State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Ken Wagner, Ph.D.
Commissioner

Enclosure 6b1
December 18, 2018

December 18, 2018

TO: Members of the Council on Elementary and Secondary Education

FROM: Ken Wagner, Ph.D., Commissioner

RE: Repeal of the 2013 Regulations Governing the Education of Children with Disabilities

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As part of the State requirement that all regulations be reformatted by December 31, 2018, and to comply with the RI Code of Regulations formatting and codification guidelines, RIDE decided to repeal the 2013 Regulations Governing the Education of Children with Disabilities, which contained voluminous sections directly copied/pasted from the Code of Federal Regulations, interspersed with state specific regulatory clauses, and replace them with the new reformatted Regulations Governing the Education of Children with Disabilities.

The repeal was promulgated in September 2018 for a 30-day public-review and comment period. During the public comment period no objections were received.

The only substantive (non-formatting) changes to the new reformatted regulations and its implementation were made in order to comply with changes to state or federal law.

(1) The Council's previously adopted Extended School Year Services and Specific Learning Disabilities regulations have been incorporated into the pertinent sections of the new Regulations;

(2) The "Public agency responsibility" portion of the "Public Participation" section of the new Regulations has been reorganized; and

(3) Duplicative language has been deleted.

RECOMMENDATION: THAT, the Council on Elementary and Secondary Education approves the repeal of the 2013 Regulations Governing the Education of Children with Disabilities.

~~RHODE ISLAND~~
~~BOARD OF EDUCATION~~

~~REGULATIONS~~
~~GOVERNING THE EDUCATION OF~~
~~CHILDREN WITH DISABILITIES~~

~~Adopted: September 9, 2013~~
~~Effective: October 9, 2013~~

~~State of Rhode Island and Providence Plantations~~
~~Department of Elementary and Secondary Education~~
~~255 Westminster Street~~
~~Providence, RI 02903-3400~~
~~www.ride.ri.gov~~

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~~The Honorable Lincoln D. Chafee, Governor~~

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~~RHODE ISLAND BOARD OF EDUCATION~~
~~REGULATIONS GOVERNING THE EDUCATION OF CHILDREN WITH DISABILITIES~~

~~PART 300~~

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~~Subpart A — General Purposes, Applicability, and Authority~~

~~300.1 Purposes.~~

~~The purposes of these regulations are —~~

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

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

~~(c) To assist state agencies, local education agencies, education service agencies, Federal agencies, educational collaboratives, and other public agencies to provide for the education of all children with disabilities; and~~

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

~~300.2 Applicability of this part to State, local, and private agencies.~~

~~(a) *States*. The federal regulations which these state regulations implement apply to Rhode Island because Rhode Island receives federal funds under Part B of the Individuals with Disabilities Education Act (IDEA).~~

~~(b) *Public agencies within the State*. The provisions of these regulations —~~
~~(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including;~~
~~(i) The Rhode Island Department of Education (RIDE) also referred to as the State Educational Agency (SEA).~~
~~(ii) Local educational agencies (LEAs), educational collaboratives, education service agencies and public charter schools.~~
~~(iii) Other State agencies and schools.~~
~~(iv) State and local juvenile and adult correctional facilities; and~~
~~(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the IDEA or state funds.~~

~~(c) *Private schools and facilities*. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the IDEA and these regulations are given to children with disabilities —~~
~~(1) Referred to or placed in private schools and facilities by that public agency; or~~
~~(2) Placed in private schools by their parents under the provisions of these regulations.~~

~~300.3 Authority~~

~~*Authority*. These regulations are established pursuant to Title 16, Chapter 24 of the General Laws of Rhode Island and by the Federal IDEA, 2004 (20 U.S.C. Chapter 33, 1400 et. seq.).~~

~~Definitions Used In These Regulations~~

~~300.4 Act.~~

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

~~300.5 Assistive technology device.~~

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

~~300.6 Assistive technology service.~~

~~*Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—~~

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

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

~~(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, orreplacing assistive technology devices;~~

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

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

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

~~300.7 Charter school.~~

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

~~300.8 Child with a disability.~~

~~(a) *General.* (1) *Child with a disability* means a child, aged 3 to 21, evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as —emotional disturbance, an orthopedic impairment, autism spectrum disorder, traumatic brain injury, other health impairment, a specific learning disability,~~

~~deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.~~
~~(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, *the child is not a child with a disability under this part.*~~
~~(ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, *the child would be determined to be a child with a disability under paragraph (a)(1) of this section.*~~

~~(b) *Children aged 3 through 8 experiencing developmental delays.* (1) Child with a disability, for children aged 3 through 8 (up to the child's ninth birthday), includes a child who shall qualify for special education and related services when the child is experiencing a developmental delay or a disability, as determined by the evaluation process; and~~
~~(2) Who, by reason thereof, needs special education and related services.~~
~~(3) A developmental delay or disability is defined as a twenty five per cent (25%) delay and/or score equal to or greater than two standard deviations below the mean in one of the following areas of development; or a score equal to or greater than 1.5 standard deviations below the mean in two (2) or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development.~~

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

~~(1) *Autism Spectrum Disorder.* (i) *Autism Spectrum Disorder* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3 that adversely affects a child's educational performance. Included in the spectrum are: Autism, Pervasive Developmental Disorder Not Otherwise Specified, Rett's Disorder, Asperger's Disorder and Childhood Disintegrative Disorder. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined herein.~~
~~(ii) A child who manifests the characteristics of autism spectrum disorder after age 3 could be diagnosed as having autism spectrum disorder if the criteria of this section are satisfied.~~

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

~~(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.~~

~~(4)(i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:~~
~~(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.~~
~~(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.~~

~~(C) Inappropriate types of behavior or feelings under normal circumstances.~~
~~(D) A general pervasive mood of unhappiness or depression.~~
~~(E) A tendency to develop physical symptoms or fears associated with personal or school problems.~~
~~(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.~~

~~(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.~~

~~(6) *Mental retardation* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.~~

~~(7) *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.~~

~~(8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).~~

~~(9) *Other health impairment* means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—~~
~~(i) Is due to chronic or acute, health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, and Tourette syndrome; and~~
~~(ii) Adversely affects a child's educational performance.~~

~~(10) *Specific learning disability* (i) *General*. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.~~
~~(ii) *Disorders not included*. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.~~

~~(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.~~

~~(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor~~

~~abilities; 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.~~

~~(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.~~

~~300.9 Consent.~~

~~*Consent* means that—~~
~~(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;~~
~~(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and~~

~~(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime;~~
~~(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).~~
~~(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.~~

~~300.10 Core academic subjects.~~

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

~~300.11 Day; business day; school day.~~

~~(a) *Day* means calendar day unless otherwise indicated as business day or school day;~~

~~(b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in 300.148(d)(1)(ii)).~~

