### §444. IEP Content and Format

A. Each completed IEP shall contain a general overview of the student's instructional needs. Required components are listed below.

1. the student's strengths and support needs;

2. the concerns of the parents for enhancing the education of their child;

3. the results of the initial evaluation and/or most recent re-evaluation of the student;

4. as appropriate, the results of the student's performance on any general state or district wide assessment program;

5. The student's present levels of educational performance, including

a. how the student's disability affects the student's involvement and progress in the general curriculum; and

b. for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities.

B. The IEP team shall also consider the following special factors and include, if needed, a statement addressing these issues on the IEP

1. in the case of a student whose behaviors impede his or her learning or that of others, if appropriate, strategies including positive behavioral intervention strategies and supports

to address that behavior;

2. in the case of a student with limited English proficiency, the language needs of the student as those needs relate to the student's IEP;

3. in the case of a student who is blind or visually impaired, instruction in Braille and the use of Braille unless the IEP team determines - after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student'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 student;

4. the communication needs of the student; and in the case of a student who is deaf or hard-of-hearing, not only the student's language and communication needs, but also the opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; the LEA shall ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly;

5. whether the student requires assistive technology devices and services based on assessment/evaluation results; if it is determined that the student requires assistive technology devices or assistive technology services, or both, they shall be made available to the student with a disability as a part of the student's special education services, as a related service, or as supplementary aids and services; on a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive a FAPE; and

6. in the case of a student who has health problems, needs to be met during the school day: such medical conditions as asthma; diabetes; seizures; or other diseases/disorders that may require lifting and positioning, diapering, assistance with meals, special diets, or other health needs;

C. If in considering the special factors described in B.1- 6. above, the IEP team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a FAPE, the IEP team shall include a statement to that effect in the student's IEP.

D. The IEP shall contain a statement of measurable annual goals, including benchmarks or short-term objectives, as listed below.

1. The statement shall relate to meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum.

2. The statement shall relate to meeting each of the student's other educational needs that result from the student's disability.

3. The statement shall relate to appropriate activities for the preschool-aged student.

E. The IEP shall contain a statement of the special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided for the student to achieve the following as listed below

1. to advance appropriately toward attaining the annual goals;

2. to be involved and progress in the general curriculum and to participate in

extracurricular and other nonacademic activities; and

3. to be educated and participate with other students with disabilities and students without disabilities in the activities.

F. The IEP shall contain an explanation of the extent, if any, to which the student will not participate with students without disabilities in the regular class and extracurricular and other nonacademic activities.

G. The IEP shall contain a statement of any individual modifications and accommodations in the administration of the State or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment; and

1. if the IEP team determines that the student will not participate in a particular State or district wide assessment of student achievement (or part of an assessment), a statement of
  - i. why that assessment is not appropriate for the student, and
  - ii. how the student will be assessed.

H. The IEP shall contain the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications.

I. The IEP shall contain a statement of how the student's progress toward the annual goals will be measured.

J. The IEP shall contain the screening date(s) and criterion/criteria by which the student will be screened to determine extended school year program (ESYP) eligibility.

K. The IEP shall contain the type of physical education program to be provided for the student.

L. The IEP shall contain a statement of how the student's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled student's progress of

1. their child's progress toward the annual goals; and
2. the extent to which the progress is sufficient to enable the student to achieve goals by the end of the year.

M. For transition services, the IEP shall include the prescribed statements listed below.

1. For each student with a disability beginning at age fourteen and younger if appropriate, and updated annually, the IEP shall contain a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program).

2. For each student with a disability beginning at age sixteen (or younger, if determined appropriate by the IEP team), the IEP shall contain a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

3. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:654 (April 2000), amended LR 29:870 (June 2003).

#### §445. IEP Accountability

A. The LEA shall provide special education and related services to a student with a disability in accordance with the student's IEP.

B. The LEA shall make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP.

C. Part B of IDEA does not require that any agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals, and objectives or benchmarks. However, IDEA does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school or agency performance.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:655 (April 2000).

#### §446. Least Restrictive Environment

A. For each educational placement of a student with a disability, including a preschool student with a disability, the LEA shall ensure that prescribed placement procedures are implemented.

1. Placement shall be determined at least annually by a group of persons (including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options).

2. Placement shall be based on an IEP/Placement Document.

3. The special education program in which each educational placement is made, including a private school or facility, shall meet the standards of the State Board.

4. A continuum of alternative educational placements shall be available to the extent necessary to implement the IEP/Placement document for each student with disabilities. Instruction may take place in other settings such as the community and job sites. At a minimum, this continuum shall include (in order of restrictiveness as it applies to each student) the following:

a. instruction in regular classes (Provisions shall be made for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement.),

- b. instruction in special classes,
- c. special schools,
- d. home instruction;
- e. instruction in hospitals and institutions.

5. A student with a disability shall not be removed from education in age appropriate regular classrooms solely because of needed modifications in the general curriculum.

6. Special class, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or intensity of the individual's needs is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Reasons for selecting a more restrictive environment may not be based solely on category of disability, severity of disability, availability of educational or related services, administrative convenience or special equipment.

7. To the maximum extent appropriate, any alternative placement selected for the student outside the general educational setting shall provide opportunities for the student to interact with nondisabled peers.

8. Students with disabilities shall have available to them the variety of educational programs and activities available to nondisabled students in the area served by the LEA, including but not limited to art, music, industrial arts, consumer and homemaking education, and vocational education.

9. Nonacademic and extracurricular services and activities shall be provided in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities including meals and recess periods and participates with nondisabled children in these services and activities to the maximum extent appropriate to the needs of that child; and may include counseling services, recreational activities, athletics, transportation, health services, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

10. Physical education services, in accordance with the IEP/Placement document, shall be provided to students with disabilities in the regular physical education program or in the adapted physical education program as specified in §904.

11. The Least Restrictive Environment rules shall not be waived by any party, including the parent(s).

B. Each completed IEP shall contain prescribed placement components.

1. The IEP shall identify the specific educational environment in which the student is to be placed. This placement shall be the least restrictive educational environment, whether in existence or not, which can meet the student's individual educational needs, including necessary resources.

2. In making placement decisions, IEP committees shall first consider the regular/general education class with the use of supplemental aids and services.

a. If a regular/general education class is not chosen as the least restrictive environment, IEP teams shall examine each alternative placement (in order of restrictiveness) to determine appropriate placement.

b. If the placement decision is not instruction in regular class/setting, the IEP team shall provide justification for each setting rejected and the reasons or educational benefit

for choosing the appropriate placement.

3. The four assurances listed below shall be provided when site determination decisions are made by the LEA.

a. The placement shall be in the school which the student would attend if not disabled unless the IEP of the student required some other arrangement. If the placement is not in the school the student would normally attend, the placement shall be as close as possible to the student's home.

b. The school and the class shall be chronologically age appropriate for the student. No student shall be placed in a setting that violates the maximal pupil/teacher ratio or the three-year chronological age span.

c. The school/setting selected shall be accessible to the student for all school activities.

d. If the placement is other than regular/general education, the classroom shall be comparable to and integrated with regular classes.

4. Any deviation from the four assurances above shall be documented and justified on the IEP. In selecting an alternative placement, the LEA shall consider any potential harmful effect on the student with a disability or on the quality of services needed.

C. For the preschool-aged students with disabilities, three through five years of age, various alternative placements shall be available to the extent necessary to implement the IEP and for the student to receive these services in his or her LRE. Decisions regarding appropriate services shall be based on the individual needs of each student. The LEA shall make available center/school placements comparable in time to kindergarten age students if the student with a disability is kindergarten age. The frequency of services shall be flexible and dependent upon the needs of the individual student and family. The following placements, which do not reflect a continuum of least restrictive environment for the preschool aged student, should be considered.

1. early childhood setting;
2. early childhood special education setting;
3. home;
4. part-time early childhood/part-time early childhood special education setting;
5. residential facility;
6. separate school;
7. itinerant service outside the home; or
8. reverse mainstream setting.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:655 (April 2000), amended LR 29:870 (June 2003).

#### §447. Extended School Year Services

A. *Extended school year programming (ESYP)* is the provision of special education and

related services to students with disabilities in accordance with an IEP beyond the normal school year of the LEA.

B. LEAs shall provide educational and related services beyond the normal school year to students with disabilities when these students are determined to be in need of or eligible for such services for the provision of a FAPE. Student eligibility, which may not limit ESY services to particular categories of disabilities, shall be determined in accordance with extended school year program eligibility criteria requirements.

C. The student's extended school year program is to be designed according to the ESY IEP team, in determining the duration, amount and type of extended school year services, shall not be bound or limited by any predetermined program or length. The extended school year services shall be determined by the IEP team on an individual basis for each student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:656 (April 2000), amended LR 29:870 (June 2003).

#### §448. Change to Less Restrictive Environment

A. During each IEP review or revision, the educational placement of the student with a disability shall be changed to a less restrictive environment, unless the LEA documents that the educational needs indicated on the updated IEP/Placement document indicate that a change in educational placement would cause a reduction in quality of services needed or have a potentially harmful effect on the student.

B. *Significant change in educational placement* is defined as moving a student from one alternative setting to another that is more restrictive or which transfers jurisdiction; such a change requires a re-evaluation. A re-evaluation is not required to precede a placement change to a less restrictive environment occurring as a result of an IEP/Placement document.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:657 (April 2000).

#### §449. IEP Declassification Placement - Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:657 (April 2000), amended LR 29:870 (June 2003), repealed LR 30:779 (April 2004).

#### §450. IEP Interim Placement - Refer to §416.

§451. Requirements for Placed or Referred Students with Disabilities

A. Before an LEA places, refers, or provides services to a student with a disability in another LEA, the LEA shall initiate and conduct a meeting to develop an IEP for the student in accordance with these Regulations.

1. In preparation for this IEP/Placement meeting, the LEA shall discuss with an authorized representative of the receiving LEA the following:

- a. the student's eligibility for admission;
- b. the education records necessary to determine eligibility for admission;
- c. the availability of services; and
- d. the likelihood of the student's being accepted by the system if the IEP/Placement meeting resulted in such a recommendation.

2. The LEA shall ensure that a representative of the other LEA attends the IEP/Placement meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the other LEA, including individual or conference telephone calls.

3. After conducting the IEP/Placement meeting, the LEA shall apply to the Division, in accordance with §451.B., for approval of placement out of the geographic attendance area of the LEA or for a transfer of jurisdiction. This procedure shall not be required when placement is in another LEA by mutual agreement.

4. For placement consideration which results in a referral to a State Board Special School, the proposed educational placement and supporting information shall be forwarded to the Division for its review and approval in accordance with §303 and a copy shall be forwarded to the appropriate State Board Special School for its review and agreement.

B. The Division, in determining whether to approve a request for referral or placement in an approved public or private day or residential school program located outside the geographic area of the LEA but within the State, will consider the following:

1. the short-term and long-term educational needs of the student;
2. the alternative educational placements available within the LEA or through a mutual agreement;
3. the potential for creating a new alternative educational placement within the LEA or by mutual agreement which would be less restrictive than the proposed placement; and
4. the proximity of the proposed placement to the residence of the student (e.g., greater metropolitan area).

C. The Division, in determining whether to approve a request for referral or for placement in an approved public or private day or residential school program located outside the State, in addition to considerations listed above, shall also consider the ability of the proposed educational program and facility to meet the minimum standards for special schools of Louisiana.

1. The private school shall be one approved by the SEA of the state in which it is located.

2. An on-site visit by Division personnel shall be conducted prior to placement.

3. The state in which the facility is located shall have an approved state plan for implementation of IDEA – Part B.

4. The public or private school shall provide necessary data to establish comparability of educational programs to similar programs operated in Louisiana.

D. If, during the review or revision of an IEP of a student, a change in placement in or a referral back to the placing or referring LEA is considered, a representative of both LEAs, in addition to other meeting participants required by §441, shall be involved in any decision about the student’s IEP/Placement.

E. LEAs shall enroll students with disabilities currently enrolled in SSD or State Board Special Schools for provision of special education and related services in the least restrictive environment when the student is placed by SSD or State Board Special Schools. Such a student with a disability shall remain in the jurisdiction of SSD or the State Board Special Schools, which shall reimburse the LEA for any costs for providing such services based on an interagency agreement. An LEA that disagrees with such a placement may, on an individual basis, apply to the State Board for exemption from the State Board from this obligation.

F. An LEA or SSD that places students with severe or low-incidence disabilities in State Board Special Schools shall reimburse State Board Special Schools for any costs for providing such services based on an interagency agreement. The LEA that retains jurisdiction shall retain fiscal responsibility for funds not available to the other system from the State.

G. Notwithstanding any other provision of these regulations, when it is necessary to provide special education and related services in programs other than public schools, these placements must not occur until it has been determined that the student cannot be appropriately educated by another governmental agency of the State. After determination has been made that neither the public schools nor another governmental agency of the State can adequately provide special education and related services, then private programs within the State (the third alternative) must be considered. If these programs are still inadequate to meet the educational needs of the student, then out-of-state private programs may be approved.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:657 (April 2000), amended LR 29:870 (June 2003).

§452-459. Reserved.

#### §460. Students with Disabilities in Private Schools Placed or Referred by LEAs

A. Each LEA shall ensure that a student with a disability who is placed in or referred to a private school or facility by the LEA is provided special education and related services in conformance with an IEP that meets the requirements of §§440 - 446 of these Regulations, at no cost to the parent; is provided an education that meets the standards that apply to education provided by the LEA; and has all rights of a student with a disability served by the LEA.

B. Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA shall initiate and conduct a meeting to develop an IEP for the child in accordance with §§440-460 of these Regulations.

C. The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

D. 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 LEA.

E. If the private school or facility initiates and conducts these meetings the LEA shall ensure that the parents and an agency representative

1. are involved in any decision about the child's IEP; and
2. agree to any proposed changes in the IEP before those changes are implemented.

F. Even if a private school or facility implemented a child's IEP, responsibility for compliance with this part remains with the LEA and the SEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:658 (April 2000), amended LR 29:870 (June 2003).

§461. Students With Disabilities Enrolled By Their Parents in Private Schools when FAPE is at Issue.

A. An LEA shall not be required to pay for the cost of the education, including special education and related services, of a student with a disability enrolled at a private school or facility if that LEA made a FAPE available to the student and the parents elected to place the student in a private school or facility. The LEA shall include that student in the population whose needs are addressed in §462 of these Regulations.

B. Disagreements between a parent and the LEA regarding the availability of a program appropriate for the student and the question of financial responsibility are subject to the due process procedures in the §507 of these Regulations.

C. If the parent of a student with a disability, who previously received special education and related services from the LEA, enrolls the student in a private preschool, elementary, or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the LEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or court, even if the placement does not meet the State standards that apply to education provided by the LEA or the State.

D. The cost of reimbursement described in the above paragraph may be reduced or denied under certain circumstances:

1. if at the most recent IEP meeting that the parents attended prior to removal of the student from the LEA, the parents did not inform the IEP team that they were rejecting the placement proposed by the LEA to provide a FAPE to the student, including stating their concerns and their intent to enroll their child in a private school at public expense; or

2. if at least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the LEA of the information in paragraph D.1. above; or

3. if prior to the parents' removal of the student from the public school, the LEA informed the parents through the notice requirements described in §504 of these Regulations, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

4. if upon judicial findings of unreasonableness with respect to actions taken by the parents.

E. Notwithstanding the notice requirement in paragraph D.1. of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if the parent is illiterate and cannot write in English, if compliance with paragraph D.1. of this section would likely result in physical or serious emotional harm to the student, if the school prevented the parent from providing the notice, or if the parents had not received notice pursuant to §504 of these Regulations regarding the notice requirement in paragraph D.1. of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:658 (April 2000).

#### §462. Students with Disabilities Enrolled by their Parents in Private Schools

A. As used in this section, *private school students* means students with disabilities enrolled by their parents in private school or facilities other than students with disabilities covered under §460. of these Regulations.

B. Private school students with disabilities shall be identified, located, and evaluated through prescribed procedures.

1. Each LEA shall locate, identify, and evaluate all private school students with disabilities, including religious-school students residing in the jurisdiction of the LEA. The activities undertaken to carry out this responsibility for private school students with disabilities shall be comparable to activities undertaken for students with disabilities in public schools.

2. Each LEA shall consult with appropriate representatives of private school students with disabilities on how to carry out the activities in paragraph B.1. above.

C. The provision of services to students with disabilities shall follow basic requirements.

1. To the extent consistent with their number and location in the state and within an LEA, provision shall be made for the participation of private school students with disabilities in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services in accordance with Subsections D.- L. below.

2. Each LEA shall develop and implement a service plan, using a format approved by the Division, in accordance with paragraph B.1. above and Subsections E.- G. below, for each private school student with a disability who has been designated to receive special education and related service.

D. Expenditures for students with disabilities shall be determined by prescribed procedures.

1. To meet the provision of the service requirements of C.1. above, each LEA shall expend funds according to a prescribed formula.

a. For students aged three through twenty-one, the LEA shall fund an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the IDEA as the number of private school students with disabilities aged three through twenty-one residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction aged three through twenty-one.

b. For students aged three through five, the LEA shall fund an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the IDEA as the number of private school students with disabilities aged three through five residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction aged three through five.

2. Child count shall follow prescribed procedures.

a. Each LEA shall consult with representatives of private school students in deciding how to conduct the annual child count of the number of private school students with disabilities and shall ensure that the count is conducted on December 1 of each year.

b. The child count shall be used to determine the amount that the LEA shall spend on providing special education and related services to private school students with disabilities in the next subsequent fiscal year.

3. Expenditures for child-find activities may not be considered in determining whether the LEA has met the requirements of §462.D. of this Subsection.

4. LEAs are not prohibited from providing services to private school students with disabilities in excess of those required by this section and consistent with State law or local policy.

E. In determining services to private school students with disabilities, the LEA shall ensure prescribed requirements as follows.

1. No private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school. Decisions about the services that will be provided to private school students with disabilities shall be made in accordance with the consultative and service plan requirements listed below.

2. In determining services, the LEA shall under prescribed guidelines consult with representatives of private school students with disabilities.

a. Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school students with disabilities in light of the funding under D. above, for the number of private school students with disabilities, the needs of private school students with disabilities and their location to decide

- i. which students will receive services;
- ii. what services will be provided;
- iii. how and where the services will be provided; and
- iv. how the services will be evaluated.

b. Each LEA shall give appropriate representatives of private school students with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultative requirements.

c. The consultation required shall occur before the LEA makes any decision that affects the opportunities of private school students with disabilities to participate in these services.

d. The LEA shall make the final decision with respect to the services to be provided to eligible private school students.

3. If a student with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall

a. initiate and conduct meetings to develop, review and revise a services plan for the student in accordance with Subsection F. below; and

b. ensure that a representative of the religious or other private school attends each meeting; if the representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

F. In providing services to students with disabilities, the LEA shall follow prescribed requirements.

1. Services provided to private school students with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools; private school students with disabilities may receive a different amount of service from students with disabilities in public schools; and no private school student with a disability is entitled to any service or to any amount of services that a student with disability would receive if enrolled in a public school.

2. Each private school student with a disability who has been designated to receive services shall have a service plan that describes the specific special education and related services the LEA will provide to the student in light of the services that the LEA has determined, through the consultative process, it will make available to private school students with disabilities. The service plan shall, to the extent appropriate, meet the IEP content requirements at §444. with respect to the services provided and be developed, reviewed, and revised consistent with IEP process procedures at §§440 - 443.

G. In determining the location of services and transportation provisions, the following guidelines shall be followed.

1. Services provided to private school students with disabilities may be provided on-site at a student's private school, including a religious school to the extent consistent with law.

2. If necessary for the student to benefit from or participate in the services provided under this part, a private school student with a disability shall be provided transportation:

a. from the student's school or the student's home to a site other than the private school, and

b. from the service site to the private school or to the student's home depending on the timing of the services.

3. The LEA is not required to provide transportation from the student's home to the private school.

4. The cost of the transportation described in G.2. above may be included in calculating whether the LEA has met the requirements of §462.D.

H. Complaints are limited to the conditions listed below.

1. The due process procedures in §507 of these Regulations do not apply to complaints that an LEA has failed to meet the requirements of §462. of these Regulations, including the provision of services on the student's service plan.

2. The due process procedures in §507 of these Regulations do apply to complaints that an LEA has failed to meet the child-find requirements, including the procedures for evaluation and determination of eligibility found at §§411 - 438. of these Regulations.

3. Complaints that an LEA has failed to meet the requirements of §462. of these Regulations may be filed under the procedure in §506.A. of these Regulations.

I. An LEA may not use funds available under section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if

1. the classes are at the same site, and

2. the classes include students enrolled in public schools and students enrolled private schools.

J. The LEA shall ensure that funds do not benefit a private school by following these prescribed guidelines.

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

2. An LEA shall use funds provided under Part B of the IDEA to meet the special education and related services needs of students enrolled in private schools, but not for the needs of a private school or for the general needs of the students enrolled in the private school.

K. The LEA may use funds available under sections 611 and 619 to pay for the use of public and private personnel under the following prescribed guidelines.

1. An LEA may use funds available under sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities to the extent necessary to provide services for private school students with disabilities, if those services are not normally provided by the private school.

2. An LEA may use funds available under section 611 or 619 of the IDEA to pay for the services of an employee of a private<sub>45</sub> school to provide services to private school

students with disabilities if the employee performs the services outside of his or her regular hours of duty and if the employee performs the services under public supervision and control.

L. The LEA shall follow prescribed requirements concerning property, equipment, and supplies for the benefit of private school students with disabilities.

1. An LEA shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under section 611 or 619 of the IDEA for the benefit of private school students with disabilities.

2. The LEA may place equipment and supplies in a private school for the period of time needed for the program.

3. The LEA shall ensure that the equipment and supplies placed in a private school

- a. are used for only Part B purposes, and
- b. can be removed from the private school without remodeling the private school facility.

4. The LEA shall remove equipment and supplies from a private school if

- a. they are no longer needed for Part B purposes or
- b. removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

5. No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:658 (April 2000), amended LR 29:871 (June 2003).

#### §463. Facility Accessibility

A. Facilities used by LEAs, directly or through contractual arrangement, shall be accessible to and usable by persons with disabilities. Architectural barriers shall not prevent a student with a disability from being educated in the least restrictive educational environment as defined in §446 of this Part.

B. New facilities or new parts of facilities shall be approved, designed, and constructed under prescribed conditions.

1. They may not be approved for construction unless and until the Department and the State Board give expressed written approval on the basis of a satisfactory showing by an LEA that adequate provision has been made for the necessary access of the students with disabilities.

2. They shall be designed and constructed in a manner that results in their being readily accessible to and usable by persons with disabilities.

3. They shall be constructed to at least meet the current level of accessibility provided by the Americans with Disabilities Act (ADA) Accessibility Guidelines for Building and Facilities.

C. Facilities that are altered for the use of LEAs shall be altered to the maximum extent feasible in a manner that results in the altered portion of the facility being readily accessible to and usable by persons with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:660 (April 2000).

§464. Program Accessibility

A. Program accessibility shall be ensured within existing facilities and accomplished through one of the following

1. alteration of existing facilities; or
2. nonstructural changes: redesign of equipment; procurement of accessible educational technology; utilization of assistive technology; reassignment of classes or other services to accessible buildings; assignment of aides to students; home visits; and delivery of health, welfare, or other social services at alternative accessible sites.

B. In choosing among available methods for meeting the program availability requirement, an LEA shall give priority to those methods that offer programs and activities to persons with disabilities in integrated settings.

C. Structural changes in facilities do not need to be made where other methods effectively ensure program accessibility; where structural changes are necessary, they shall be made as expeditiously as possible.

D. All nonstructural changes necessary to ensure program accessibility shall be made immediately or as expeditiously as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:660 (April 2000).

§465. Facility Comparability

A. Facilities identifiable as being for students with disabilities and the services and activities provided therein shall meet the same standards and level of quality as do facilities, services, and activities provided to other students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661(April 2000).

§466. Day Care and Adult Services

A. LEAs that operate a preschool education or day care program or activity may not, on the basis of disability, exclude any students with disabilities and shall take into account the need(s) of such students in determining aids, benefits, or services to be provided under the program or activity. LEAs that operate an adult education program or activity may not, on the basis of disability, exclude persons with disabilities and shall take into account the need(s) of these persons in determining aids, benefits, or services to be provided under the program or activity.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661 (April 2000).

§467- 469. Reserved

§470. Local Advisory Panel

A. A local advisory panel for the education of students with disabilities may be appointed by each LEA for the purpose of providing policy guidance with respect to special education and related services for students with disabilities in their school district, with the approval of its governing authority. Membership of the panel should appropriately represent the populations served.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661 (April 2000).

§475-480. Reserved

§481. Appointment of a Supervisor/Director of Special Education

A. Each LEA shall employ a certified supervisor/director of special education on a full- or part-time basis.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661 (April 2000).

§482. Personnel Standards

A. Personnel of local public and private educational agencies, including other local agency providers, who deliver special educational services (including instructional, appraisal, related,

administrative, and support services) to students with disabilities (birth through age twenty-one) shall meet appropriate entry level requirements that are based on the highest requirements in Louisiana applicable to the profession or discipline in which a person is providing special education or related services. See §369 for more details.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661 (April 2000).

§483. Comprehensive System of Personnel Development

A. LEAs shall have on file with the Department information to demonstrate that all personnel necessary to carry out these regulations within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of §482 above.

B. To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661 (April 2000).

§484.- 485. Reserved.

§486. Procedures for Determination of Eligibility for State or Federal Funds

A. Each LEA requesting State or Federal funds administered by the Department shall do so according to the procedures established by the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661 (April 2000).

§487. Annual Eligibility for IDEA - Part B Funds

A. Each LEA receiving assistance for the provision of education to students with disabilities within its jurisdiction shall have in effect policies, procedures, and programs that are consistent with the State's policies and procedures established pursuant to the Individuals with Disabilities Education Act (IDEA).

B. Each LEA shall have on file with the Department, policies and procedures that demonstrate compliance with the requirements of IDEA are consistent with State and Federal requirements.

C. Each LEA shall permit access by the staff of the Division during regular business hours of the LEA to any sources of information necessary to ascertain compliance with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661 (April 2000).

§488.- 489 Reserved

§490. Maintenance of Special Education Student Data

A. Each LEA shall maintain and assure the accuracy of the required elements for each student record on the Louisiana Network of Special Education Records (LANSER), the automated special education tracking system and on the Student Information System (SIS).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:661 (April 2000).

§491. Child Counting

A. Each LEA shall use LANSER for the purpose of tracking students with disabilities. Data from this system shall be used to produce the Annual Child Count, as of December 1, for the purpose of generating grant awards under IDEA-B and the Preschool Grants Program.

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program (IEP).

C. If a student with a disability has more than one disability, the LEA shall adhere to the procedures prescribed below.

1. If a student has only two disabilities - deafness and blindness - and the student is not reported as having a developmental delay, that student shall be reported under the category "deaf-blindness."

2. A student who has more than one disability and who is not reported as having deaf-blindness or as having a developmental delay shall be reported under the category "multiple disabilities."

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:662 (April 2000), amended LR 29:871 (June 2003).

§492. Reserved

§493. Use of IDEA - Part B Flow-through Funds

A. An LEA may only use IDEA - Part B funds for the excess cost of providing special education and related services for students with disabilities. The excess cost requirement prevents a LEA from using funds provided under IDEA - Part B to pay for all of the costs directly attributable to the education of a student with disabilities. However, the excess cost requirement does not prevent a LEA from using IDEA - Part B funds to pay for all of the cost directly attributable to the education of a student with disabilities in any of the ages of 3, 4, 5, 18, 19, 20, or 21 years, if no local or State funds are available for nondisabled students in that age range. However, the LEA shall comply with the non-supplanting and other requirements of this Part, providing the education and services. IDEA - Part B funds received shall not be commingled with State funds.

B. The LEA meets the excess cost requirement if it has spent at least at a minimum average amount determined under 34 CFR 300.184 for the education of each of its students with disabilities. This amount may not include capital outlay or debt service.

C. LEAs may not use IDEA - Part B funds to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures for the preceding year. To determine whether that requirement is met, LEAs shall be able to demonstrate that the total amount, or average per capita amount, of State and local school funds budgeted for expenditures in the current fiscal year for the education of students with disabilities is at least equal to the total amount, or average per capita amount, of State and local school funds actually expended for the education of students with disabilities in the most recent preceding fiscal year for which the information is available. An LEA may reduce the level of expenditures by the LEA under IDEA-Part B below the level of those expenditures for the preceding fiscal year if the reduction is attributable to the following prescribed factors.

1. Voluntary departure by retirement or otherwise, or departure for just cause of special education or related services personnel, who are replaced by qualified, lower-salaried staff. In order for an LEA to invoke this exception, the LEA shall ensure that those voluntary retirements or resignations and replacements are in full conformity with

- a. existing school board policies in the agency,
- b. the applicable collective bargaining agreement in effect at that time, and
- c. applicable State statutes.

2. A decrease in the enrollment of students with disabilities.

3. The termination of the obligation of the LEA, consistent with this section, to provide a program of special education for a particular student with a disability that is an exceptionally costly program, as determined by the SEA, because the student

- a. has left the jurisdiction of the LEA,
- b. has reached the age at which the obligation of the LEA to provide a FAPE to the student has terminated, or

c. no longer needs the program of special education.

D. LEAs shall use State and local funds to provide services to students with disabilities receiving IDEA - Part B funds which, taken as a whole, are at least comparable with services provided to other students without disabilities.

E. LEAs shall maintain records that demonstrate compliance with the excess cost, nonsupplanting, and comparability requirements.

F. An LEA may use funds received under IDEA Part B for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965 under the following conditions:

1. the amount used in any school-wide program may not exceed the amount received by the LEA under Part B for that fiscal year, divided by the number of students with disabilities in the jurisdiction of the LEA, and multiplied by the number of students with disabilities participating in the school wide program; and

2. the LEA shall ensure that all students with disabilities receive services in accordance with a properly developed IEP and are afforded all the rights and services guaranteed to students with disabilities under the IDEA.

G. An LEA may use funds received under IDEA Part B for the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a student with a disability in accordance with the student's IEP, even if one or more nondisabled students benefit from these services.

H. An LEA may not use more than five percent of the amount it receives under Part B of the IDEA for any fiscal year, in combination with other amounts (which shall include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for students and families, including students with disabilities and their families.

I. An LEA, through authority granted by the Department, may use funds made available under Part B of the IDEA to permit a public school within the jurisdiction of the LEA to design, implement, and evaluate a school-based improvement plan for a period not to exceed three years in accordance with 34 CFR 300.245-250.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:662 (April 2000).

#### §494. Obligation of Noneducational Public Agencies

A. If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy to provide or pay for any services that are also considered special<sub>52</sub> education or related services (such as relating to

assistive technology devices/ services, related services, supplementary aids and services, or transition services) that are necessary for ensuring a FAPE to students with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

B. A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

C. If a public agency other than an educational agency fails to provide or pay for the special education and related services in A. above, the LEA or department shall provide or pay for these services to the student in a timely manner. The LEA or department may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or department in accordance with the terms of the interagency agreement.

D. Nothing in this part relieves the participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for transition services that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:663 (April 2000), amended LR 29:871 (June 2003).

#### §495. Interagency Coordination

A. Each LEA shall, upon request, assist the Department in the development and implementation of any interagency agreements designed to improve the delivery of special education and related services to students with disabilities.

B. Each LEA shall enter into interagency agreements in §830 to the extent necessary to comply with all provisions of these Regulations.

C. Each agreement shall be consistent with Chapter 8 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:663 (April 2000).

#### §496. Students With Disabilities Who Are Covered By Public or Private Insurance

A. An LEA may use the public insurance benefits of a student with a disability who is covered by public insurance only under certain prescribed conditions.

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

2. With regard to services required to provide a FAPE to an eligible student under this part, the public agency

a. may not require parents to sign up for or enroll in public insurance programs in order for their child to receive a FAPE under Part B of the IDEA;

b. may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parent otherwise would be required to pay; and

c. may not use a student's benefits under a public insurance program if that use would

i. decrease available lifetime coverage or any other insured benefit;

ii. result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;

iii. increase premiums or lead to the discontinuation of insurance; or

iv. risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

B. The LEA may use the private insurance benefits of a student with a disability who is covered by private insurance only under certain prescribed conditions.