~~(c)(1) *School day* means any day, including a partial day that children are in attendance at school for instructional purposes.~~
~~(2) School day has the same meaning for all children in school, including children with and without disabilities, except for pre-school aged children with mild to moderate disabilities for whom a school day shall consist of a minimum of a two and one-half (2 ½) hours. A school day for pre-school aged children with severe or profound mental retardation or multiple disabilities shall consist of a minimum of five (5) hours.~~

~~300.12 Educational service agency.~~

~~*Educational service agency (ESA)* means—~~

~~(a) A regional public multiservice agency~~
~~(1) Authorized by State law to develop, manage, and provide services or programs to LEAs; and~~
~~(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;~~

~~(b) Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.~~

~~(c) Includes entities that meet the definition of intermediate educational unit in § 602(23) of the Act as in effect prior to June 4, 1997.~~

~~300.13 Elementary school.~~

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

~~300.14 Equipment.~~

~~*Equipment* means—~~

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

~~(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.~~

~~300.15 Evaluation.~~

~~*Evaluation* means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.~~

~~300.16 Excess costs.~~

~~*Excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—~~

~~(a) Amounts received—~~
~~(1) Under Part B of the Act;~~
~~(2) Under Part A of title I of the ESEA; and~~
~~(3) Under Parts A and B of title III of the ESEA and;~~

~~(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 of the federal regulations for an example of how excess costs must be calculated.)~~

~~300.17 Free appropriate public education.~~
~~*Free appropriate public education* or *FAPE* means special education and related services that —~~

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

~~(b) Meet the standards of the SEA, including the requirements of this part;~~

~~(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and~~

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

~~300.18 Highly qualified special education teachers.~~

~~(a) *Requirements for special education teachers teaching core academic subjects.* For any public elementary or secondary school special education teacher teaching core academic subjects, the term *highly qualified* has the meaning given the term in § 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also —~~
~~(1) Include the requirements described in paragraph (b) of this section; and~~
~~(2) Include the option for teachers to meet the requirements of § 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.~~

~~(b) *Requirements for special education teachers in general.* (1) When used with respect to any public elementary school or secondary school special education teacher, highly qualified requires that —~~
~~(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;~~
~~(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and~~
~~(iii) The teacher holds at least a bachelor's degree.~~
~~(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which —~~
~~(i) The teacher —~~
~~(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;~~
~~(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;~~
~~(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and~~

~~(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and~~
~~(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.~~
~~(3) Any public elementary school or secondary school special education teacher, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.~~

~~(c) *Requirements for special education teachers teaching to alternate achievement standards.* When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either —~~
~~(1) Meet the applicable requirements of § 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or~~
~~(2) Meet the requirements of paragraph (B) or (C) of § 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of § 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.~~

~~(d) *Requirements for special education teachers teaching multiple subjects.* Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either —~~
~~(1) Meet the applicable requirements of § 9101 of the ESEA and 34 CFR 200.56(b) or (c);~~
~~(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or~~
~~(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.~~

~~(e) *Separate HOUSSE standards for special education teachers.* Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers —~~
~~(1) The State may develop a separate HOUSSE for special education teachers; and~~
~~(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.~~

~~(f) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§ 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.~~

~~(g) *Applicability of definition to ESEA; and clarification of new special education teacher*. (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.~~
~~(2) For purposes of § 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.~~

~~(h) *Private school teachers not covered*. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under § 300.138.~~

~~330.19 Homeless children.~~

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

~~300.20 Include.~~

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

~~300.21 Indian and Indian tribe.~~

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

~~(b) *Indian tribe* means any Federal or State Indian tribe, band, Rancheria, pueblo, colony, or community, or as further defined at 34 CFR part 300.21.~~

~~300.22 Individualized education program (IEP).~~

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

~~300.23 Individualized education program team.~~

~~*Individualized education program team* or *IEP team* means a group of individuals described in 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.~~

~~300.24 Individualized family service plan (IFSP).~~

~~*Individualized family service plan* or *IFSP* has the meaning given the term in § 636 of the Act~~

~~300.25 Infant or toddler with a disability.~~

~~*Infant or toddler with a disability* —~~

~~(a) Means an individual under three years of age who needs early intervention services because the individual —~~
~~(1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or~~
~~(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and~~

~~(b) May also include, at the State's discretion —~~
~~(1) At-risk infants and toddlers; and~~
~~(2) Children with disabilities who are eligible for services under § 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include —~~
~~(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and~~
~~(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under § 619 of the Act.~~

~~300.26 Institution of higher education.~~

~~*Institution of higher education* —~~
~~(a) Has the meaning given the term in § 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq*. (HEA); and~~

~~*(b)* Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, *et seq.*~~

~~300.27 Limited English proficient.~~

~~*Limited English proficient* has the meaning given the term in § 9101(25) of the ESEA.~~

~~300.28 Local educational agency (LEA).~~

~~(a) General. *Local educational agency* 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, county, township, school district, or other political subdivision of the State, or for a combination of school districts or counties as are recognized in the State as an administrative agency for its public elementary or secondary schools.~~

~~(b) Educational service agencies and other public institutions or agencies. The term includes —~~
~~(1) An educational service agency, as defined in § 300.12~~

~~(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public non-profit charter school that is established as an LEA under State law.~~

~~300.29 Native language.~~

~~(a) *Native language*, when used with respect to an individual who is limited English proficient, means the following:~~

~~(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.~~

~~(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.~~

~~(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).~~

~~300.30 Parent.~~

~~(a) *Parent* means—~~

~~(1) A biological or adoptive parent of a child;~~

~~(2) A foster parent, unless State law, regulations, or contractual obligations with the State or local entity prohibit a foster parent from acting as a parent;~~

~~(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);~~

~~(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or~~

~~(5) A surrogate parent who has been appointed in accordance with § 300.519 or § 639(a)(5) of the Act.~~

~~(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.~~

~~(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.~~

~~300.31 Parent training and information center.~~

~~*Parent training and information center* means a center assisted under §§ 671 or 672 of the Act.~~

~~300.32 Personally identifiable.~~

~~*Personally identifiable* means information that contains—~~

~~(a) The name of the child, the child's parent, or other family member;~~

~~(b) The address of the child;~~

~~(c) A personal identifier, such as the child's social security number of student number; or~~

~~(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.~~

~~300.33 Public agency.~~

~~*Public agency* includes the SEA, LEAs, Educational Collaboratives, ESAs, non-profit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.~~

~~300.34 Related services.~~

~~(a) *General*. *Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services, social work services in schools, and parent counseling and training.~~

~~*(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.*~~
~~(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.~~
~~(2) Nothing in paragraph (b)(1) of this section—~~
~~(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.~~
~~(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or~~
~~(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).~~

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

~~(1) *Audiology* includes—~~
~~(i) Identification of children with hearing loss;~~
~~(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;~~