1. With regard to services required to provide a FAPE to an eligible student under these regulations, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent.

2. Each time the public agency proposes to access the parent's private insurance proceeds, it shall obtain parent consent and 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.

C. Use of Part B Funds to pay for public or private insurance coverage is permissible under prescribed conditions.

1. If a public agency is unable to obtain parental consent to use the parent's private insurance or public insurance when the parent would incur a cost for a specified service to ensure a FAPE, the public agency may use its Part B funds to pay for the service.

2. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay (e.g., the deductible or co-pay amounts.)

D. Proceeds from public or private insurance shall be considered according to prescribed guidelines.

1. Proceeds from public or private insurance shall not be treated as program income for purposes of 34 CFR 80.25.

2. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds shall not be considered “State or local” funds for purposes of the maintenance of effort provisions.

E. Nothing in these requirements should be construed to alter the requirements imposed on a State Medicaid agency or on any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:663 (April 2000).

497-499. Reserved.

## **Chapter 5. PROCEDURAL SAFEGUARDS**

### **§501. General Responsibility**

A. Each Local Educational Agency (LEA) shall establish and implement procedural safeguards that meet the requirements of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:664 (April 2000).

### **§502. Opportunity to Examine Records and Parent Participation in Meetings**

A. Parents of a student with a disability shall be afforded, in accordance with §517.C. of these Regulations, an opportunity to inspect and review all educational records with respect to the identification, evaluation and educational placement of the student and with respect to the provision of a FAPE to the student.

B. Parents of a student with a disability shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation and educational placement of the student and the provision of a free appropriate public education to the student.

1. Each LEA shall provide notice consistent with §504 of these Regulations to ensure that parents of a student with a disability have the opportunity to participate in meetings described in paragraph 502.B. above.

2. A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues - such as teaching methodology, lesson plans, or coordination of service provision - if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities in which public agency personnel engage to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

3. Each LEA shall ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of their child. (See §442 of these Regulations.)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:664 (April 2000).

### **§503. Independent Educational Evaluation**

A. The parents of a student with a disability have a right to obtain an independent educational evaluation of the student subject to this section. The LEA shall provide to the parent, upon request for an IEE, information about where an independent educational evaluation may be obtained and the criteria by which it shall be conducted.

1. *Independent educational evaluation (IEE)* means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student in question.

2. *Public Expense* means that the LEA either shall pay for the full cost of the evaluation or shall ensure that the evaluation is otherwise provided at no cost to the parent.

3. To avoid unreasonable charges for Independent Educational Evaluations (IEEs), an LEA may establish maximum allowable charges for specific tests. The maximum shall be established so that it allows parents to choose among the qualified professionals in the area and eliminates unreasonably excessive fees. The LEA shall allow parents the opportunity to demonstrate unique circumstances to justify an IEE that falls outside the district's criteria.

B. An IEE is provided at public expense to the parents if

1. the parent disagrees with an evaluation provided by the LEA, or
2. a hearing officer requests an IEE as part of a due process hearing.

C. When an LEA is notified in writing by the parent that the parent disagrees with the LEA's educational evaluation, the LEA has ten business days following the receipt of the notice to initiate a due process hearing to show that its evaluation is appropriate. If the LEA does not initiate a due process hearing within the ten business days, the IEE shall be at public expense.

1. The request for an IEE may be presented orally if the parent is illiterate in English or has a disability that prevents the production of a written statement.

2. If, in a due process hearing, the hearing officer finds that the LEA's evaluation is appropriate, the parent shall still have the right to an independent evaluation, but not at public expense.

3. If a parent requests an IEE, the LEA may ask for the parent's reasons why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the LEA may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation.

4. If a parent requests an IEE at public expense, the LEA must ensure that the evaluation is provided at public expense, unless the LEA demonstrates in a hearing under §507 of these regulations that the evaluations obtained by the parent did not meet agency criteria.

D. An IEE obtained at public expense shall meet the same criteria established by these Regulations. The LEA may not impose conditions on obtaining an IEE, other than the mandated criteria

E. If the parents obtain an IEE at private expense and it meets the mandated criteria, the results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the student; and they may be presented as evidence at a hearing as described in §507 of these Regulations regarding the student.

F. The LEA is not required to use the IEE obtained at private expense as its only criteria for deciding the content of the student's special education program.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:664 (April 2000), amended LR 29:871 (June 2003).

§504. Prior Notice and Procedural Safeguard Notice

A. Written notice shall be given to the parents of a student with a disability a reasonable time before the LEA

1. proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student, or
2. refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

B. The prior notice shall include prescribed information as listed below:

1. a description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any other options the LEA considered and reasons why those options were rejected;
2. a description of each evaluation procedure, test, record or report the LEA used as a basis for the proposed or refused action;
3. a description of any other factors that are relevant to the LEA's proposal or refusal;
4. a statement assuring that the parents of a student with a disability have protections under the procedural safeguards; and
5. sources for parents to contact to obtain assistance in understanding the provisions of the procedural safeguards.

C. The notice shall be written in language understandable to the general public and 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; and

1. if the native language or other mode of communication of the parent is not a written language, the Department and the LEA shall 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;
  - c. the LEA shall maintain written evidence that the requirements of paragraph C. of this section have been met; and

D. Notices scheduling Individualized Education Program (IEP) Team meetings shall contain not only a description of the purpose, date, time, and location of the meeting, but also a list of who will be in attendance.

E. If the notice relates to an action proposed by the LEA that also requires parental consent under §505 below, the LEA may give notice at the same time it requests parent consent.

F. Requirements for procedural safeguard notice are noted below.

1. A copy of the procedural safeguards (*Louisiana's Educational Rights of Exceptional Children*) shall be given to the parents of a student with a disability, at a minimum

- a. upon initial referral for evaluation,
- b. upon each notification of an IEP meeting,
- c. upon re-evaluation of the student, and
- d. upon receipt of a request for a due process hearing.

2. The procedural safeguards notice shall include a full explanation of all procedural safeguards available under 34 C.F.R. 300.403, 300.500-300.529 and 300.560-300.577, including the State complaint procedures available in §506 of these Regulations.

3. The procedural safeguards notice shall meet the requirements of §504.C. of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:664 (April 2000), amended LR 29:871 (June 2003).

#### §505. Parental Consent

A. Parental consent shall be obtained before the LEA conducts an initial evaluation or re-evaluation and before the LEA provides initial special education and related services to a student with a disability.

B. Consent for initial evaluation may not be construed as consent for initial placement described in Subsection A.

C. Parental consent is not required before the LEA reviews existing data as part of an evaluation or re-evaluation; or before the LEA administers a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

D. Whenever parental consent has been withheld, the LEA shall follow procedures to ensure a FAPE for the student.

1. If the parent's decision is to withhold consent for the initial evaluation or initial placement of the student in special education, the LEA may appeal to the appropriate State court. If the parent withholds consent for a re-evaluation, the LEA may request a due process hearing following the procedures outlined in §507 of these Regulations.

2. Each LEA shall establish and implement effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the student with a FAPE.

3. An LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA except as required by these Regulations.

E. Informed parental consent need not be obtained for re-evaluation if the LEA can demonstrate through detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, detailed records of visits made to the parent's home or place of employment and the results of those visits, that it has taken reasonable measures to obtain that consent and that the student's parent has failed to respond.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:665 (April 2000), amended LR 29:871 (June 2003).

#### §506. Complaint Management and Mediation

A. Complaint procedures are established to resolve disputes regarding educational decisions between an LEA and a parent.

1. Any individual or organization acting on behalf of a student with a disability shall have the right to file a complaint when it is believed that there exists a violation of state and/or federal law regarding the educational rights of a student with a disability.

2. Complaints may be filed in writing, by telephone or in person. The complaint shall involve a violation that occurred not more than one year prior to the date of filing unless a longer period is reasonable because the violation is continuing, or because the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint was received under this Section.

3. Upon receipt, the complaint shall be reviewed; the LEA shall then be notified in writing and asked to provide specific information regarding the complaint.

4. The complainant shall be given the opportunity to provide additional oral or written information during the course of the investigation.

5. All information relevant to the complaint shall be reviewed by the Department and a decision shall be made as to whether an on-site visit is needed. A determination shall be made as to whether the LEA is violating any requirements of applicable Federal or State statutes, regulations or standards.

6. Within sixty (60) days of the receipt of the complaint, the Department shall issue not only a letter of findings to the complainant and to the LEA on each of the allegations of the complaint but also the reasons for the Department's decision.

7. The Department shall ensure effective implementation of the final decision through technical assistance, negotiations and corrective actions that achieve compliance. In resolving a complaint in which it has found a failure to provide appropriate services, the Department shall address how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student and appropriate future provision of services for all students with disabilities.

8. The Department shall allow for extensions of the sixty (60) day time lines only if exceptional circumstances exist.

9. If a complaint received is the subject of a due process hearing or if it contains multiple issues, of which one or more is part <sup>60</sup> of the hearing, the Department shall set aside

any part of the complaint that is being addressed in the hearing until the conclusion of the hearing. Any issue of the complaint that is not a part of the hearing action shall be resolved, using the time limit and procedures above.

10 If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision shall be binding and the Department shall inform the complainant to that effect.

11. A complaint alleging an LEA's failure to implement a due process decision shall be resolved by the Department.

B. Mediation process procedures shall be available to parents and the LEA personnel to allow them to resolve disputes involving any matter described in §504.A 1.and 2. At a minimum, mediation shall be offered whenever a due process hearing is requested under §507 and §519 I. and L. of these Regulations.

1. Mediation, which is voluntary on the part of both parties, shall be conducted by a qualified and impartial mediator trained in effective mediation techniques and assigned randomly by the department.

2. Mediation shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights.

3. The department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

4. The impartial mediator may not be an employee of any LEA or State agency that is providing direct services to the student. The mediator shall not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator shall not be considered an employee of an LEA solely because he or she is paid by the agency to serve as a mediator.

5. The department shall bear the cost of the mediation process.

6. The mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

7 An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

8. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:665 (April 2000), amended LR 29:871 (June 2003).

#### §507. Impartial Due Process Hearing

A. A parent or LEA may initiate a hearing on any of the matters described in §504 A. 1 and 2. A parent of a child with a disability or the attorney representing the child, initiates a hearing by sending written notice to the Department-, which remains confidential. The LEA initiates

a hearing by sending written notice to the parent and to the Department. When a hearing has been initiated, the Department shall inform the parents of the availability of mediation.

1. The written notice to the Department for a due process hearing shall include the student's name and address, the name of the school the student is attending, a description of the nature of the problem; of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the person requesting the hearing. The Department must provide a model form to a parent to assist in filing a request for a due process hearing.

2. The request for a due process hearing may be presented orally if the parent is illiterate in English or has a disability that prevents the production of a written statement.

3. The department may not deny or delay a parent's right to a due process hearing for failure to provide the required notice described above.

B. Any party to a hearing has the following rights as described below.

1. The hearing shall be conducted at a time and place convenient to the parent and the student involved.

2. Any party shall have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities.

3. Any party to the hearing shall have the right to present evidence and to confront, cross-examine, and compel the attendance of witnesses.

4. Any party to the hearing shall have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

5. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluation that the party intends to use at the hearing.

6. The hearing officer may bar any party that fails to comply with the above requirement from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

7. Any party shall have the right to obtain a written or electronic, at the option of the parent, verbatim record of the hearing at no cost.

8. Any party to the hearing shall have the right to obtain written or, at the option of the parent, electronic findings of fact and decisions at no cost.

C. A parent involved in a hearing shall have the right to

1. have the student who is the subject of the hearing present;

2. have the hearing open to the public;

3. be informed, upon request, of any free or low-cost legal and other relevant services if the parent requests the information or when either the parent or the LEA initiates a due process hearing; and

4. be informed that, if the parent prevails in a due process hearing, the parent may be able to recover attorney fees.

D. The Department, after deleting any personally identifiable information, shall annually transmit those findings and decisions to the State Advisory Panel established under these Regulations; and shall upon request, make those findings and decisions available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:666 (April 2000), amended LR 29:871 (June 2003).

#### §508. Hearing Officer Appointment and Hearing Procedures

A. The hearing officer appointed shall be in compliance with requirements stipulated below.

1. A hearing officer shall be an impartial person knowledgeable about the legal and educational issues involved in assessing compliance with these Regulations.

a. A hearing officer may not be an employee of a public agency that is involved in the education or care of the student. A person who otherwise qualifies to conduct a hearing under this section is not an employee of the public agency solely because he or she is paid by the agency to serve as a hearing officer.

b. No person who has a personal or professional interest that would conflict with his or her objectivity may be appointed to serve as a hearing officer.

c. No attorney who has represented an LEA or a parent in education litigation within three years may act as a hearing officer.

2. The department and each LEA shall maintain the list of qualified hearing officers. The list shall include a statement of the qualifications of each of the hearing officers. The department shall ensure that these hearing officers have successfully completed an inservice training program approved by the department. Additional inservice training shall be provided whenever warranted by changes in applicable legal standards or educational practices.

3. Appointments shall be for a period of one year.

B. Hearing procedures shall include the designating of a hearing officer as stipulated below.

1. The local special education administrator shall notify the Department of the need to assign a hearing officer within one day of receipt of a request for a hearing.

2. The hearing officer shall be assigned within five business days by the department on a rotational basis from the department's list of certified hearing officers.

3. If the parent or LEA has reasonable doubt regarding the impartiality of a hearing officer, written information shall be submitted to the Department within three business days of receipt of the notice of the assigned hearing officer.

4. The department shall review any written challenge and provide a written decision and notice to the parent and LEA within three business days after receipt of the written challenge.

5. If the Department determines that doubt exists as to whether the proposed hearing officer is truly impartial, another hearing officer shall be immediately assigned.

C. Procedures for conducting a hearing are stipulated below.

1. The hearing officer shall contact all parties to schedule the hearing and then shall notify in writing all parties and the Department of the date, time and place of the hearing.

2. The hearing shall be conducted in accordance with guidelines developed by the Department.

3. At the request of either party, the hearing officer shall have the authority to subpoena persons to appear at the hearing.

4. A final hearing decision shall be reached and a copy of the decision mailed to each party not later than forty-five (45) days after the receipt of the request for the hearing.

5. A hearing officer may grant specific extensions of time beyond the prescribed time requirements at the request of either party. When an extension is granted, the hearing officer shall, on the day the decision is made to grant the extension, notify all parties and the Department in writing, stating the date, time, and location of the rescheduled hearing.

6. A decision made by the hearing officer shall be final unless an appeal is made by either party.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:667 (April 2000), amended LR 29:872 (June 2003).

§509. Appeal of the Hearing Decision – Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:667 (April 2000), repealed LR 29:872 (June 2003).

§510. The State Level Review Panel – Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), repealed LR 29:872 (June 2003).

§511. Appeal to the State Level Review Panel - Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), repealed LR 29:872 (June 2003).

§512. Appeal to State or Federal Court

A. Any party aggrieved by the decision and the findings of the hearing officer has the right to bring a civil action in State or Federal court. The civil action shall be filed in State or federal court of competent jurisdiction without regard to the amount of controversy within 90 days after notification of the decision or finding of the hearing officer is received by the aggrieved person, agency, or party.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

§513. Reserved.

§514. Student Status During Proceedings

A. Except as provided in §519.K. of the regulations during the pendency of any administrative or judicial proceeding regarding due process, the student involved shall remain in the current educational placement unless the parent and the LEA agree otherwise.

B. If the hearing involves an application for initial admission to a public school, the student, with the consent of the parents, shall be placed in the public school program of the LEA until the completion of all the proceedings.

C. If the decision of a hearing officer agrees with the parent that a change of placement is appropriate, that placement shall be treated as an agreement between the State or the LEA and the parents for the purposes of Subsection A.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

§515. Costs

A. LEAs shall be responsible for paying administrative costs or reasonable expenses related to participation of LEA personnel in a hearing. The cost and expenses of the hearing officer and stenographic services shall be paid by the department in accordance with its policies and procedures.

B. The awarding and funding of attorneys' fees may be provided under the following stipulations.

1. In any action or proceeding brought under Section 615 of IDEA, the courts, in its discretion, may award reasonable attorneys' fees as part of the costs to the parent of a student with a disability who is a prevailing party.

2. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615( Procedural Safeguards) of the IDEA. This stipulation does not preclude the Department from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA.

4. The court may award reasonable attorneys' fees under section 615 of the IDEA consistent with 34 CFR 300.513 (c) (1)-(5).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

§516. Surrogate Parents

A. An LEA shall ensure that the rights of a student are protected if no parent (as defined in §904) can be identified; the LEA, after reasonable efforts, cannot discover the whereabouts of a parent; or the student is a ward of the State (including a ward of the court or of a State agency).

B. A surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education.

C. A method for determining whether a student needs a surrogate parent and for assigning a surrogate parent shall be developed and implemented by each LEA.

1. A person assigned as a surrogate parent shall have no interest that conflicts with the interests of the student and shall not be an employee of the Department, the LEA, or any agency involved in the education or care of the student.

2. The person assigned shall have knowledge and skills that ensure adequate representation of the student.

D. An LEA may select as a surrogate a person who is an employee of a private agency that provides only noneducational care for the student and who meets the standards in C. above.

E. Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee of the LEA.

F. Any person appointed as a surrogate parent shall be protected by the "limited liability" of L.R.S. 17:1958.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000).

§517. Confidentiality of Information

A. The Department shall have established policies and procedures for the implementation of the confidentiality requirements under IDEA - Part B and the Family Educational Rights and Privacy Act (FERPA) of 1974.

B. The Department shall give notice, which is adequate to inform parents fully about the requirements under identification, location and evaluation of students with disabilities.

1. The notice shall provide a description of the extent to which the notice is given in the native languages of the various population groups in the State.

2. The notice shall provide a description of the students on whom personally identifiable information is maintained, the types of information sought, the method the State

intends to use in gathering the information (including the sources from whom information is gathered) and the uses to be made of the information.

3. The notice shall provide a summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.

4. The notice shall provide a description of all of the rights of parents and students regarding this information, including the rights under the FERPA.

5. Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers, or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

C. In ensuring access rights, each LEA shall permit parents to inspect and review any educational records relating to their child, which are collected, maintained, or used by the LEA under these Regulations. The LEA shall comply with the request without unnecessary delay and before any meeting regarding an individualized education program or any hearing pursuant to § 507 and §519.D-M of these regulations; in no case shall the time exceed forty-five (45) days after the request has been made. The LEA shall not destroy any education records if there is an outstanding request to inspect and review the records.

1. The right to inspect and review any educational records includes the following:  
a. the right to a response from the LEA to reasonable requests for explanations and interpretations of the records;

b. the right to request that the LEA 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

c. the right to have a representative of the parent inspect and review the records when written permission by the parent is presented.

2. Any LEA may presume that a parent has authority to inspect and review records relating to his or her child unless the LEA has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

D. In ensuring record of access, each LEA shall keep a record of parties attaining access to education records collected, maintained or used under these Regulations (except access by parents or authorized parties of the LEA), including the name of the party, the date access was given, and the purpose for which the party was authorized to use the record.

E. When any educational record includes information on more than one student, the parents of those students shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

F. Each LEA shall provide parents, on request, a list of the types and locations of education records collected, maintained or used by the LEA.

G. Each LEA may charge a fee for copies of records that are made for parents under these Regulations if the fee does not effectively prevent the parents from exercising their right to inspect and review those records; but an LEA may not charge a fee to search or to retrieve information under these Regulations.

H. Amendments of records at parent's request shall follow prescribed guidelines.

1. The parent shall have a right to have the child's records amended when the parent believes that the information contained in the records is inaccurate, misleading or otherwise in violation of the parent's and child's privacy or other rights.

2. After the receipt of a request by a parent of a student with a disability to amend the student's record, the LEA shall decide within a reasonable time whether to amend.

3. If the LEA refuses to amend the records as requested by the parent, the LEA shall inform the parent of the right to request a hearing as stated below.

I. The LEA shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that they are not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student.

1. A hearing held under these Regulations shall be conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA).

J. Results of a hearing regarding records have the following stipulations.

1. If, as a result of a hearing, the LEA decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parents in writing.

2. If, as a result of a hearing, the LEA decides that the information is not inaccurate, misleading or otherwise in violation of privacy or other rights, the parents shall be afforded a right to place in the record comments they may have concerning the records or comments setting forth any reasons for disagreeing with the decision of the agency.

3. Any explanation placed in the record shall be maintained by the LEA as part of the records of the student as long as the record or contested portion is maintained by the LEA; and if the records of the student or the contested portion are disclosed by the LEA to any party, the explanation shall also be disclosed to the party.

K. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the LEA collecting or using the information under these Regulations subject to Number 2 below of this section, or used for any purpose other than meeting a requirement of these Regulations.

1. An LEA or institution subject to FERPA may not release information from education records to LEA without parental consent unless authorized to do so under FERPA.

2. If a parent refuses to provide consent under this Section, the requesting agency may file a written complaint with the SDE. Such a complaint shall be investigated by the Division according to adopted procedures for the complaint management required by these Regulations.

L. Each LEA shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

1. One official at each LEA shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

2. Any persons collecting or using personally identifiable information shall receive training or instruction regarding the State's policies and procedures under §355 of these regulations, 34 CFR Part 99, and Part B of IDEA.

3. Each LEA shall maintain for public inspection a current listing of the names and the positions of those employees within the agency who may have access to personally identifiable information.

M. The LEA shall inform parents when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student.

1. The information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance records, classes attended, grade level completed and year completed may be maintained without time limitation.

N. All rights of privacy afforded to parents shall be afforded to students with disabilities taking into consideration the age of the child and type of severity of the disability.

1. Under the regulations for the Family Educational Rights and Privacy Act of 1974, the rights of parents regarding educational records shall be transferred to the student at age eighteen.

2. If the rights accorded to parents under Part B of the IDEA and these Regulations are transferred to a student who reaches the age of majority, consistent with section §518 of these regulations.

O. State-mandated Compliance Monitoring includes the policies, procedures and sanctions that the State shall use to ensure that the requirements of IDEA - Part B and these Regulations are met.

P. The LEA shall include in the records of a student with a disability, a statement of any current or previous disciplinary action that has been taken against the student, and transmit the statement to the same extent that the disciplinary information is included in and transmitted with the student records of nondisabled students.

1. The statement shall include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety<sup>69</sup> of the student and other individuals.

2. If the student transfers from one school to another, the transmission of any of the student's records shall include both the student's IEP and any statement of current or previous disciplinary action that has been taken against the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:669 (April 2000), amended LR 29:873 (June 2003), LR 30:779 (April 2004).

#### §518. Transfer of Parental Rights at the Age of Majority

A. When a student with a disability reaches the age of majority that applies to all students (except for a student with a disability who has been determined to be incompetent under state law), he or she shall be afforded those rights guaranteed at such age.

1. The LEA shall provide any notice required by these Regulations to both the individual and the parent; all rights accorded to parents under these Regulations shall transfer to the student.

2. All rights accorded to parents under these Regulations shall transfer to students who are incarcerated in an adult or juvenile, State or local correctional institutions.

3. Whenever rights transfer under these Regulations pursuant to paragraph A. 1 and 2, the LEA shall notify the individual and the parent of the transfer of rights.

B. When a student with a disability reaches the age of majority and has not been interdicted or the subject of a tutorship proceeding, the student's parent may allege to the LEA that the student lacks the ability to provide informed consent with respect to his or her educational program. In the event that the parent makes such an allegation, the student has the right to dispute the parent's allegation, either orally or in writing, or by any other method of communication.

1. Any protest or objection to the parent's allegation shall result in the student's educational rights being transferred fully to the student at the age of majority, unconditionally. If the student makes no such dispute or objection, the parent shall retain the student's educational rights.

2. The student's position is final and unappealable; however, at any time the student may revoke his assent to his parents' retention of rights. Upon such revocation, the students' rights immediately vest with the student.

3. LEAs are required to document in the child's IEP that the parents and the student have been informed of the rights herein and that they have accepted or declined these rights. If the student and/or parent is unable to sign the appropriate section of the IEP reflecting this information, the IEP team may complete that portion of the IEP on behalf of the student and/or parent, reflecting each party's position and acknowledging that the student and/or parent is unable to sign.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary

Education, LR 26:670 (April 2000), amended LR 29:873 (June 2003).

§519. Discipline Procedures for Students with Disabilities

A. For purposes of removal of a student with a disability from the student's current educational placement under §519.B. - L. of these Regulations, a change of placement occurs when

1. a student with a disability is removed from his or her current educational placement for more than ten consecutive school days; or

2. a student with a disability is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

B. School personnel have the authority to order a change in placement for a student with a disability when certain conditions exist.

1. School personnel may order a removal of a student with a disability from the student's current educational placement for not more than ten consecutive school days for any violation of school rules to the extent a removal would be applied to a student without a disability, and school personnel may order additional removals of not more than ten consecutive school days in the same school year for separate incidents of misconduct as long as the removals do not constitute a change of placement as defined in 519. A. of this section.

2. School personnel may order a change in placement of a student with a disability to an appropriate interim alternative educational setting for the same amount of time a student without a disability would be subject to discipline, but for not more than forty-five (45) days, if

a. the student carries or possesses a weapon at school or at a school function under the jurisdiction of the State or an LEA; or

b. the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the State or an LEA.

C. For purposes of this section, the following definitions apply:

1. *Controlled substance* means a drug or other substance identified under schedule I, II, III, IV, or V in Sec. 202 (c) of the Controlled Substance Act (21 U.S.C. 812 (c)).

2. *Illegal drug* means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

3. *Weapon* has the meaning given the term *dangerous weapon* under paragraph (2) of the first Subsection (g) of Sec 930 of Title 18, United States Code.

D. A hearing officer who meets the requirements of §508 of these Regulations has the authority to order a change in placement for a student with a disability when certain conditions exist.

1. The hearing officer may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing:

a. determines that the LEA has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others (substantial evidence means beyond a preponderance of the evidence);

b. considers the appropriateness of the student's current placement;

c. considers whether the LEA has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

d. determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets all IAES requirements as set forth in Subsection G.

E. An LEA need not provide services during periods of removal under §519.B.1. to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

1. In the case of a student with a disability who has been removed from his or her current placement for more than ten school days in that school year, the LEA, for the remainder of the removals, shall provide services to the extent necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP, if the removal is

a. under the school personnel's authority to remove under §519.B.1 for not more than ten consecutive school days as long as that removal does not constitute a change of placement as defined in §519.A. of these Regulations; school personnel, in consultation with the student's special education teacher, shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP;

b. for behavior that is not a manifestation of the student's disability consistent with § 519.H. of these regulations; the student's IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP.

2. An LEA shall provide services that will enable the student to continue to progress in the general curriculum and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP. The LEA shall include services and modifications designed to address the behavior described below and to prevent the behavior from recurring if the removal is

a. for drugs or weapon offenses (the IEP team determines the interim alternative educational setting); or

b. based on a hearing officer's determination that maintaining the current placement of the student is substantially likely to result in injury to the student or others if he or she remains in the current placement. (School personnel in consultation with the student's

special education teacher shall propose the interim alternative educational setting to the hearing officer.)

F. Either before or not later than ten business days after either first removing the student for more than ten school days in a school year or commencing a removal that constitutes a change of placement as defined in 519.A. and including the action describe 519 B.2 of this section, the LEA shall follow prescribed procedures as listed below.

1. If the LEA did not conduct a functional behavior assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal occurred, the LEA shall convene an IEP meeting to develop an assessment plan.

2. If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation and modify the plan and its implementation as necessary, to address the behavior.

3. As soon as practicable after developing the behavioral intervention plan and completing the assessment required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

4. If subsequently, a student with a disability who has a behavioral intervention plan and who has been removed from his or her placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavior intervention plan and its implementation to determine whether modifications are necessary.

a. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation to the extent the team determines necessary.

G. The interim alternative educational setting referred to in paragraph B of this section shall be determined by the IEP team. Any interim alternative educational setting in which a student is placed under paragraphs B.2 and Subsection D. of this Section shall:

1. be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP; and

2. shall include services and modifications designed to address the behavior described in paragraph B.2 and Subsection D. and to prevent the behavior from recurring.

H. Manifestation determination review is required whenever an action involving a removal that constitutes a change of placement for a student with a disability is contemplated.

1. Not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and shall be provided the procedural safeguards notice (Louisiana's Educational Rights of Children with Disabilities).

2. Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.

3. The review shall be conducted by the IEP team and other qualified personnel in a meeting.

4. In carrying out the manifestation determination review, the IEP team and other qualified personnel may determine that the behavior of the student was not a manifestation of the student's disability only if the IEP team and other qualified personnel

a. consider, in terms of the behavior subject to disciplinary action, all relevant information, the evaluation and diagnostic results, including the results or other relevant information supplied by the parent of the student; observations of the student; and the student's IEP and placement, and

b. determine that

i. in relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;

ii. the student's disability did not impair the ability of the student to understand the impact and consequence of the behavior subject to disciplinary action; and

iii. the student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

5. If the IEP team and other qualified personnel determine that any of the standards in paragraph 4.b. of this section were not met, the behavior shall be considered a manifestation of the student's disability.

6. If the IEP team and other qualified personnel determine that the behavior is a manifestation of the student's disability, the disciplinary removal cannot occur, unless the removal is in accordance with §519.B.2.(a) and (b) and §519 D. of these Regulations.

7. The manifestation review meeting may be conducted at the same IEP meeting that is convened to conduct the functional behavioral assessment.

8. If in the review, the LEA identifies deficiencies in the student's IEP or placement or in their implementation, it shall take immediate steps to remedy those deficiencies.

I. When the determination is made that the behavior was not a manifestation of the student's disability, prescribed guidelines shall be followed.

1. If the results of the manifestation determination review is that the behavior of the student was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities except a FAPE as defined in paragraph E. of this section shall be provided.

2. If the LEA initiates disciplinary procedures applicable to all students, the LEA shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the persons or persons making the final determination regarding the disciplinary action.

3. Except as provided in §519.K.1. of these Regulations, if a parent requests a hearing to challenge a determination made through the review process that the behavior of the student was not a manifestation of the student's disability, the student's status during due process

proceeding shall follow §514 of these Regulations.

J. If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement and discipline, the parent may request a hearing.

1. The department, consistent with §507 and §508.B. of these regulations, shall arrange for an expedited hearing in any case described in the above paragraph if a hearing is requested by a parent.

a. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the LEA has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of §519.H.5.

b. In reviewing a decision under §519 B.2. of these Regulations to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in §519.D. of these Regulations.

K. The student's placement during appeal shall follow prescribed guidelines.

1. If the parents request a hearing regarding a disciplinary action described in §519.B.2. or §519.D.1.a-d to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the time period provided for in 519 B.2 or 519.D.1.a-d, whichever occurs first, unless the parent and the state or LEA agree otherwise.

2. If a student is placed in an interim alternative educational setting pursuant to §519 B.2 and §519.D.1.a-d and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pending of any proceeding to challenge the proposed change in placement, the student shall remain in the current placement (student's placement prior to the interim alternative educational setting), except as provided in K.3 below.

3. The LEA may request an expedited due process hearing if school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings.

a. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in §519.D.1.a-d.

b. A placement ordered pursuant to 3.a above may not be longer than forty-five (45) days.

c. The procedures in 3. above may be repeated as necessary.

L. A student who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the LEA including any behavior described in §519 B and 519 E, may assert any of the protections provided for in this section if the LEA had knowledge (as determined in accordance with paragraph (2) below ) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

1. An LEA shall be deemed to have knowledge that a student is a student with a disability if

a. the parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the LEA that the student is in need of special education and related services;

b. the behavior or performance of the student demonstrates the need for these services, in accordance with the definition of a student with a disability;

c. the parent of the student has requested an evaluation of the student; or

d. the teacher of the student or other personnel of the LEA has expressed concern about the behavior or performance of the student to the director of special education of the LEA or to other personnel in accordance with the LEA's established child find or special education referral system.