~~(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;~~
~~(iv) Creation and administration of programs for prevention of hearing loss;~~
~~(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and~~
~~(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.~~

~~(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.~~

~~(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.~~

~~(4) *Interpreting services* includes—~~
~~(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and~~
~~(ii) Special interpreting services for children who are deaf-blind.~~

~~(5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.~~

~~**(6)** *Occupational therapy*—~~
~~(i) Means services provided by a qualified occupational therapist; and or services provided by a certified occupational therapist assistant under supervision of a certified occupational therapist; and~~
~~(ii) Includes—~~
~~(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;~~
~~(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and~~
~~(C) Preventing, through early intervention, initial or further impairment or loss of function.~~

~~(7) *Orientation and mobility services*—~~
~~(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and~~
~~(ii) Includes teaching children the following, as appropriate:~~
~~(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);~~
~~(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;~~
~~(C) To understand and use remaining vision and distance low vision aids; and~~
~~(D) Other concepts, techniques, and tools.~~

~~(8) *Parent counseling and training means*—~~
~~(i) Assisting parents in understanding the special needs of their child;~~
~~(ii) Providing parents with information about child development; and~~

~~(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.~~

~~(9) *Physical therapy* means services provided by a qualified physical therapist or by a qualified physical therapy assistant under the supervision of a qualified physical therapist.~~

~~(10) *Psychological services* includes—~~
~~(i) Administering psychological and educational tests, and other assessment procedures;~~
~~(ii) Interpreting assessment results;~~
~~(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;~~
~~(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, and behavioral evaluations;~~
~~(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and~~
~~(vi) Assisting in developing positive behavioral intervention strategies.~~

~~(11) *Recreation* includes—~~
~~(i) Assessment of leisure function;~~
~~(ii) Therapeutic recreation services;~~
~~(iii) Recreation programs in schools and community agencies; and~~
~~(iv) Leisure education.~~

~~(12) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et. seq.~~

~~(13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.~~

~~(14) *Social work services in schools includes*—~~
~~(i) Preparing a social or developmental Assessment on a child with a disability;~~
~~(ii) Group and individual counseling with the child and family;~~
~~(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;~~
~~(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and~~
~~(v) Assisting in developing positive behavioral intervention strategies.~~

~~(15) *Speech-language pathology services includes*—~~
~~(i) Identification of children with speech or language impairments;~~
~~(ii) Diagnosis and appraisal of specific speech or language impairments;~~
~~(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;~~
~~(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and~~

~~(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.~~

~~**(16)** *Transportation includes* –~~
~~(i) Travel to and from school and between schools;~~
~~(ii) Travel in and around school buildings, travel to and from community and work-based instruction sites as determined by the IEP team; and~~
~~(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.~~
~~(iv) Those requirements in § 300.902 of these regulations.~~

~~**300.35 Scientifically based research.**~~

~~*Scientifically based research* has the meaning given the term in § 9101(37) of the ESEA.~~

~~**300.36 Secondary school.**~~

~~*Secondary school* means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.~~

~~**300.37 Services plan**~~

~~*Services plan* means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with § 300.132, and is developed and implemented in accordance with §§ 300.137 through 300.139.~~

~~**300.38 Secretary.**~~

~~*Secretary* means the Secretary of Education.~~

~~**300.39 Special education.**~~

~~(a) *General.* (1) *special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—~~
~~(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and~~
~~(ii) Instruction in physical education.~~
~~(2) Special education includes each of the following, if it meets the requirements of paragraph (a)(1) of this section—~~
~~(i) Speech-language pathology services for students through eight years of age (up to the child's ninth birthday)~~
~~(ii)Travel training; and~~
~~(iii) Vocational education.~~

~~(b) *Individual special education terms defined*. The terms in this definition are defined as follows:~~

~~(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.~~

~~(2) *Physical education* means—~~
~~(i) The development of—~~
~~(A) Physical and motor fitness;~~
~~(B) Fundamental motor skills and patterns; and~~
~~(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and~~
~~(ii) Includes special physical education, adapted physical education, movement education, and motor development.~~

~~(3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—~~
~~(i) To address the unique needs of the child that result from the child's disability; and~~
~~(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.~~

~~(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—~~
~~(i) Develop an awareness of the environment in which they live; and~~
~~(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).~~

~~(5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.~~

~~300.40 Reserved.~~

~~300.41 State educational agency.~~

~~*State educational agency* or *SEA* means the Rhode Island Department of Elementary and Secondary Education (RIDE) which is responsible for the general supervision of all education programs for children with disabilities in Rhode Island including all such programs administered by any other state or local agency.~~

~~300.42 Supplementary aids and services.~~

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

~~300.43 Transition services.~~

~~(a) *Transition services* means a coordinated set of activities for a child with a disability that—~~
~~(1) Is designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;~~
~~(2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and~~
~~(3) Includes—~~
~~(i) Instruction;~~
~~(ii) Related services;~~
~~(iii) Community experiences;~~
~~(iv) The development of employment and other post-school adult living objectives; and~~
~~(v) If appropriate, acquisition of daily living skills and provision of functional vocational evaluation.~~

~~(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.~~

~~300.44 Universal design.~~

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

~~300.45 Ward of the State.~~
~~(a) *General.* Subject to paragraph (b) of this section, *ward of the State* means a child who, as determined by the State where the child resides, is—~~
~~(1) A foster child;~~
~~(2) A ward of the State; or~~
~~(3) In the custody of a public child welfare agency.~~
~~(b) *Exception.* Ward of the State does not include a foster child who has a foster parent who meets the definition of a *parent* in § 300.30.~~

~~300.46 Vocational evaluation~~

~~*Vocational evaluation* is a strength-based, student-centered process, by which information is obtained to assist students in designing individualized education and vocational services to reach their career goals. This includes the use of formal and informal methods to collect information, including: Interest inventories, student interviews, parent interviews, skill and aptitude tests, on-campus and off-campus situational assessments, work samples, vocational evaluations, performance in career related courses and other methods. Vocational evaluation is an ongoing process, not a single test or procedure. The results of Vocational evaluation are shared at IEP meetings, and the information obtained through the Vocational evaluation should be infused into designing the student's educational services and in developing appropriate, measurable post secondary goals.~~

~~300.47 Teacher of record~~

~~*Teacher of record* means—~~

~~(a) The teacher responsible for content instruction and determining student grades.~~

~~(b) The term teacher of record has the same meaning given the term by RIDE Office of Educator Quality and Certification~~

~~Subpart B—Local Education Agency General Requirements~~

~~300.100 Reserved.~~

~~FAPE Requirements.~~

~~300.101 Free appropriate public education (FAPE)~~

~~(a) *General* . A free appropriate public education must be available to all eligible children residing in the LEA, between the ages of 3 and 21, inclusive (until the child's twenty first birthday or until the child receives a regular high school diploma), including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d). For children enrolled by their parents in private schools FAPE is available in accordance with §300.129.~~