2. An LEA would not be deemed to have knowledge under paragraph 2 above, if as a result of receiving the information specified in that paragraph, the LEA either

a. conducted an evaluation and determined that the student was not a student with a disability; or

b. determined that an evaluation was not necessary and provided notice to the student's parents of its determination.

3. Certain conditions apply if there is no basis of knowledge.

a. If an LEA does not have knowledge that a student is a student with a disability, in accordance with paragraphs 1 and 2 above, prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors.

b. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in less than sixty business days without exception or extensions.

4. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

5. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services in accordance with the provisions of these regulations including the requirements of §519.B-N and R.S.17:1943.6.

M. Expedited due process hearings addressed in paragraph J. of this section shall follow the procedures prescribed below.

1. The hearing shall meet the requirements of §507.A. of these Regulations.

2. The hearing shall be conducted by a due process hearing officer that meets the criteria established in §508 of these Regulations.

3. The hearing shall result in a written decision that shall be mailed to the parties within twenty business days of the LEA's receipt of the request for the hearing, without exceptions or extensions.

4. The hearing shall have time lines that are the same for hearings requested by the parents or the LEA.

5. The hearing shall be conducted according to guidelines established in §508 of these Regulations, where appropriate, except for the timelines at §508.C.4., and according to guidelines established by the department.

6. The decisions on expedited due process hearings are appealable consistent with the procedures established at §512 of these Regulations.

N. Nothing in this part prohibits an LEA from reporting a crime committed by a student with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

1. An LEA reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.

2. An LEA reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:670 (April 2000), amended LR 29:873 (June 2003), LR 30:779 (April 2004).

§520-599. Reserved.

## **Chapter 6. ESTABLISHMENT AND OPERATION OF SPECIAL SCHOOL DISTRICT**

### **§601. Establishment of Special School District (SSD)**

A. Special School District (SSD) is an educational service agency administered by the Louisiana Department of Education with the approval of the SBESE serving in the capacity of the governing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:674 (April 2000).

### **§602. Program Approval**

A. Each educational program operated by SSD shall meet the Standards for school approval.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:674 (April 2000), amended LR 29:874 (June 2003).

### **§603. Purpose**

A. The instructional programs operated by SSD shall consist of Special School District Number 1 (SSD#1) and Special School District Number 2 (SSD#2).

1. The purposes of SSD#1 is to provide a free appropriate public education for eligible students with disabilities, ages three through twenty-one years, who have been enrolled in State operated programs and to provide appropriate educational services to school-aged students enrolled in State-operated mental health facilities.

2. The purpose of SSD#2 is to provide appropriate educational, vocational, and related services to eligible students who are placed by Department of Public Safety and Corrections (DPS&C) in certain privately-operated secure juvenile correctional facilities.

3. During this period, SSD shall assume jurisdiction and responsibility for education on an individual basis for each student to assure that each student receives an uninterrupted appropriate educational program.

B. When providing a FAPE to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons, certain requirements do not apply or can be modified.

1. The requirements do not apply relating to participation of students with disabilities in general assessments.

2. The requirements do not apply relating to transition planning and transition services to students whose eligibility under these Regulations 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.

3. The requirements relating to IEP or placement may be modified by the IEP team of a student with a disability if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:674 (April 2000).

§604-629. Reserved.

§630. General Responsibilities

A. Whenever a student enters the jurisdiction of SSD consistent with the requirements of these Regulations, SSD shall be responsible for either providing or causing to be provided all needed educational services to each student in full compliance with provisions of Chapter 4 of these Regulations, and/or as stipulated in *Bulletin 741*, as listed below.

1. The necessary certified personnel to ensure the conduct of an Individual Evaluation for each student within its jurisdiction in accordance with all requirements of §430-436 of these Regulations

2. The development and implementation of an IEP for each student with disabilities in accordance with §§440-446 of these Regulations

3. Adequate administrative and instructional personnel to implement each student's educational plan

4. Adequate personnel to establish and maintain the appropriate relationships with each affected LEA to provide for a smooth transition of educational services for each student leaving SSD

5. The transmission of all educational records of a student leaving SSD to the LEA in which the student will be enrolled or seeking to be enrolled

6. The adherence to all procedural safeguards of Chapter 5.

B. The assumption of this responsibility by SSD shall not relieve in any way an insurer, similar third party, or State or local public agency - e.g., Department of Health and Hospitals (DHH), Department of Public Safety and Corrections (DPS&C) - from an otherwise valid obligation to provide or to pay for services to which students are entitled as clients or beneficiaries of such third parties under State or Federal entitlement or laws, or under policies or contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:674 (April 2000).

§631. Jurisdiction

A. SSD has jurisdiction over all students with disabilities enrolled in residential facilities operated by DHH or DPS&C, eligible students enrolled in facilities operated by OMH, eligible students placed by DPS&C in certain privately-operated secure juvenile correctional facilities, and students placed by SSD in an LEA. When a student is no longer enrolled in a State-operated facility, jurisdiction is transferred from SSD to the LEA of current residence of the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:674 (April 2000).

#### §632. Enrollment

A. Students as identified in §631 shall be enrolled in a SSD school/ program after admission to a State-operated residential facility or to certain privately-operated secure juvenile correctional facilities.

B. SSD shall develop with each affected agency an interagency agreement for the purpose of implementing the above requirements, which shall include procedures for the joint development of each IEP; educational plan; and treatment, care, or habilitation plan.

C. Wherever possible, consistent with the rules for the least restrictive environment, students enrolled in SSD shall participate in educational programs operated by LEAs serving the geographic attendance area in which the facility is located.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000).

#### §633. Reserved

#### §634. Emergency and Respite Care Program

A. The admission of a student by the State of Louisiana into a DHH facility for a temporary program of respite care shall not automatically require enrollment in SSD for the purpose of these Regulations. The admission of a student on an emergency basis shall not constitute enrollment in SSD. However, if such admission continues on a nonemergency basis after a decision has been made by the legally constituted agency (i.e., DHH or DPS&C) or by a court of the State of Louisiana to place the student in a State-operated residential facility, the student shall be enrolled in SSD in accordance with §632 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000).

§635-649. Reserved.

§650. Financing

A. The Department shall provide to SSD whatever financial resources are necessary to support the educational programs of SSD.

B. The cost of teachers, paraeducators, principals, speech therapists, pupil appraisal personnel, and other instructional support staff for the educational programs operated by SSD shall be included in the operating budget prepared by the Department. SSD may from time to time enter into contracts for the delivery of educational services with LEAs in whose jurisdiction residential facilities are located. LEAs shall participate in such contractual arrangements unless the State Board approves the request by a LEA for exemption from this obligation.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000).

§651-689. Reserved.

§690. Instructions for Child Count

A. Each LEA shall use LANSER for the purpose of tracking students with disabilities. Data from this system shall be used to produce the Annual Child Count, as of December 1, for the purpose of generating grant awards under IDEA-B and the Preschool Grants Program.

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education (IEP) Program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000), amended LR 29:874 (June 2003).

§691. Individual Evaluation

A. Individual evaluations in SSD shall be conducted to comply with all requirements of §430-436 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000).

§692. IEP and Placement Development and Review

A. The IEPs and placement of students enrolled in SSD shall be developed and implemented in accordance with §§440-446 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000).

§693. Procedural Safeguards

A. Students and parents of students with disabilities enrolled in SSD#1 shall be provided the procedural safeguards in accordance with Chapter 5 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000).

§694. Reserved.

§695. Monitoring and Complaint Management

A. Special School District shall develop an internal monitoring and complaint management system.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000).

§696-699. Reserved.

## **Chapter 7. RESPONSIBILITIES OF STATE BOARD SPECIAL SCHOOLS**

### **§701. Establishment**

A. The State Board Special Schools (Louisiana School for the Deaf, Louisiana School for the Visually Impaired, and Louisiana Special Education Center) are State operated schools providing educational programs and services for students with disabilities. These schools are administered by the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000).

### **§702. School Approval**

A. Each State Board Special School shall meet the Standards for School Approval of the SBESE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:676 (April 2000).

### **§703. Purpose**

A. State Board Special Schools are designated to provide a free appropriate public education for students who, because of low-incidence impairments (i.e., deaf, blind, orthopedic impairment) meet the criteria for admission for each such special school; they are enrolled in such special school on a residential basis. The quality of education shall be equal to that received by any other similar student with disabilities in the LEAs of the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:676 (April 2000).

### **§704. Administrative Organization**

A. The SBESE is the governing board of the State Board Special Schools. The Department administers such special schools through the schools' appointed superintendents. The superintendent of each special school shall administer the special school for which he or she is responsible in compliance with approved SBESE policies and procedures, these Regulations, and other applicable bulletins.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:676 (April 2000).

§705. General Responsibilities

A. Whenever a student with disabilities enters a State Board Special School in compliance with §401 D.6. of these Regulations, provision for a FAPE shall be the responsibility of the LEA with jurisdiction in accordance with §706.

B. State Board Special Schools shall, upon admitting a student with disabilities in compliance with §716, assume the responsibility for providing the student a free appropriate public education in full compliance with all provisions of Chapter 4 of these Regulations, including those related to child search, evaluation, IEP development and implementation, and placement; the provision of special education and related services; adherence to procedural safeguards; and certification of staff.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:676 (April 2000).

§706. Jurisdiction

A. All students with disabilities referred by an LEA and admitted as full-time residential students into a State Board Special School shall be under the jurisdiction of the State Board Special School.

B. Students with disabilities referred by an LEA and admitted as full-time students to participate in the academic and nonacademic programs to the extent necessary to meet the individual needs of the student, with the exception of residential services because of the proximity of residence of parents and/or other residential arrangements, shall also be under the jurisdiction of State Board Special Schools.

C. Students with disabilities under the jurisdiction of the State Board Special School, but placed in an educational program or receiving services in an LEA, shall remain under the jurisdiction of the State Board Special School.

D. Students with disabilities placed by an LEA in a State Board Special School shall remain under the jurisdiction of the placing LEA.

E. The LEA which retains jurisdiction shall retain the fiscal responsibility for funds or resources not available to the other system from the State or through an interagency agreement or cooperative program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:676 (April 2000).

§707. Enrollment (Admission and Release)

A. Eligible students with disabilities shall be admitted to State Board Special Schools according to admission procedures established by the State Board Special School, approved by the SBESE, and in compliance with §303 or §716 of these Regulations.

B. Students with disabilities admitted to State Board Special Schools shall be released from enrollment according to procedures established by the State Board Special School, approved by the SBESE, and in compliance with these Regulations.

1. Students with disabilities currently enrolled in State Board Special Schools shall not be referred to an LEA without a review of the current IEP/Placement (in compliance with §440 and 451.D.) conducted by the State Board Special School and an LEA representative.

2. Prior to the release of any student placed in a State Board Special School, through out-of-district placement procedures at §451.B., the Division shall review and approve each release.

C. State Board Special Schools may enter into interagency agreements with Special School District for cooperative supportive efforts in the provision of services, such as child search, evaluation and coordination.

D. Admission to a State Board Special School does not necessarily mean that all educational services described in the IEP of the student shall be provided within such facility. Wherever appropriate, consistent with the rules for a least restrictive environment in §446, students admitted to State Board Special School programs shall participate in educational programs operated by LEAs serving the geographic attendance area in which the facility is located.

E. Admission to a State Board Special School shall not relieve in any way an insurer, similar third party, or other State or local public agency (e.g., DHH, DPS&C, DSS) from an otherwise valid obligation either to provide or to pay for services to which students with disabilities are entitled as clients or beneficiaries of such third parties under State or Federal entitlement or laws, or under policies or contracts.

F. State Board Special Schools may not deny admission or release from enrollment any student with a disability who exhibits behavioral concerns. All procedural safeguards, as found in Chapter 5 of these Regulations, shall be afforded the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary

Education, LR 26:676 (April 2000).

§708. Financing

A. State Board Special Schools shall apply for State funds by submitting annual budgets approved by the SBESE to the Louisiana Legislature. Such budgets shall indicate Federal and State sources of revenue. Each State Board Special School shall have its own schedule number in the annual appropriation bill.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000).

§709. Child Search Activities

A. State Board Special Schools shall cooperate with each LEA in which the parents of a student with a disability enrolled in the State Board Special School are domiciled to permit the LEA to carry out its ongoing responsibility with respect to child search when a student is in a State Board Special School.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000).

§710. Reserved.

§711. Instructions for Child Count

A. Each LEA shall use LANSER for the purpose of tracking students with disabilities. Data from this system shall be used to produce the Annual Child Count, as of December 1, for the purpose of generating grant awards under IDEA-B and the Preschool Grants Program.

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program (IEP).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000), amended LR 29:874 (June 2003).

§712. Individual Evaluation

A. Individual evaluations in State Board Special Schools shall be conducted in compliance with all requirements of §§430-436 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000).

#### §713. IEP/Placement

A. IEP/Placement of students enrolled in a State Board Special School shall be reviewed or revised and implemented in accordance with §§440-459 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000).

#### §714. Procedural Safeguards

A. Students with disabilities and parents of students with disabilities enrolled in a State Board Special School shall be afforded all the procedural safeguards provided by Chapter 5 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000).

#### §715. Monitoring and Complaint Management

A. The State Board Special Schools shall develop an internal monitoring and complaint management system.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000).

#### §716. Louisiana Schools for the Deaf and the Visually Impaired Alternative Placement

A. In compliance with RS 17:348 and RS 17:1946.B(2) the Louisiana School for the Deaf (LSD) and the Louisiana School for the Visually Impaired (LSVI) shall determine, not later than the second Monday in September of each year, the number of additional students who may be admitted under this placement option. LSD and LSVI shall base the determination on the

availability of all necessary resources required to provide a free appropriate public education.

B. Upon receipt from a parent (as defined in Chapter 9 of these Regulations) of an application for admission of his or her child, LSD or LSVI shall require, at a minimum, an individual evaluation for classification as having a hearing impairment (i.e., deaf, hard of hearing) or a visual impairment (i.e., blindness, partial sight) as a part of the application. LSD or LSVI shall notify the LEA of the parent/student domicile that the application has been made, in order to fulfill the provisions established in §709 of these Regulations.

C. Within forty-five (45) business days, LSD or LSVI shall process the application, make a determination of eligibility for admission, and develop an Individualized Education Program (IEP). In the development of the IEP, the parent shall be informed of all placement options available to meet the student's educational needs.

D. LSD or LSVI shall notify the LEA of the parent/student domicile that a student has been admitted or rejected under the provisions of this Subsection.

E. The applicable procedural safeguards established in Part 500 of these Regulations shall be followed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000), amended LR 29:874 (June 2003).

§717-799. Reserved.

## Chapter 8. INTERAGENCY AGREEMENTS

### §801. General Statement

A. Under R.S. 17:1941-1958 et seq., the SBESE has authorized the Department, Division of Special Populations to enter into any agreement developed with another public or private agency, or agencies, whenever such an agreement is consistent with the Regulations; is essential to the achievement of full compliance with the Regulations; is designed to achieve or accelerate the achievement of the full educational goal for all students with disabilities; and is necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the State. Each LEA and the Department shall enter into all interagency agreements or other mechanisms for interagency collaboration specified in the regulations by following all the requirements in this part.

B. As used in this part, *interagency agreement* means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000).

§802-809. Reserved.

### §810. Relationship Between LEAs and the Department

A. The relationship between the Department and the LEAs is defined by these Regulations in regard to providing a free appropriate public education to students with disabilities. Interagency agreements shall not be necessary to define such relationships.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:678 (April 2000).

§811-819. Reserved.

### §820. Purpose of Interagency Agreements

A. The purpose of interagency agreements shall be to assure that the standards established by Federal/State mandates and the SBESE to ensure a free appropriate public education for students with disabilities are upheld when they are implemented by an approved public or private agency not within the governance of the SBESE.

B. The agreements are mandated to provide maximum use of both human and fiscal resources in the delivery of special education and related services and to identify or define a method for defining the financial responsibility of each agency.

C. Agreements may be entered into with parties both inside and outside the State of Louisiana with special consideration being given to abide by the rules for least restrictive environment. Nothing in any agreement shall be construed to reduce assistance available or to alter eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:678 (April 2000).