~~*(b) FAPE for children beginning at age 3.*~~
~~(1) Each public agency must ensure that—~~
~~(i) The obligation to make FAPE available to each eligible child begins no later than the child's third birthday; and~~
~~(ii) An IEP or an IFSP is in effect for the child by that date in accordance with § 300.323(b).~~
~~(2) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.~~

~~(c) *Children advancing from grade to grade*.~~
~~(1) Each public agency must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.~~
~~(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.~~

~~**(d)** *FAPE for children suspended or expelled from school.*~~
~~(1) An LEA need not provide services to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.~~
~~(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the LEA, for the remainder of the removals, must—~~
~~(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the~~

~~goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability.~~
~~(3) In the case of a child who is removed from his or her current placement to an interim alternative educational setting for reasons described in paragraph (3) (ii) and (iii) of this section, the LEA must~~
~~(i) Provide services consistent with §§ 300.530, regarding determination of the appropriate interim alternative educational setting, if the removal is —~~
~~(ii) For drug or weapons offenses under § 300.530 of these regulations; or~~
~~(iii) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with § 300.532.~~

~~300.102 Limitation—exception to FAPE for certain ages.~~

~~The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:~~
~~(1)(i) Children with disabilities who have graduated from high school with a regular high school diploma.~~
~~(ii) The exception in paragraph (a)(1)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.~~
~~(iii) Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with Part E of these regulations at RI Regulation § 300.503.~~
~~(iv) As used in this section, the term *regular high school diploma* does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED).~~
~~(2) Children with disabilities who are eligible under subpart (H) of the I.D.E.A., 34 C.F.R. 800 et. seq., but who receive early intervention services under Part C of the Act.~~

~~Other FAPE Requirements~~

~~300.103 FAPE-methods and payments.~~

~~(a) Each public agency may use whatever State, local, Federal, and private sources of support available in the State to meet the requirements of this part.~~

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

~~(c) Consistent with § 300.323(c), the LEA must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.~~

~~300.104 Residential placement.~~

~~If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.~~

~~300.105 Assistive technology.~~

~~(a) Each public agency must ensure that assistive technology devices or assistive technology~~

~~services, or both, as those terms are defined in § 300.5 and § 300.6, respectively, are made available to a child with a disability if required as a part of the child's—~~
~~(1) Special education under § 300.39;~~
~~(2) Related services under § 300.34; or~~
~~(3) Supplementary aids and services under §§ 300.42 and 300.114(a)(2)(ii).~~

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

~~300.106 Extended school year services.~~

~~(a) *General*. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.~~
~~(2) Extended school year services must be provided when a child's IEP Team determines, on an individual basis, in accordance with § 300.320 through § 300.324, that the services are necessary for the provision of FAPE to the child.~~
~~(3) In implementing the requirements of this section, a public agency may not—~~
~~(i) Limit extended school year services to particular categories of disability; or~~
~~(ii) Unilaterally limit the type, amount, or duration of those services.~~

~~(b) *Definition*. As used in this section, the term extended school year services means special education and related services that—~~
~~(1) Are provided to a child with a disability—~~
~~(i) Beyond the normal school year of the public agency;~~
~~(ii) In accordance with the child's IEP; and~~
~~(iii) At no cost to the parents of the child; and~~
~~(2) Meet RIDE extended school year standards as adopted by the RI Board of Regents.~~

~~300.107 Nonacademic services.~~

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

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

~~300.108 Physical education.~~

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

~~(b) *Regular physical education*. Each child with a disability must be afforded the opportunity to~~

~~participate in the regular physical education program available to nondisabled children unless—~~
~~(1) The child is enrolled full time in a separate facility; or~~
~~(2) The child needs specially designed physical education, as prescribed in the child's IEP.~~

~~(c) *Special physical education*. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.~~

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

~~300.109 Reserved.~~

~~300.110 Program options.~~

~~Each public agency must take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.~~

~~300.111 Child find.~~

~~(a) *General*. (1) Each local education agency must have in effect policies and procedures to ensure that all of the following children with disabilities are identified, located, and evaluated, regardless of the severity of their disabilities, and who are in need of special education and related services:~~
~~(i) All children aged three (3) through twenty-one (21) residing in the LEA, including children with disabilities who are homeless children or are wards of the state, excluding, children parentally placed in private, including religious, schools located outside the LEA that meet the definitions under §§ 300.13 and 300.36;~~
~~(ii) All children with disabilities, regardless of residence, enrolled by their parents in private, including religious, schools that are located in the district served by the LEA and meet the State definition of an elementary or secondary school, in accordance with § 300.131 (Child Find for parentally-place private school children with disabilities); § 300.13 (Elementary School); and § 300.36 (Secondary School); and~~
~~(iii) For children aged three (3) through five (5) years, the screening procedures must be consistent with the Rhode Island Guidelines for Implementing Child Outreach Screening, as adopted by the Rhode Island Board of Regents.~~

~~(b) *Children currently served*. Each local education agency must have in effect policies and procedures to ensure that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services.~~

~~(c) *Provisions implementing child find*. The following provisions apply with respect to implementing the child find requirements of this section:~~
~~(1) Documents relating to child find. Each LEA must have on file the policies and procedures described in paragraphs (a) and (b) of this section, including —~~
~~(i) The name of the LEA Representative responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;~~
~~(ii) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;~~
~~(iii) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and~~
~~(iv) Information adequate to evaluate the effectiveness of those policies and procedures; and~~
~~(v) A description of the method the LEA uses to determine which children are currently receiving special education and related services.~~
~~*(2) Child find for children from birth through age 2 (until the child turns age three) with the Department of Human Services as the lead agency administering Part C of the Act.*~~
~~The RI Department of Human Services is the lead agency for administering Part C of the Act, and implements a comprehensive system of child find activities including:~~
~~(i) Prior notice;~~
~~(ii) Universal screening;~~
~~(iii) Acting on direct referrals; and~~
~~(iv) Evaluation and assessment procedures.~~

~~(d) *Interagency agreement*. The RI Department of Education and the RI Department of Human Services have executed interagency agreements which serve as the primary mechanism through which universal screening is conducted and which specify the administrative, fiscal, and programmatic responsibility of each department relative to Child Find activities.~~
~~The use of an interagency agreement or other mechanism for providing for the Early Intervention lead agency's participation does not alter or diminish the responsibility of the LEA to ensure compliance with the requirements of this section.~~

~~(e) *Confidentiality of child find data*. The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of these regulations.~~

~~300.112 Individualized education programs (IEP).~~

~~Each public agency must ensure that an IEP, or an IFSP that meets the requirements of § 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.320 through 300.324, except as provided in § 300.300(b)(3)(ii).~~

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

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

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

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

~~Least Restrictive Environment (LRE)~~

~~300.114 LRE requirements.~~

~~Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), each public agency must ensure that—~~
~~(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and~~
~~(2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.~~