§821-829. Reserved.

#### §830. Types of Interagency Agreements

A. The Department and SSD shall have agreements or promulgate regulations for interagency coordination with the Department of Health and Hospitals (DHH), the Department of Social Services (DSS), and the Department of Public Safety and Corrections (DPS&C), and/or other state agencies and their sub-offices, where appropriate. LEAs shall have those agreements whenever necessary for the provisions of a free appropriate public education. The State School for the Deaf, State School for the Visually Impaired and the State Special Education Center, now under the auspices of SSD, shall have interagency agreements with the LEA in whose geographic area they are located; with each LEA that places a student in the day programs of that facility; with the regional state agencies; and with habilitation agencies with which they share students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:678 (April 2000), amended LR 29:874 (June 2003).

§831-839. Reserved.

#### §840. Mandatory Content of Interagency Agreements

A. Each agreement shall contain in writing information specified by Federal and State mandates and SBESE policy, as listed below.

1. A statement describing the disparate governance being dealt with by the parties of the agreement.

2. The reason for writing the agreement.

3. The responsibilities of each party of the agreement for providing a FAPE, including policies and procedures for agencies<sup>90</sup> to determine and identify the interagency

coordination responsibilities of each agency designed to promote the coordination and timely and appropriate delivery of services.

4. An identification of or a method for defining financial responsibility of each agency in providing services, including conditions and terms of reimbursement.

5. All applicable State and Federal standards that will apply to the agreement being developed.

6. The data to be exchanged and the methods for exchanging them.

7. The statements with respect to Child Search and confidentiality issues.

8. The monitoring schedule and procedures.

9. The duration of the agreement.

10. The process for amending the agreement, to include not only the statement to the effect that the contract may be terminated upon thirty days written notice but also the procedures for the disposition of data/materials collected to that point.

11. Any information specific to an agency which is necessary for approval of the agreement by the Department.

12. The names, titles and signatures of individuals authorized to enter into such agreements.

B. Interagency agreements shall be reviewed annually. It is not necessary to write a new agreement if there is documentation between parties that the existing signed agreement is still agreeable to all parties.

C. In addition, the agreements shall contain the three statements listed below for conformance to Division of Administration requirements.

1. The Contractor shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the State, provided, however, that claims for money due or to become due to the Contractor from the State may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

2. The Contractor shall agree to abide by all of the provisions of R.S.43:31 in regard to the printing of public documents. The Contractor shall agree that prior to the final publication of any reports, documents, or publications of whatever nature for delivery to or used by the State, the final proofs shall be proofread by personnel of the Department and that no final printing shall occur until the Contractor has been advised by the Department in writing that the text of materials to be printed has been proofread and approved.

3. The Contractor shall agree that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration's auditors shall have the option of auditing all of the Contractor's accounts that relate to this contract.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:678 (April 2000).

§841-859. Reserved.

§860. Resolving Interagency Disputes

A. The steps to be followed to resolve interagency disputes including funding in an expeditious manner have been prescribed by the SBESE.

1. For agency disputes between educational agencies over which SBESE has control, regular complaint procedures shall be followed.

2. For interagency disputes at the local, regional, or state level that involve either program or financial responsibility, referral to the Office of the Governor shall be made.

3. If a dispute continues beyond these interventions, either party of the dispute may seek resolution from a court of competent authority.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:679 (April 2000).

§861. DHH and the Department's Responsibilities Under IDEA and the Louisiana Education of Children with Exceptionalities Act

A. This regulation and the following regulations at §861-§870 control the legal relationship between the Louisiana Department of Health and Hospitals (DHH) and the Louisiana Department of Education (the Department), for the interagency coordination of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq. and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941, et seq., and encompasses all offices, division, bureaus, units and programs at the State, regional and local levels with each department.

B. These regulations are promulgated to comply with the obligations imposed upon the State of Louisiana and its agencies at 20 USC §1412 and 34 CFR §300.142.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

§862. Definitions

A. For the purposes of this Chapter, the following definitions apply.

*Educational services* - means all other services, including but not limited to academic services, extracurricular activities, transportation, related services for which DHH is not legally responsible, and any other service included on a student's IEP but not provided by DHH, through Medicaid or any other program operated by DHH, under any existing State or federal law.

*Eligibility criteria for DHH health and medical services* - The criteria for individuals receiving a specific health or medical service provided by DHH.

*Family* - The child's parents or legal guardians as well as surrogate parents and persons acting as a parent as defined by Bulletin 1706, Regulations for the Implementation of the Children with Exceptionalities Act.

*IEP* - Individualized Education Program, as defined in §904 herein.

*LEA* - A local educational agency, as defined in §904 herein.

*Related Services* - In addition to the definition of these terms in IDEA and Bulletin 1706, in the context of these regulations, the term means those services which DHH, through Medicaid or any other program operated by DHH, is required by any existing State or federal law to provide to a qualified recipient in the State of Louisiana. “Related services” includes but is not limited to supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, medical services for diagnostic or evaluation purposes, and transition services.

*Services* - Any special education and/or related services as defined in IDEA and Bulletin 1706, Regulations for Implementation of the Children with Exceptionalities Act.

*Student* - Any individual between the ages of three and twenty-two years and is enrolled in a Louisiana Local Education Agency (“LEA”) or is the responsibility of the Department and/or the LEAs.

*Student with a disability* – As defined in §904 herein.

*Transition Services* – Transition services, as defined in §904 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, *et seq.*

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

### §863. Responsibility for Services

A. In order to ensure that all services described in §864 of these regulations that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute, the following requirements are imposed on the Department and DHH.

1. Agency Financial Responsibility. All relevant federal and state mandates apply. The Department and DHH, as obligated under federal or state law, must use allocated federal, state and local funds to provide, pay or otherwise arrange for services on the IEP that are necessary to ensure each eligible student receives a free appropriate public education (“FAPE”) as written on the IEP. The financial responsibility for these services shall be governed by all pertinent federal and state laws, including but not limited to 20 U.S.C. §1400, *et seq.*, 34 CFR Parts 300, LSA-R.S. 17:1941, *et seq.*, Louisiana Department of Education *Bulletin 1706*, 42 U.S.C. §1396 and 42 CFR Part 430.

a. If DHH is otherwise obligated under federal or state law, or assigned responsibility under DHH policy or pursuant to 34 CFR §300.142, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR §300.5 relating to assistive technology devices, 34 CFR §300.24 relating to related services, 34 CFR §300.28 relating to supplementary aids and services, and 34 CFR §300.29 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the State, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

b. DHH may not disqualify an eligible service for Medicaid reimbursement because it is on an IEP or because that service is provided in a school context or any other setting that is a most integrated setting or least restrictive environment in order to provide a free appropriate public education. DHH is required to provide all eligible services to the

same extent the individual would receive these services under federal and state law and regulation without eligibility for IDEA.

c. The financial responsibility of DHH must precede the financial responsibility of the LEA or the State agency responsible for developing the student's IEP.

2. Conditions and terms of reimbursement. DHH will fund or provide services that are included on an IEP to the extent that such services are services that are funded or provided to individuals eligible under any federal or state program provided by DHH. If any program under the auspices of DHH fails to provide or pay for these special education and related services, the LEA and/or the Department is responsible for providing or paying for these services. The Department or the LEA will then claim reimbursement from DHH, having failed to provide or pay for these services. DHH is then required to reimburse the LEA or the Department for the services that DHH is otherwise obligated to provide. DHH is required to fund or provide services that are included on an IEP to the extent that such services are services for which the individual is eligible under any federal or state program administered by DHH.

3. Interagency Disputes. Disputes relating to the provision of services pursuant to 20 U.S.C. §1400, et seq., and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941, et seq., must be addressed in the following manner.

a. If a family disputes the actions of an LEA, that family may either file a complaint with the Department or file for a due process hearing, both as set out in Louisiana Bulletin 1706, Chapter 5, Procedural Safeguards. If a family disputes the actions of DHH and that family or student is a client of or eligible for DHH services, that dispute may be addressed through the DHH appeals process, as authorized in R.S. 46:107 or any other relevant State or federal statute or regulation.

b. If an LEA disputes the actions of the Department, that LEA may file suit against the Department only in the United States District Court for the Middle District of Louisiana or the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

c. If an LEA disputes the actions of DHH, as a Medicaid provider, that LEA may appeal through the DHH appeal process, as authorized in R.S. 46:107 or any other relevant State or federal statute or regulation.

d. An interagency dispute between DHH and the Department, which involves either program or financial responsibility, will be referred to the Superintendent of Education and the Secretary of the Department of Health and Hospitals for mediation. If the dispute cannot be resolved in mediation, it will be referred to the Office of the Governor for resolution. If a dispute continues beyond these interventions, either DHH or the Department may seek resolution from a court of competent authority.

e. During the pendency of any dispute, a student's LEA bears full responsibility for program and/or financial obligations, to ensure that the student's IEP is implemented fully and that the student is receiving FAPE. If the LEA is unable or unwilling to provide FAPE, the Department is responsible for those program and/or financial obligations.

4. Coordination of Services Procedures. The Department and DHH shall coordinate services to students with disabilities by complying with procedures that are specific to each agency, including, but not limited to, the following:

a. The Department bears the following responsibilities.

i. Maintain the Child Search system under Part B of IDEA, specifically, the identification, location and evaluation of students from three through twenty-one years of age who are suspected of having a disability;

ii. Provide DHH with a listing of its primary contacts and service

description for the Child Search Program on a parish basis for DHH to make available to its regional and parish offices;

iii. Ensure that each eligible student/student will receive a timely, appropriate multidisciplinary evaluation. In order to reduce the duplication of effort, services and paperwork, the LEAs will implement a policy to ensure evaluations conducted by programs in DHH are utilized in the multidisciplinary evaluation of students suspected of being disabled and in the re-evaluation of students;

iv. Ensure that each eligible student with a disability receives a free appropriate public education (“FAPE”) in accordance with an IEP. FAPE includes special education and related services;

v. Ensure that each eligible student has an IEP developed and implemented in accordance with IDEA;

vi. Monitor the provision of services on IEPs through assurances with LEAs; and

vii. Monitor the implementation of the IEP and assure that resources necessary for the implementation of services on the IEP will be made available through federal or State funds.

b. DHH bears the following responsibilities.

i. Provide access to medical services offered by DHH through application for such services at DHH office locations in all regions of the State where the students currently reside. The student must meet the eligibility criteria for the medical services for which the student is applying. Establishing eligibility and need for services is the responsibility of DHH;

ii. DHH shall not reduce the medical services, which it would be required to provide to a student with a disability solely because those services are included on IEP;

iii. Refer students to the LEA upon suspicion of a disability. DHH personnel will share available information on students receiving joint services from the Department and DHH with the proper written consent;

iv. Provide information at the consent and request of a parent.; and

v. Ensure that a student with a disability can access Medicaid services for which the student is eligible. DHH policy and procedures shall not preclude an LEA from enrolling as a provider in the Medicaid program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941., et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

#### §864. Obligations of DHH

A. If DHH is otherwise obligated under federal or State law, or assigned responsibility under State policy or pursuant to §§861-870 herein, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR §300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.24 relating to related services, §300.28 relating to supplementary aids and services, and §300.29 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the State, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

B. DHH may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

C. If DHH fails to provide or pay for the special education and related services described in paragraph (A) hereinabove, the LEA (or State agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or State agency may then claim reimbursement for the services from DHH, having failed to provide or pay for these services, and DHH shall reimburse the LEA or State agency in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:876 (June 2003).

#### §865. Students with Disabilities Who Are Covered by Public Insurance

A. An LEA may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this agreement, as permitted under the public insurance program, except as follows.

1. With regard to services required to provide FAPE to an eligible student under this part, the LEA

a. May not require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA;

b. May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to §867(B) of these regulations, may pay the cost that the parent otherwise would be required to pay; and

c. May not use a student's benefits under a public insurance program if that use would

i. Decrease available lifetime coverage or any other insured benefit;

ii. Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;

iii. Increase premiums or lead to the discontinuation of insurance; or

iv. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

#### §866. Students with Disabilities Who are Covered by Private Insurance

A. With regard to services required to provide FAPE to an eligible student under this Chapter, an LEA may access a parent's private insurance proceeds only if the parent provides informed consent consistent with 34 CFR §300.500(b)(1).

B. Each time the LEA proposes to access the parent's private insurance proceeds, it must

1. Obtain parent consent in accordance with paragraph (A) this section; and

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

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§867. Use of Part B Funds

A. If an LEA or State agency is unable to obtain parental consent to use the parent’s private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service.

B. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent’s insurance (e.g., the deductible or co-pay amounts).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§868. Proceeds from Public or Private Insurance

A. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR §80.25.

B. If an LEA spends reimbursements from federal funds (e.g., Medicaid) for services under this part, those funds will not be considered “State or local” funds for purposes of the maintenance of effort provisions in 34 CFR §§300.154 and 300.231.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§869. Limitations of These Requirements

A. No provision of this Chapter should be construed to alter the requirements imposed on DHH or any other agency administering a public insurance program by federal statute, regulations, or policy under title XIX or title XXI of the Social Security Act or any other public insurance program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§870. General Provisions Governing §§861- 870

A. Confidentiality of Information. In accordance with federal and State law, information on a student's disabilities is confidential. For the purposes of identification, location, evaluation, development and implementation of the IEP, information and records on mutually served students may be exchanged between the Department and DHH with the written, informed consent of the parent(s) of each student. The method of exchanging information may be electronic or written. When a specific student or family is identified, the exchange must be written with proper consent obtained.

B. Ancillary Agreements. Regional and/or local agreements may be developed and implemented between the respective programs within the Department and DHH for the purposes of determining and identifying interagency coordination to promote the coordination of services and the timely and appropriate delivery of services to each eligible student and family. The services may be provided either directly, through a contract or other arrangement. These agreements are considered binding for the programs under the auspices of the Department and DHH only after written approval of such regional or local agreements by the Secretary of DHH and the Division Director of Special Populations in the Department, respectively.

C. Joint Coordination and Monitoring. DHH and the Department are required to develop jointly State level annual goals that are based on needs/data. DHH and the Department are required to evaluate jointly the overall effectiveness of these goals. Each department is required to designate a liaison at the state level to coordinate the activities and monitor the compliance of these regulations. Each agency is required to appoint an interagency committee to review and evaluate the effectiveness of these regulations; facilitate their implementation; and make recommendations for revisions as deemed appropriate.

D. Modifications to These Requirements. As the lead agency for implementation of the Louisiana Education of Children with Exceptionalities Act and the Individuals with Disabilities Education Act in Louisiana, the Department is the sole agency with authority to promulgate regulations pursuant to those statutes and no modification to these requirements shall be made by any other agency by regulation, policy or otherwise, without the express written consent of the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.  
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§871-899. Reserved.

## **Chapter 9. DEFINITIONS**

### **§901. Terms**

A. The terms defined in §902-904 of this Chapter are used throughout these Regulations. Unless expressly provided to the contrary, each term used in these Regulations shall have the meaning established by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:679 (April 2000).

### **§902. Abbreviations/Acronyms used in these Regulations**

- A. DSS - State Division of Social Services
- B. DHH - State Department of Health and Hospitals
- C. DPS&C - State Department of Public Safety and Corrections
- D. FAPE - Free Appropriate Public Education
- E. FERPA - Family Educational Records and Privacy Act of 1974
- F. IDEA - Part B of the Individuals with Disabilities Education Act amends the Education for All Handicapped Children Act of 1975 formerly known as EHA (P.L. 94-142).
- G. IEP - The Individualized Education Program required by §440 of these Regulations
- H. LEA - Local Education Agency
- I. LRE - Least Restrictive Environment
- J. SBESE - State Board of Elementary and Secondary Education
- K. Section 504 - Section 504 of the Rehabilitation Act of 1973, 29 USC 706 and the Regulation issued by the U.S. Department of Education at 45 CFR 84
- L. SSD#1 and SSD#2 - Special School District Number One and Two

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:679 (April 2000).