~~300.115 Continuum of alternative placements.~~

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

~~(b) The continuum required in paragraph (a) of this section must—~~
~~(1) Include the alternative placements listed in the definition of special education under § 300.39 (instruction in regular classes, special classes, special schools, home instruction, instruction in hospitals and institutions); and~~
~~(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.~~

~~300.115(A) Continuum of special education placements and services.~~

~~Each public agency shall make available to children with disabilities the following continuum of special education programs:~~

~~(1) Placement of the child in a general education class with special education consultation, supplementary aids and services or part-time services in a special class. The special educator(s) shall consult with the child's parent and general education teachers.~~

~~(2) Placement in a special class integrated in a school district building. Placement must be based on similarity of student strengths and needs for the purpose of ensuring academic achievement and functional performance. Such classes must be taught by a special education teacher, together with other appropriately certified specialists providing related services. These professionals shall also consult with the child's parents.~~

~~(3) Home or hospital instruction provided by special education teachers, general education classroom teachers or regular education, subject-matter teachers, together with other appropriately certified specialists providing related services, as needed; to any child with a disability whose health status warrants home or hospital instruction.~~

~~(4) Special education day school placement in a separate public school or non-public facility whose special education program has been approved by the Rhode Island Commissioner of Elementary and~~

~~Secondary Education.~~

~~(5) Special education residential school placement in a separate public or non-public facility whose special education program has been approved by the Rhode Island Commissioner of Elementary and Secondary Education.~~

~~(6) A continuum of services must be available to enable each child ages fourteen (14) to twenty one (21) or earlier if appropriate, or upon graduation with a regular high school diploma, to achieve his or her measurable post-secondary goals as defined in §§ 300.43 and 300.320(b).~~

~~300.115(B) Continuum of special education placements and services for children aged three (3) through five (5).~~

~~*General*. All preschool children (ages 3 through 5) with disabilities shall receive an IEP or IFSP suited to their particular needs which shall include, but not be limited to, language development, symbol recognition, communication and socialization skills, health, perceptual and sensory-motor development, art, music and physical education.~~

~~*Each public agency must* make available to each child with a disability, aged three (3) through (5) years old, a program which represents the least restrictive environment (LRE) and the appropriate placement given the student's individualized education program (IEP) or individualized family service plan (IFSP). Unless the individualized education program (IEP) or individualized family service plan (IFSP) requires otherwise, special education and related services shall be provided in that setting in which the child would normally be placed if he or she did not have a disability. The SEA has guidelines to assist IEP teams in determining delivery of services decisions. The array of educational settings shall include the following placement opportunities:~~

~~(1) Temporary placement in any educational setting as described in this Section, for a period of no more than thirty (30) days, when necessary to aid in determining educational objectives and the appropriate placement for an eligible child with a disability. Prior to such placement, an interim individualized education program (IEP) or individualized family service plan (IFSP) shall be developed which specifies the conditions and timelines for the temporary placement. Upon the close of the interim period, an individualized education program (IEP) or individualized family service plan (IFSP) meeting shall be conducted to finalize the child's individualized education program (IEP) or individualized family service plan (IFSP).~~

~~(2) Placement in a general early childhood setting with on-site consultation by an early childhood special educator and/or provider(s) of related services to the general education teacher and/or to the family and, when indicated by the IEP or IFSP, direct intervention with the child. Early childhood settings include, but are not limited to: general kindergarten classes, public and non-public preschools, Head Start programs, early care and education centers, home/early childhood combinations, home/Head Start combinations, or home based child care, which meet federal or state requirements. In these settings, children receive all of their special education and related services in programs designed primarily for children without disabilities.~~

~~(3) Placement in an integrated preschool class designed primarily for preschool children with disabilities and including children without disabilities that is located in a public school building. The~~

~~maximum class size shall be no more than fifteen (15) children with less than fifty percent (50%) being children with disabilities. The staff shall include at a minimum, an early childhood special educator and teacher assistant with the provision of additional staff as indicated by the needs of the children and their IEPs or IFSPs.~~

~~(4) Home-based special education and, where appropriate, related services provided to the child together with his or her parent(s) or primary care provider. Home visits shall include instruction for the parent or primary care provider, demonstration of specific tasks and provision of developmental toys and materials for the parents or primary care provider to use with the child. A home-based program may supplement placement in another program option or, for pre-kindergarten-aged students be available as the primary placement, unless the child's needs, as determined by the evaluation process, can more appropriately be met in a group setting. When implemented as the primary placement, home visits shall be scheduled at least weekly and in accordance with the IEP or IFSP.~~

~~(5) Placement at home or in a general early childhood setting with supplementary placement in an early childhood special education setting for a portion of the school day or week.~~
~~(6) Full-time placement in an early childhood special education setting which is located in a public school building or other community-based early childhood facility.~~

~~(7) Placement in a special education day school.~~

~~(8) Placement in a residential special education school.~~

~~300.115(C) Continuum of special education placements and services: homebound and hospital instructional programs.~~

~~(a) *General.* In determining the educational services for a child with a disability in homebound and hospital instruction programs, the IEP Team shall determine what constitutes an appropriate program, including the consideration of whether the child is in need of an extended school year program, as required by § 300.106.~~

~~(b) *Homebound Instructional Programs*. (1) The home atmosphere shall be conducive to learning. Special conditions recommended by the physician shall be observed.~~
~~(2) The minimum number of hours of instruction shall be five (5) hours per school week at the elementary level of education and six (6) hours at the secondary level of education unless fewer hours are recommended by the physician. Depending on the physical condition of the child, a number of instructional hours greater than the minimum number of hours required per week is permissible.~~
~~(3) A complete record of homebound teaching activities shall be maintained.~~
~~(4) Homebound instruction shall be coordinated with the work of the regular education class so that return to school (if this is possible) will require little readjustment, or so that the long-term homebound instruction may approximate the regular education curriculum to the highest degree possible.~~
~~(5) The use of a home-to-school telephone system or other appropriate technological system should be employed whenever possible. In such cases, however, a teacher should provide instruction in the student's home for at least one (1) hour each school week.~~
~~(6) Children with disabilities who receive homebound instruction shall be provided with summer tutoring, if they are unable to complete their current school year because of health reasons.~~

~~(7) Teachers of homebound instruction shall hold Rhode Island teaching certificates in the area appropriate to educate and provide related services to the student with a health impairment, a physical disability or to the student's disability condition.~~
~~(8) School districts shall not use home tutoring programs as a substitute for in-school programs nor as a means of excluding students with disabilities from in-school programs.~~