### **§903. Abbreviated Terms**

- A. The Act - Sections 1941 through 1958 of Chapter 8 of Title 17 of Louisiana Statutes of 1950, as amended
- B. The Department - The State Department of Education
- C. The Division - The Division of Special Populations of the State Department of Education
- D. The State - The State of Louisiana
- E. The State Board - The State Board of Elementary and Secondary Education

F. The State Board Special Schools - The Louisiana Special Education Center, The Louisiana School for the Deaf, The Louisiana School for the Visually Impaired

G. The Superintendent - The State Superintendent of Public Elementary and Secondary Education

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:679(April 2000).

#### §904. Definitions

*Adapted physical education* - is specially designed physical education for not only students with disabilities who may not safely or successfully engage in unrestricted participation in the vigorous activities of the regular physical education program on a full-time basis but also for students with disabilities, ages three through five, who meet the mandated criteria. The delivery of adapted physical education required by an IEP shall meet the following conditions:

1. evaluation and instruction are provided by a certified adapted physical education teacher;
2. only students with disabilities whose need is documented in accordance with mandated criteria for eligibility are included in the caseload;
3. the caseload is in accordance with the pupil/teacher ratios listed in Chapter 10 of these regulations.

*Age of majority* - as defined in Louisiana, means eighteen years of age.

*Alternative placement* - means any educational placement within the preschool, elementary, and secondary structure of the State specially designed for providing for the needs of students with disabilities. At a minimum, the continuum of alternative placements shall include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Provisions shall be made for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class instruction.

*Alternate assessment* - a substitute approach used in gathering information on the performance and progress of students who do not participate in typical state assessments. Under these Regulations, alternate assessments shall be used to measure the performance of a relatively small population of students with disabilities who are unable to participate in the general statewide assessment system, even with accommodations and modifications.

*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 functional capabilities of a student with a disability.

*Assistive technology service* - means any service that directly assists a student with a

disability in the selection, acquisition, or use of an assistive technology device. The term includes

1. the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;
2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students 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 educational and rehabilitation plans and programs;
5. training or technical assistance for a student with disabilities, or, if appropriate, that student'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 student.

*At no cost* - means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular educational program.

*Audiology* - as a related service, means

1. the identification of students with hearing loss;
2. the determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. the provision of habilitative activities such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. the creation and administration of programs for prevention of hearing loss;
5. the counseling and guidance of students, parents, and teachers regarding hearing loss; and
6. the determination of the students' needs for group and individual amplification, the selection and fitting of an appropriate aid, and the evaluation of the effectiveness of amplification.

*Autism* - means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, generally evident before age three, and that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance. A student who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria are satisfied.

*Business day* - means Monday through Friday, except Federal and State holidays

(unless holidays are specifically included in the designation of business day).

*Certificate of Achievement* - an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below. The receipt of a Certificate of Achievement shall not limit a student's continuous eligibility for services under these Regulations unless the student has reached the age of twenty-two.

1. The student has a disability under the mandated criteria.
2. The student has participated in Louisiana Alternate Assessment Program (LAA).
3. The student has completed at least twelve years of school or has reached the age of twenty-two (not to include students younger than sixteen).
4. The student has met attendance requirements.
5. The student has addressed the general education curriculum as reflected on the students' IEP.
6. Transition planning for the student has been completed and documented.

*Certificate of Achievement - Provisional Eligibility Criteria* - an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below.

1. Eligible students are those:
  - a. who have disabilities under the mandate criteria;
  - b. who were in an Alternative to Regular Placement (ARP) program during the 1997-98 school year as documented in the IEP;
  - c. who were enrolled in grades 6, 7, 8, 9, 10, or 11 during the 1998-99 school year; and
  - d. who their IEP team determined did not meet the LEAP Alternate Assessment Participation Criteria.
  - e. or
    - i. who participated in LAA in the Spring 2002 or Spring 2003;
    - ii. who are disabled under the mandated criteria;
    - iii. who participated in LEAP Alternate Assessment in their first or third years of high school; and
    - iv. whose IEP team determined would not be eligible to participate in alternate assessment under the revised LEAP Alternate Assessment Participation Criteria.

2. Eligible students shall meet the Provisional Eligibility Criteria listed below to be awarded a Certificate of Achievement. The receipt of a Certificate of Achievement shall not limit a student's continuous eligibility for services under these Regulations unless the student has reached the age of twenty-two.

a. The student has participated in general district and statewide assessments, including all components of the Graduation Exit Examination (GEE).

(i) If the student has failed a component of the GEE, the decision to retake that component of the GEE is an IEP team decision.

(ii) If the student will not retake that component of the GEE, GEE remediation will not be provided.

(iii) If the student will retake that component of the GEE, the student will be provided GEE remediation.

b. The student has completed at least twelve years of school or has reached the age of twenty-two (not to include students younger than sixteen).

c. The student has met attendance requirements according to the *School Administrator's Handbook, Bulletin 741*.

d. Transition planning for the student has been completed and documented.

e. A body of evidence exists to document that the student had access to and progressed in the general curriculum, to include at a minimum the Louisiana Content Standards in the areas of English/language arts, mathematics, science, and social studies and the foundation skills.

f. A body of evidence exists to document that the student has developed vocational competencies.

*Change of Placement* - See §448 and §519A. of these Regulations.

*Child search coordinator* - is the LEA employee responsible for the child-search and child-identification activities, including those of locating the student suspected of having a disability. Child-search in these Regulations equates to child-find in IDEA.

*Combination self-contained and resource classroom* - is an alternative education placement in which the same teacher provides special education instruction for students who receive instruction in various special education alternative placements. These placements include self-contained, resource, and regular classes.

*Community-based instruction* - is teaching and learning functional skills and activities in the community setting in which these activities would typically occur.

*Community-based vocational training* - is job training for high school students who train in real-work sites/local businesses, without pay, with training/support/supervision and/or follow-along provided by trained personnel from the LEA.

*Confidentiality of information* - involves the storage, disclosure to third parties, retention, and destruction of personally identifiable information.

*Consent* - means that

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;

2. the parent understands and agrees in writing to carry out the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. the parent understands that granting of consent is voluntary on the part of the parent and may be revoked at any time; if a parent revokes consent, that revocation is not retroactive (i.e., does not negate an action that occurred after the consent had been given and before the consent was revoked).

*Controlled substance* - means a drug or other substance identified under schedules I, II, III, IV, or V. in section 202(c) of the Controlled Substances Act (21 U.S.C. 812 (c)).

*Counseling services* - means services provided by qualified social workers, psychologists, guidance counselors, or otherwise qualified personnel.

*Day* - means calendar day unless otherwise indicated as business day or school day.

*Deaf-blindness* - is 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 students with deafness or students with blindness.

*Deafness* - See *Hearing Impairment*.

*Destruction* - means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Due Process* - See §507. of these Regulations.

*Developmental delay* - is a disability in which students, ages three through eight, are identified as experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development or adaptive development.

*Disability* - See *Student with a disability*.

*Early identification and assessment of disabilities in students* - as a related service, means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

*Education records* - means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

*Educational Diagnostic Services* - include

1. identifying special needs of students by providing consultation and collaboration with teachers, school administrators, students and parents, classroom observations and academic support services;
2. preventing educational problems through early identification of at-risk students;
3. consulting with teachers and other school staff members in planning, implementing, and evaluating school programs and strategies to meet the educational needs of individuals and groups of students;
4. designing interventions that address the academic needs of specific students to increase success in the academic setting;

5. administering, analyzing and interpreting informal and formal tests that will assist in identifying educational strengths and/or weaknesses in students who may need special education and related services; and

6. working as part of a multidisciplinary team to assess the educational, psychological, social and health needs of individual students.

*Emotional Disturbance* - means a condition characterized by behavioral or emotional responses so different from appropriate age, cultural, or ethnic norms that they adversely affect performance. Performance includes academic, social, vocational or personal skills. Such a disability is more than a temporary, expected response to stressful events in the environment; it is consistently exhibited in two different settings; and it persists despite individualized intervention within general education and other settings. Emotional disturbance can co-exist with other disabilities. This classification does not include children/youth who are socially maladjusted, unless it is determined that they also meet the criteria for Emotional Disturbance.

*Educational Service Agency* - means a regional public multiservice agency that is authorized by State law to develop, manage, and provide services or programs to LEAs and that is 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. This definition includes any other public institution or agency having administrative control and direction over a public elementary or secondary school and includes entities that meet the definition of an intermediate educational unit.

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

*Excess cost* - means those costs that are in excess of the average annual per student expenditure in a LEA during the preceding school year for an elementary or secondary school student, as may be appropriate.

*Evaluation* - is a multidisciplinary evaluation of a child/student, ages three through twenty-one years, in all areas of suspected disability through a systematic process of review; examination; interpretation; and analysis of screening data, developmental status, intervention efforts, interviews, observations, and test results, as required; and other assessment information relative to the predetermined criteria.

*Evaluation coordinator* - is the pupil appraisal person who, in addition to serving as an examiner in the individual evaluation, is assigned the responsibilities described in §433 for a particular student.

*Extended School Year (ESY) Services* - is the provision of special education and related services to students with disabilities beyond the normal school year of the LEA. All students (ages three through twenty-one) classified as having a disability with a current evaluation and IEP are to be screened annually by the ESY screening date to determine eligibility for

ESYP. Services are to be provided in accordance with the student's IEP once eligibility is determined.

*Free Appropriate Public Education (FAPE)* - means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the Department; that include preschool, elementary school, or secondary school education in the state; and that are provided in conformity with an IEP.

*Foster parent* - See *Parent*.

*Generic Class* - is an instructional setting (self-contained or resource).

1. In accordance with the level of support needed, students with disabilities may be placed as follows:

a. mild/moderate class consisting of mild to moderate impairments which include mental disabilities, autism, specific learning disabilities, emotional disturbances, orthopedic impairments, other health impairments, speech or language impairments, or traumatic brain injury; or

b. severe/profound class consisting of moderate, severe to profound impairments which include mental disabilities, autism, multiple disabilities, deaf-blindness, emotional disturbance, or traumatic brain injury.

2. The instruction is provided by a special education teacher with appropriate certification.

3. The pupil/teacher ratios established in Chapter 10 of these Regulations are used.

4. The generic class meets the other requirements of the categorical self-contained or resource class.

*Hearing impairment* - means an impairment in hearing, whether permanent or fluctuating, that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that it adversely affects a student's educational performance. It includes students who are deaf or hard-of-hearing or who have unilateral hearing loss or high frequency hearing loss.

*Home or hospital instruction* - refers to alternative education placements on the continuum for the provision of special education to a student with a disability in the student's home environment or in a hospital, based on an IEP by a teacher with appropriate certification according to the pupil/teacher ratio established in Chapter 10 of these Regulations.

*Homeless or homeless individual* - refers to

1. an individual who lacks a fixed, regular, and adequate nighttime residence; and

2. an individual who has a primary nighttime residence that is

a. a supervised, publicly or privately operated, shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

b. an institution that provides a temporary residence for individuals intended to be institutionalized; or

c. a public or private place not designed for, or ordinarily used as, a regular

sleeping accommodation for human beings such as a camp ground, abandoned buildings and cars;

d. substandard housing which includes no heat, indoor plumbing, running water or means of cooking or storing food;

e. crowded or undesirable living conditions in which two or more families live together, (called doubled-up or doubling-up) because they have no place of their own to live.

*IEP Team* - See §441.of these Regulations.

*Illegal Drug* - means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any provision of Federal law.

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

*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 student in question. (See §503 of these Regulations.)

*Individualized Education Program* - means a written statement developed, reviewed, and revised in a meeting in accordance with §§440-445 for each student with a disability.

*Individualized Family Service Plan (IFSP)* -

1. is a written plan for providing early intervention services for eligible children and their families. The determination of the most appropriate early intervention services - including any modifications in placement, service delivery, service providers or early intervention services - is accomplished through the development of the IFSP. The IFSP shall

a. be developed jointly by the family and appropriate qualified personnel, including family service coordinators involved in the provision of early intervention services;

b. be based on the multidisciplinary evaluation and assessment of the child and family;

c. include the services necessary to enhance the development of the child and the capacity of the family to meet the special needs of their child;

d. continue until the child transitions out of early intervention, either to other appropriate service providers at age three, or at such time that the family and multidisciplinary professionals determine that services are no longer necessary; or the family no longer desires early intervention services;

e. identify the location of the early intervention services to be provided in natural environments, including the home and community settings, in which children without special needs would participate.

2. If there is a dispute between agencies regarding the development or the implementation of the IFSP, the Lead Agency is responsible for taking the necessary actions to resolve the dispute or assign responsibility for developing or implementing the IFSP.

*Infants and toddlers with disabilities* - are children between the ages of birth and three years of age who have been determined eligible for early intervention services.

*Instruction in Regular Class* - is an alternative education placement for eligible students with disabilities who receive special education and related services less than twenty-one percent of the school day outside the regular classroom.

*Interagency agreement* - means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed. The statement shall be drawn up to be consistent with the mandatory provision of Chapter 8 of these Regulations.

*Interim alternative educational setting* - See §519.F. of these Regulations.

*Interpreter services* - means the facilitation of communication within an instructional environment via an enhanced visual and/or tactile mode between and among hearing impaired and hearing individuals in situations in which those individuals are unable to communicate with one another using a speech and hearing mode.

*Least restrictive environment* - means the educational placement of a student with a disability in a manner consistent with the Least Restrictive Environment Requirements in §446. of these Regulations.

*LEA* - means a public board of education or other public authority legally constituted within the State for either administrative control or direction of or to perform a service function for public elementary or secondary schools in a city, parish, school district, or other political subdivision of the state. The term includes an educational service agency and any other public institution or agency having administrative control and direction of a public elementary or secondary school including a public charter school that has been established as an LEA under State law.

*Maintenance of effort* - See §493.C. of these Regulations.

*Manifestation determination review* - See §519.G. of these Regulations.

*Medical services* - as a related service, means services for diagnostic and evaluation purposes provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

*Mental disability* - refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, home living, community use, health and safety, leisure, self-care, social skills, self-direction, functional academics, and work. Mental disabilities are manifested before age eighteen.

*Multiple disabilities* - are concomitant impairments (such as mental disability-blindness,

orthopedic impairment - deafness, autism - orthopedic impairment, or emotional disturbance - mental disability), the combination of which causes such severe educational problems that the student cannot be accommodated in a special education program solely for one of the impairments. This term does not include deaf-blindness.

*Native language* - when used with reference to an individual of limited English proficiency, means the language normally used by that individual, or in the case of a student, the language normally used by parents of the student. In all direct contact with the student, including the evaluation of the student, the language is the one normally used by the student in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

*Nonacademic and extracurricular activities* - See §446.A.10. of these Regulations.

*Noncategorical preschool* - is a disability in which students three years through age five, but not enrolled in a State-approved kindergarten, are identified as having a disabling condition which is described, according to functional or developmental levels, as mild/moderate or severe/profound.

*Occupational therapy* - as a related service, means mandated services provided by a qualified Occupational Therapist.

*Orientation and mobility training* - as a related service, means services provided to blind or visually-impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home and community. This service includes teaching students, as appropriate,

1. spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
2. to use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
3. to understand and use remaining vision and distance low vision aids; and
5. other concepts, techniques, and tools.

*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; the impairment is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, ventilator assistance, or attention deficit disorder or attention deficit hyperactivity disorder; and adversely affects a student's educational performance.

*Orthopedic impairment* - means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member); impairments caused by disease (e.g., poliomyelitis, bone tuberculosis); and disabilities from other causes (e.g., cerebral palsy,

amputations, and fractures or burns which cause contractures).

*Paraeducator (teacher-aide)* - is a person who assists in the delivery of special educational services under the supervision of a special education teacher or other professional who has the responsibility for the delivery of special education services to students with disabilities and who has all of the following qualifications: 1) is at least twenty years of age; 2) possesses a high school diploma or its equivalent; and 3) has taken a nationally validated achievement test and scored a level of achievement equivalent to the normal achievement level of a tenth grade student.

*Paraeducator training unit* - is a setting that may be used for the training of self-help skills (toilet training, dressing skills, grooming skills, feeding skills, and pre-academic readiness activities) to students with severe or low incidence disabilities or preschool students. A school-aged unit shall be made up of no more than six paraeducators. A preschool unit shall be made up of no more than four paraeducators. All units shall be supervised directly by a certified special education teacher.

*Parent* - means a natural or adoptive parent of a child; a guardian, but not the State if the child is a ward of the State; a person acting in the place of a parent such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with §516. A foster parent may act as a "parent" under these Regulations when the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and when the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under these Regulations, and has no interest that would conflict with the interest of the child. Louisiana Law requires that the rights and responsibilities of a parent established by these Regulations shall be exercised by the student with a disability who attains the age of eighteen years, unless such student has been interdicted or determined to be in continuing minority by a court order of the State of Louisiana and taking into consideration the student's type and severity of disability in accordance with §516 of these Regulations.

*Parent counseling and training* - as a related service, means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

*Participating agency* - for transition purposes, is a State or local agency, other than the LEA that is responsible for a student's education and that is financially and legally responsible for providing transition services to the student.

*Participating agency* - for confidentiality purposes, means any agency or institution that collects, maintains, or uses personally identifiable information, or any agency or institution from which information is obtained under these Regulations.

*Personally identifiable* - means that information - includes the name of the student, the student's parent, or other family member; the address of the student; a personal identifier, such as the student's social security number or student number; or a list of personal characteristics or other information - that would make it possible to identify the student with reasonable certainty.

*Physical education* - means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual or group games or sports (including intramural and lifetime sports.) The term *physical education* includes special physical education, adapted physical education, movement education and motor development.

*Physical therapy* - as a related service means mandated services provided by a qualified physical therapist.

*Preschool-aged Students with Disabilities Placement Options*-- as defined below, do not reflect a continuum of least restrictive environment and may include a combination of any of these settings.

1. *Early Childhood Setting* – students receive all of their special education and related services in educational programs designed primarily for children without disabilities. No education or related services are provided in separate special education settings. This may include, but is not limited to:

- a. regular kindergarten classes;
- b. public or private preschools;
- c. Head Start Centers;
- d. child care facilities;
- e. preschool classes offered to an eligible pre-kindergarten population by the public school system;
- f. home/early childhood combinations;
- g. home/Head Start combinations; and
- h. other combinations of early childhood settings.

2. *Early Childhood Special Education Setting* - students receive all of their special education and related services in educational programs designed primarily for children with disabilities housed in regular school buildings or other community-based settings. No education or related services are provided in early childhood settings. This may include, but is not limited to:

- a. special education classrooms in regular school buildings;
- b. special education classrooms in child care facilities, hospital facilities on an outpatient basis, or other community-based settings; and
- c. special education classrooms in trailers or portables outside regular school buildings.

3. *Home* – students receive all of their special education and related services in the principal residence of the child’s family or caregivers.

4. *Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting* – students receive services in multiple settings, such that: (1) general and/or special education and related services are provided at home or in educational programs designed primarily for children without disabilities, and (2) special education and related services are provided in programs designed primarily for children with disabilities. This may include, but is not limited to:

- a. home/early childhood special education combinations;
- b. Head Start, child care, nursery school facilities, or other community-based settings with special education provided outside of the regular class;
- c. regular kindergarten classes with special education provided outside of the regular class;
- d. separate school/early childhood combinations.

5. *Residential Facility* – students receive all of their special education and related

services in publicly or privately operated residential schools or residential medical facilities on an inpatient basis. This may include, but is not limited to:

- a. hospitals; and
- b. nursing homes

6. *Separate School* – students receive all of their special education and related services in educational programs in public or private day schools designed specifically for children with disabilities

7. *Itinerant Service Outside the Home* – students receive all of their special education and related services at a school, hospital facility on an outpatient basis or other location for a short period of time (no more than 3 hours per week). (This does not include children who receive services at home for 3 hours or less per week. This would be included in the Home setting.) These services may be provided individually or to a small group of children. This may include, but is not limited to: speech instruction, APE and assistive technology up to 3 hours per week in a school, hospital, or other community-based setting. (A combination of services may not exceed 3 hours per week). Children receiving all of their special education and related services at a school, hospital facility on an outpatient basis, or other location for longer than 3 hours per week must be reported under early childhood special education setting or early childhood setting, depending on whether the program was designed primarily for students with or without disabilities.

8. *Reverse Mainstream Setting* – students receive all of their special education and related services in educational programs designed primarily for children with disabilities but that include 50% or more children without disabilities.

*Prior notice* - See §504. of these Regulations.

*Psychological services* - as a related service, includes

1. administering psychological and educational tests and other assessment procedures;
2. interpreting assessment results;
3. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations;
5. planning and managing a program of psychological services, including psychological counseling for students and parents; and
6. assisting in developing positive behavior intervention strategies.

*Public agency* - includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to students with disabilities.

*Public charter school* - See §403. of these Regulations.

*Public expense* - means that the LEA either pays for the full evaluation when an independent educational evaluation is being conducted or ensures that the evaluation is otherwise

provided at no cost to the parent.

*Pupil appraisal personnel* - means personnel who meet the certification requirements for school personnel for such positions and who are responsible for the delivery of pupil appraisal services included in §411- 436 of these Regulations.

*Qualified Personnel* - means personnel who have met State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education and related services.

*Recreation* - as a related service, means the assessment of leisure function, therapeutic recreation services, recreation programs in schools and community agencies, and leisure education.

*Rehabilitation counseling* - as a related service, means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. It also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

*Related services* - transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. Related services include speech/language pathology and audiological services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

*Resource departmentalized* - is an instructional setting in which students receive instruction from more than one special education teacher and in which each teacher teaches only a single content or subject matter area. The pupil/teacher ratio shall be consistent with those listed in Chapter 10 of these Regulations. Instruction shall be provided for not more than the maximum allowed for that disability in a self-contained class at any given period.

*Resource room* - is a type of alternative education placement for special education and related services; it has been designed or adapted as a location where students with disabilities may receive all or a part of the special education required by their IEPs, and in which all of the following exist

1. the pupil/teacher ratios established in Chapter 10 are used;
2. only students with disabilities are enrolled;
3. instruction is provided for not more than twelve students whose disabilities are not severe or low incidence impairments for any one hour of instructional time;
4. special education is provided by a teacher certified either generically or specifically in the area of the disability for which special education is provided; and
5. students receive special education and related services for at least 21% but no

more than 60% of the school day outside the regular classroom.

*School building level committee* - is a committee of at least three school level staff members; the committee may be identified as an SBLC, SAT, STAT, etc., at the discretion of the LEA. The committee shall be comprised of at least the principal/designee, a classroom teacher, and the referring teacher. It is suggested that other persons be included, such as the guidance counselor, reading specialist, master teacher, nurse, parents, pupil appraisal personnel, etc. This committee is a decision-making group that meets on a scheduled basis to problem-solve concerns from teachers, parents, or other professionals on individual students who are experiencing difficulty in school due to academic and/or behavior problems. In most instances, for enrolled students, it is only through the SBLC that a referral can be made to pupil appraisal for an individual evaluation.

*School day* - means any day, including a partial day, that students are in attendance at school for instructional purposes. *School day* has the same meaning for all students in school, including students with and without disabilities.

*School health services* - as a related services means services provided by a certified school nurse or other qualified person.

*Self-contained departmentalized* - is an instructional setting in which students receive instruction from more than one special education teacher and in which each teacher teaches only one content area or subject matter. Pupil/teacher ratios shall be consistent with those listed in Chapter 10 of these Regulations. Instruction shall be provided for not more than the maximum number allowed for that disability in a self-contained class at any given period.

*Self-contained special education classroom* - is a type of alternative education placement in which special education instruction and related services are provided outside the regular classroom more than sixty percent of the school day.

*Severe language disorder* - is a type of communication impairment resulting from any physical or psychological condition which seriously interferes with the development, formation, and expression of language and which adversely affects the educational performance of the student. This category does not include students whose communication impairment is primarily due to mental disability, autism, or a hearing impairment. This disability applies to students identified as such prior to 1999.

*Severe or low incidence impairments* - may include moderate, severe and profound mental disabilities, multiple disabilities, autism, blindness, deafness, deaf-blindness, emotional disturbances, severe language disorders, orthopedic impairments, and traumatic brain injury, dependent upon the intensity of the student's individual needs.

*Significant change of educational placement* - See §448. of these Regulations.

*Social work services in schools* - as a related service, includes preparing a social or developmental history on a student with a disability; group and individual counseling with the student and family; working in partnership with parents and others on those problems in a

student's living situation (home, school, and community) that affect the student's adjustment in school; mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies.

*Special education* - means specially designed instruction, at no cost to the parent, to meet the unique needs of the student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. If they meet the definition of special education, the term also includes speech-language pathology services, travel training and vocational education.

*Specially designed instruction* - means adapting, as appropriate to the needs of an eligible student under these Regulations, the content, methodology or delivery of instruction to address the student's unique needs that result from the student's disability and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards that apply to all students within the jurisdiction of the LEA.

*Specific learning disability* - is a severe and unique learning problem characterized by significant difficulties in the acquisition, organization, or expression of specific academic skills or concepts. This learning problem is typically manifested in school functioning as significantly poor performance in such areas as reading, writing, spelling, arithmetic reasoning or calculation, oral expression or comprehension, or the acquisition of basic concepts. The term includes such conditions as attention deficit disorders, perceptual disabilities or process disorders, minimal brain dysfunction, dyslexia, developmental aphasia, or sensorimotor dysfunction, when consistent with the mandated criteria. The term does not apply to students who have learning problems primarily the result of visual, hearing, or motor impairments; of mental disabilities; of an emotional disturbance; of lack of instruction in reading or mathematics; of limited English proficiency; or of economic, environmental, or cultural disadvantage.

*Speech or language pathology* - as a related service, includes identification of students with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language disorders; provisions of speech and language services for the habilitation of communication or prevention of communication impairments; and counseling and guidance of parents, students, and teachers regarding speech and language impairments.

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

*Student with a disability* - means a student evaluated in accordance with §430 - 436 of these Regulations and determined as having one of the disability categories and, by reason of that disability, needing special education and related services.

*Supplementary aids and services* - means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate.

*Surrogate Parent* - See §516. of these Regulations.

*Transition services* - are a coordinated set of activities for a student with a disability; they are designed within an outcome-oriented process that promotes movement from school to post-school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; they shall be based upon the individual student's needs, taking into account the student's preferences and interests and shall include instruction, related services, community experiences, the development of employment and other post school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

*Transportation* - as a related service, means transportation required to assist a student with a disability to benefit from special education and includes

1. travel to and from school; between schools and sites;
  2. travel in and around school buildings; and
  3. specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.
- (Nonacademic and extracurricular activities may include transportation.)

*Traumatic brain injury* - is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both; the injury adversely affects a student's educational performance. The term applies to open or closed-head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgement; problem-solving; sensory, perceptual, or motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

*Travel training* - means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment (such as, in school, in the home, at work, and in the community).

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

*Vocational education* - means organized educational programs directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

*Weapon* - has the meaning given the term *dangerous weapon* under paragraph (2) of the

first subsection (g) of section 930 of Title 18, United States Code.

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§905-999. Reserved.

## Chapter 10 STATE PROGRAM RULES FOR SPECIAL EDUCATION

### §1001. Pupil/Teacher, Pupil/Speech/Language Pathologist, and Pupil Appraisal Ratios for Public Education

A. In providing services to all identified students with disabilities, the number of students in each instructional setting shall not exceed the following numbers.

	Preschool	Elementary	Secondary
1. Self-contained classrooms			
a. Autism	4	4	4
b. Blindness	7	9	9
c. Deafness	7	9	9
d. Deaf-blindness	4	4	4
e. Emotional Disturbance		8	8
f. Hard of Hearing	11	15	17
g. Mental Disability			
i. Mild		16	16
ii. Moderate		11	17
iii. Severe		9	9
iv. Profound		9	9
h. Mild/Moderate (Generic)		16	16
i. Multiple Disabilities	7	9	9
j. Noncategorical Preschool			
i. Mild/Moderate Functioning			
1. Full Day	11		
2. Half Day	16		
ii. Severe/Profound Functioning			
1. Full Day	7		
2. Half Day	14		
k. Other Health Impairment		17	17
l. Orthopedic Impairment	7	11	13
m. Partial Seeing	11	15	17
n. Speech or Language Impairment	7	9	9
o. Severe/Profound (Generic)		9	9
p. Specific Learning Disability		13	13
q. Traumatic Brain Injury	7	9	9

#### 2. Paraeducator Training Units

a. **Preschool-Aged Students:** One teacher and two paraeducators shall be appointed for the initial six preschool students. For students functioning within the severe/profound range, there shall be one additional paraeducator for any additional group of three, not to exceed two additional groups of such students. For students functioning within the mild/moderate range, the additional paraeducators shall be added for each additional group of four. The maximum number of students shall not exceed twelve per unit.

b. **School-Aged Students:** One teacher and two paraeducators shall be appointed for the initial six students with severe/profound or low incidence disabilities. There shall be one additional paraeducator for any additional group of three, not to exceed four additional groups of

such students. The maximum number of students shall not exceed eighteen per unit.

3. Resource Rooms (Generic or Categorical) and Itinerant Instruction Programs (per teacher)

- a. Students with severe or low incidence impairments/disabilities 10
- b. All other students with disabilities 27

Because of the travel requirements of the program, this number may be reduced by the LEA to 10-19 when instruction is provided to “all other students with disabilities” in at least two different schools.

4. Combination Self-contained and Resource Classrooms

- a. Students with severe/low incidence impairments/disabilities 12
- b. All other students with disabilities 20

5. Hospital/Homebound Instruction (per teacher)

- a. Itinerant 10
- b. One Site 17

6. Preschool Intervention Settings (Parent/Child Training)

- a. Intervention in the Home 15
- b. Intervention in a School or Center 19

7. Reserved.

8. Adapted Physical Education Instruction (per teacher) 60

a. In caseloads exceeding thirty-five students, the total number of students identified as having a severe motor deficit shall not exceed seventeen.

- b. Itinerant Instruction (Two or more schools) 40

9. Instruction in Regular Classes. This ratio refers to the caseload of special education teachers who provide instruction to students with disabilities in general education settings.

- a. Students with severe or low incidence impairments/disabilities 9
- b. All other students with disabilities 16

10.	Self-contained or Resource Departmentalized Settings	Elementary	Secondary
a.	Autism	15	15
b.	Blindness	33	33
c.	Deafness	33	33
d.	Deaf-blind	15	15
e.	Emotional Disturbance	30	30
f.	Hard of Hearing	58	63
g.	Mental Disability		
	i. Mild	63	63
	ii. Moderate	43	63
	iii. Severe	33	33
	iv. Profound	33	33
h.	Mild/Moderate Generic	58	58
i.	Multiple Disabilities	33	33
j.	Other Health Impairment	63	63
k.	Orthopedic Impairment	43	45
l.	Partial Seeing	58	63
m.	Speech or Language Impairment	33	33
n.	Severe/Profound Generic	33	33
o.	Specific Learning Disability	50	58
p.	Traumatic Brain Injury	33	33

11. Paraeducators may be hired to meet the unique needs of students with disabilities.

12. Speech/language pathologists in LEAs shall be employed at the rate of one for each thirty (or major fraction thereof) students receiving speech therapy. In determining the number of pupils, the following criteria shall be used.

a. Each student shall receive speech therapy.

b. Each speech/language pathologist shall be assigned a minimum of one student in speech therapy and shall not be assigned more than 79 points.

c. Each hour per week of pupil appraisal assessment services, supervision of speech/language pathologists who hold restricted license, or supervision of speech pathology assistants shall equal one point for the purpose of determining the caseload. Assignment of these activities shall be made by the LEA supervisor.

d. The caseload shall be determined according to the following guidelines.

Service Type	Number of Points Determining Caseload
Each hour of assessment	1
Each hour of supervision	1
Each hour of consultation	1
Each student receiving speech therapy	1

13. Pupil appraisal members shall be employed by LEAs at the rate listed below. LEAs may substitute one pupil appraisal for another provided that all pupil appraisal services are provided in accordance with these Regulations.

	Public School Ratios Based on Membership	Private School Ratios Based on Membership
Educational Diagnosticians	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
School Psychologists	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
Social Workers	1:3,200 or major function thereof	1:4,500 or major function thereof

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