~~(c) *Hospital Instructional Programs.*~~
~~(i) Hospital special education instructional programs shall meet the same criteria as that specified for homebound instructional programs when dealing with acute medical problems. In addition, private and State hospitals wishing to establish their in-patient educational programs or out-patient instructional programs must be approved by the Rhode Island Commissioner of Elementary and Secondary Education before they may operate such programs in Rhode Island and shall follow the same procedure and criteria for approval as outlined for non-public schools and State-operated school programs.~~
~~(ii) Certification of Hospital Teaching Personnel.~~
~~(iii) All teachers employed in hospital programs shall be trained and certified to provide special education in the area of basic disability for which the hospital program is established.~~

~~300.116 Placements.~~

~~In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that —~~

~~(a) The placement decision —~~
~~(1) Is made by an IEP Team, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and~~
~~(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118.~~

~~(b) The child's placement —~~
~~(1) Is determined at least annually;~~
~~(2) Is based on the child's IEP; and~~
~~(3) Is as close as possible to the child's home;~~

~~(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;~~

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

~~(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum; and~~

~~(f) In providing services to children with disabilities in special classes the age range of the children shall not exceed four years. An exception to this requirement can be made only by the IEP team based on the documented needs of the child and with the agreement of the parents of all of the other students in the class where placement is sought.~~

~~300.117 Nonacademic settings.~~

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

~~300.118 Children in public or private institutions.~~

~~Each public agency must ensure that the LRE requirements at § 300.114 are effectively implemented, including, if necessary, making arrangements with public and private institutions.~~

~~300.119 Technical assistance and training activities.~~

~~Each public agency must carry out activities to ensure that teachers and administrators in all public agencies —~~
~~(a) Are fully informed about their responsibilities for implementing these regulations; and~~

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

~~300.120-123 Reserved~~

~~300.124 Transition of children from Part C to preschool programs.~~

~~(a) Not later than the child's third birthday, an IEP or IFSP must be in effect for each eligible child with a disability.~~

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

~~(c) At the time the child turns thirty (30) months, a transition team minimally consisting of a resident school district representative, the parent(s), an Early Intervention Program representative, and at the discretion of the parent(s) or agencies, other individuals who have knowledge or expertise regarding the child (including child care, Head Start, advocates and home provider, other family members, and related services personnel) must meet to develop a written plan which includes the activities to take place during the transition period, the timelines in which the activities will occur, and the persons responsible for carrying out these activities. Each LEA must respond within ten (10) school days to the Early Intervention (EI) transition notice and send an LEA representative to the thirty (30) month transition team meeting.~~

~~(d) These activities will occur over a six (6) month period of time and will reflect the individual needs of the child and the participation of the child's family. For a child who will become thirty-six (36) months of age between May and September, these activities will occur on an adjusted timeline that will allow for the participation of all parties, and to insure that the child will begin receiving special education and related services upon the opening of school, or when the child turns thirty six (36) months if a child is eligible for an extended school year program.~~

~~(e) As part of the transition plan, if a child is determined to be ineligible for special education services, the transition team will refer the family and child to appropriate community resources.~~

~~(f) The LEA representative must have authority to commit resources.~~

~~300.125 – 300.128 Reserved.~~

~~Children in Private Schools~~

~~Children With Disabilities Enrolled by Their Parents in Private Schools~~

~~300.129 FAPE for children with disabilities enrolled by their parents in private schools.~~

~~*(a) Definition of "private school children with disabilities."*~~
~~As used in this part, private school children with disabilities means children with disabilities, beginning at age 3, enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.36, other than children with disabilities covered under §§ 300.145 through 300.147.~~

~~*(b) Services Available Under State Law*~~
~~As required by Rhode Island General Law 16-24-1, each private school child with a disability is entitled to FAPE provided by the school committee of the city or town where the child resides. A parent of a private school child may seek FAPE by requesting from the LEA of residence an initial evaluation to determine if the child is a child with a disability. The LEA of residence shall evaluate and determine the child's eligibility for FAPE. A determination of eligibility for services under §§300.130 through 300.144 shall not be a prerequisite to a request for FAPE. Absent a request for FAPE, the LEA of residence will not be considered to be in violation of the requirement to make FAPE available to the private school child with a disability.~~

~~*(c) Provision of services – basic requirement.*~~
~~(1) General. Each LEA of residence shall make FAPE available to eligible students with disabilities who are enrolled by their parents in private schools. The LEA of residence shall determine the student's eligibility for FAPE.~~
~~(2) LEA Responsibility. Each LEA of residence shall ensure that, an IEP is developed and implemented for each eligible child with a disability enrolled by their parents in a private school and that the child is afforded all of the rights of a child with a disability served by the LEA.~~

~~(d) *Services determined*.~~
~~(1) A private school child with a disability has a right to FAPE.~~
~~(2) Decisions about the services that will be provided to private school children with disabilities must be made by the IEP team.~~

~~(e) *Services provided*.~~
~~(1) General. The services provided to private school children with disabilities by the LEA must be provided by personnel meeting the same standards as personnel providing services in the public schools.~~
~~(2) Services provided in accordance with an IEP.~~

~~(i) Each private school child with a disability who has been designated by the LEA of residence to receive special education and related services must have an IEP.~~

~~(f) *Non-public and State operated school programs.*~~
~~(1) To be eligible for approval by RIDE, special education programs conducted in private and state-operated schools in Rhode Island shall meet the regulations governing the approval of school programs. Private and state operated school programs shall be evaluated in the same manner, on the same schedule and with the same criteria and procedures as utilized for public schools in Rhode Island and shall be subject to on-site visits by the Rhode Island Commissioner of Elementary and Secondary Education or the Commissioner's authorized representative as often as is deemed necessary by RIDE. Approval of such programs shall be on a triennial basis.~~
~~(2) All special education programs in any private and state operated day or residential school shall meet the same standards as those established for public school programs.~~
~~(3) Private and state operated school programs shall provide related services by appropriately certified personnel in accordance with the needs of the students with disabilities to be served, as determined by the IEP process. Caseloads for specialized personnel shall be assigned based on the time required to meet the needs of children with disabilities, as determined by the IEP process.~~
~~(4) Monitoring of a child with a disability's progress in a private day or residential school program shall be conducted by the special education director or designee, trained in the child's area of need, who shall be from the school district where the child resides.~~
~~(5) Special Education programs for children with disabilities in state operated schools shall be monitored by RIDE.~~
~~(6) Private day or residential programs shall employ a certified administrator of special education, whose basic responsibilities shall be the overall administration and supervision of the special education program, and whose schedule shall be determined based on the time required to meet the needs of the children with disabilities.~~
~~(7) Each private day and residential school program shall have a statement of financial stability which identifies sufficient assets to establish and maintain a satisfactory program of education on a continuing basis. The owner(s) of a school, whether for initial approval or renewal of approval, shall also furnish statements of income and retained earnings and changes in financial position. These statements shall include in a clearly identifiable manner, records of receipts and expenditures, personnel salaries, and tuition. All statements shall be prepared by a Public Accountant or Certified Public Accountant, but need not be certified by the Accountant or supported by an audit. These statements shall be accompanied by a notarized statement by the owner(s) or the director of the school that the financial statements are true and correct, and shall identify the name of the Public Accountant or Certified Public Accountant who prepared the statements.~~
~~(8) Information on tuition and/or fee schedule shall be submitted to RIDE in accordance with forms and instructions supplied by RIDE as part of the school approval application.~~
~~(9) Each non-public day and residential school program shall use and have available for inspection written administrative procedures that encompass the following:~~
~~(i) Provision for emergency and early termination of children including prior consultation with the special education director in the school district of the child's residence in order to provide for an orderly transfer of responsibility back to this special education director.~~
~~(ii) Provision of procedural safeguards which cover the same areas required for public schools.~~
~~(iii) Provision for parental involvement including parental education and counseling.~~
~~(iv) Provision for staff training.~~
~~(v) Provision of measures which protect all students from exposure to humiliation or verbal abuse or any form of corporal punishment that could be construed as cruel or severe.~~

~~(vi) Provision of written reports on each child which are mailed to the child's parents and the special education director in the child's resident school district at least as often as the public school district reports progress to parents of non disabled children.~~

~~*(g) State responsibility.*~~
~~(1) In ensuring that each LEA meets their responsibilities under §§ 300.145 through 300.147 of these regulations, RIDE shall—~~
~~(i) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;~~
~~(ii) Disseminate copies of applicable standards to each private school and facility to which an LEA has referred or placed a child with a disability; and~~
~~(iii) Provide an opportunity for those private schools and facilities to participate in development and revision of State standards that apply to them.~~

~~300.130 Definition of parentally-placed private school children with disabilities.~~
~~*Parentally-placed private school children with disabilities* means children with disabilities beginning at age 3, enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.36, other than children with disabilities covered under §§ 300.145 through 300.147.~~

~~300.131 Child find for parentally-placed private school children with disabilities.~~
~~(a) *General.* Each LEA must conduct child find to locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.~~

~~(b) *Child find design.* The child find process must be designed to ensure—~~
~~(1) The equitable participation of parentally-placed private school children;~~
~~(2) Notice to parents of the right to FAPE under §300.129; and~~
~~(3) An accurate count of those children.~~

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

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

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

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

~~300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.~~

~~(a) *General.* To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with § 300.137.~~

~~(b) *Services plan for parentally-placed private school children with disabilities.* In accordance with paragraph (a) of this section and §§ 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.~~

~~(c) *Record keeping.* Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§ 300.130 through 300.144:~~
~~(1) The number of children evaluated;~~
~~(2) The number of children determined to be children with disabilities; and~~
~~(3) The number of children served.~~

~~300.133 Expenditures.~~

~~(a) *Formula.* To meet the requirement of § 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:~~
~~(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under § 611(f) of the Act as the number of private school children with disabilities aged three (3) through twenty one (21) who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three (3) through twenty one (21).~~
~~(2)(i) For children aged three (3) through five (5), an amount that is the same proportion of the LEA's total subgrant under § 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three (3) through five (5) who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.~~
~~(ii) As described in paragraph (a)(2)(i) of this section, children aged three (3) through five (5) are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in § 300.13.~~
~~(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.~~

~~(b) *Calculating proportionate amount.* In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B of federal regulations for an example of how proportionate share is calculated)~~

~~(c) *Annual count of the number of parentally-placed private school children with disabilities.* (1) Each LEA must—~~
~~(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with § 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and~~
~~(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.~~
~~(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.~~

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

~~**300.134 Consultation.**~~

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

~~(a) Child find. The child find process, including—~~
~~(1) How parentally-placed private school children suspected of having a disability can participate equitably; and~~
~~(2) How parents, teachers, and private school officials will be informed of the process.~~

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

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

~~(d) *Provision of special education and related services.* How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—~~
~~(1) The types of services, including direct services and alternate service delivery mechanisms; and~~

~~(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and~~
~~(3) How and when those decisions will be made.~~

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

~~300.135 Written affirmation.~~

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

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

~~300.136 Compliance.~~

~~(a) *General.* A private school official has the right to submit a complaint to the SEA that the LEA—~~
~~(1) Did not engage in consultation that was meaningful and timely; or~~
~~(2) Did not give due consideration to the views of the private school official.~~

~~(b) *Procedure.* (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and~~
~~(2) The LEA must forward the appropriate documentation to the SEA.~~
~~(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and~~
~~(ii) The SEA shall forward the appropriate documentation to the Secretary.~~

~~300.137 Equitable services determined.~~

~~(a) *No individual right to special education and related services.* No parentally-placed private school child with a disability has an individual right under §§ 300.130 through 300.144, to receive some or all of the special education and related services that the child would receive if enrolled in a public school.~~

~~(b) *Decisions.* (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§ 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and § 300.134(c).~~
~~(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.~~

~~(c) *Services plan for each child served under §§ 300.130 through 300.144.* If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—~~

~~(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 300.138(b); and~~

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

~~300.138 Equitable services provided.~~

~~(a) *General.* (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of § 300.18.~~
~~(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.~~

~~(b) *Services provided in accordance with a services plan.* (1) Each parentally-placed private school child with a disability who has been designated to receive services under § 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§ 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.~~
~~(2) The services plan must, to the extent appropriate—~~
~~(i) Meet the requirements of § 300.320, or for a child ages three (3) through five (5), meet the requirements of § 300.323(b) with respect to the services provided; and~~
~~(ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.~~

~~(c) *Provision of equitable services.* (1) The provision of services pursuant to this section and §§ **300.139** through 300.143 must be provided:~~
~~(i) By employees of a public agency; or~~
~~(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.~~
~~(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular and neutral.~~

~~300.139 Location of services and transportation.~~

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

~~(b) *Transportation*—(1) *General.* (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—~~
~~(A) From the child's school or the child's home to a site other than the private school; and~~
~~(B) From the service site to the private school, or to the child's home, depending on the timing of the services.~~
~~(ii) LEAs are not required to provide transportation from the child's home to the private school.~~
~~(2) *Cost of transportation.* The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of § 300.133.~~

~~300.140 Due process complaints and State complaints.~~

~~(a) *Due process not applicable, except for child find.* (1) Except as provided in paragraph (b) of this section, the procedures in §§ 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.132 through 300.139, including the provision of services indicated on the child's services plan.~~

~~(b) *Child find complaints—to be filed with the LEA in which the private school is located.* (1) The procedures in §§ 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in § 300.131, including the requirements in §§ 300.300 through 300.311.~~
~~(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.~~

~~(c) *State complaints.* (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§ 300.132 through 300.135 and §§ 300.137 through 300.144 must be filed in accordance with the procedures described in §§ 300.151 through 300.153.~~
~~(2) A complaint filed by a private school official under § 300.136(a) must be filed with the SEA in accordance with the procedures in § 300.136(b).~~

~~300.141 Requirement that funds not benefit a private school.~~

~~(a) An LEA may not use funds provided under §§ 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.~~
~~(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—~~
~~(1) The needs of a private school; or~~
~~(2) The general needs of the students enrolled in the private school.~~

~~300.142 Use of personnel.~~

~~(a) *Use of public school personnel.* An LEA may use funds available under §§ 611 and 619 of the Act to make public school personnel available in other than public facilities—~~
~~(1) To the extent necessary to provide services under §§ 300.130 through 300.144 for parentally-placed private school children with disabilities; and~~
~~(2) If those services are not normally provided by the private school.~~

~~(b) *Use of private school personnel.* An LEA may use funds available under §§ 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§ 300.130 through 300.144 if—~~
~~(1) The employee performs the services outside of his or her regular hours of duty; and~~
~~(2) The employee performs the services under public supervision and control.~~

~~300.143 Separate classes prohibited.~~

~~An LEA may not use funds available under §§ 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—~~
~~(a) The classes are at the same site; and~~
~~(b) The classes include children enrolled in public schools and children enrolled in private schools.~~

~~300.144 Property, equipment, and supplies.~~

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

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

~~(c) The public agency must ensure that the equipment and supplies placed in a private school—~~
~~(1) Are used only for Part B purposes; and~~
~~(2) Can be removed from the private school without remodeling the private school facility.~~

~~(d) The public agency must remove equipment and supplies from a private school if—~~
~~(1) The equipment and supplies are no longer needed for Part B purposes; or~~
~~(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.~~

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

~~Children With Disabilities in Private Schools Placed or Referred by Public Agencies~~

~~300.145 Applicability of §§ 300.146 and 300.147.~~

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

~~300.146 Responsibility of LEA.~~

~~Each LEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—~~
~~(a) Is provided special education and related services—~~
~~(1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and~~
~~(2) At no cost to the parents;~~

~~(b) Is provided an education that meets the standards that apply to education provided by the SEA and the LEA including the requirements of this part, except for the personnel requirements at § 300.18 and § 300.156(c); and~~

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

~~300.147 Implementation by SEA.~~

~~In implementing § 300.146, the SEA shall —~~
~~(a) Monitor compliance through procedures such as written reports, onsite visits, and parent questionnaires;~~

~~(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and~~

~~(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.~~

~~Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue~~

~~300.148 Placement of children by parents when FAPE is at issue.~~

~~(a) *General.* This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.~~

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

~~(c) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.~~

~~(d) *Limitation on reimbursement.* The cost of reimbursement described in paragraph (c) of this section may be reduced or denied —~~
~~(1) If —~~
~~(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or~~
~~(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;~~

~~(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or~~
~~(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.~~

~~(e) *Exception.* Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement —~~
~~(1) Must not be reduced or denied for failure to provide the notice if —~~
~~(i) The school prevented the parents from providing the notice;~~
~~(ii) The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or~~
~~(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and~~
~~(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if —~~
~~(i) The parents are not literate or cannot write in English; or~~
~~(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.~~

~~300.149 – 300.150 Reserved.~~

~~State Complaint Procedures~~

~~300.151 Adoption of State complaint procedures.~~

~~(a) *General.* The SEA has established written procedures for —~~
~~(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by —~~
~~(i) Providing for the filing of a complaint with the SEA; and~~
~~(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153.~~

~~(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, the State, pursuant to its general supervisory authority under Part B of the Act, must address —~~
~~(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and~~
~~(2) Appropriate future provision of services for all children with disabilities.~~

~~300.152 State complaint procedures.~~

~~(a) *Time limit; procedures.* The SEA has established a time limit of 60 days after a complaint is filed under § 300.153 to —~~
~~(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;~~
~~(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;~~
~~(3) Provide the public agency with the opportunity to review the complaint, including, at a~~

~~minimum —~~

~~(i) At the discretion of the public agency, a proposal to resolve the complaint; and~~
~~(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506;~~
~~(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and~~
~~(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains —~~
~~(i) Findings of fact and conclusions; and~~
~~(ii) The reasons for the SEA's final decision.~~

~~(b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must —~~
~~(1) Permit an extension of the time limit under paragraph (a) of this section only if —~~
~~(i) Exceptional circumstances exist with respect to a particular complaint; or~~
~~(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and~~
~~(2) Include procedures for effective implementation of the SEA's final decision, if needed, including —~~
~~(i) Technical assistance activities;~~
~~(ii) Negotiations; and~~
~~(iii) Corrective actions to achieve compliance.~~

~~(c) Complaints filed under this section, and due process hearings under §§ 300.507 through 300.515 and §§ 300.530 through 300.532.~~
~~(1) If a written complaint is received that is also the subject of a due process hearing under §§ 300.507 through 300.515 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.~~
~~(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties —~~
~~(i) The due process hearing decision is binding on that issue; and~~
~~(ii) The SEA shall inform the complainant to that effect.~~
~~(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.~~

~~300.153 Filing a complaint.~~

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

~~(b) The complaint must include —~~
~~(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;~~
~~(2) The facts on which the statement is based;~~
~~(3) The signature and contact information for the complainant; and~~
~~(4) If alleging violations with respect to a specific child —~~

~~(i) The name and address of the residence of the child;~~
~~(ii) The name of the school the child is attending;~~
~~(iii) In the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;~~
~~(iv) A description of the nature of the problem of the child, including facts relating to the problem; and~~
~~(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.~~

~~(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with these regulations unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under these regulations and in accordance with § 300.151.~~

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

~~**Methods of Ensuring Services**~~

~~**300.154 Methods of ensuring services.**~~

~~(a) *Establishing responsibility for services*.~~ ~~The Chief Executive Officer of the State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(l) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:~~
~~(1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).~~
~~(2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.~~
~~(3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.~~
~~(4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.~~

~~(b) *Obligation of noneducational public agencies.* (1) *General.* (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology~~

~~services, § 300.34 relating to related services, § 300.42 relating to supplementary aids and services, and 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.~~
~~(ii) A noneducational public agency described in paragraph (b)(l)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.~~
~~(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(l) of this section, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section, and the agreement described in paragraph (a) of this section.~~

~~(c) *Special rule*. The requirements of paragraph (a) of this section may be met through—~~
~~(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 Chief Executive Officer of the State or designee of that officer and approved by the Secretary.~~

~~(d) *Children with disabilities who are covered by public benefits or insurance*.~~
~~(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.~~
~~(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—~~
~~(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;~~
~~(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay; and~~
~~(iii) May not use a child's benefits under a public benefits or insurance program if that use would—~~
~~(A) Decrease available lifetime coverage or any other insured benefit;~~
~~(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;~~
~~(C) Increase premiums or lead to the discontinuation of benefits or insurance; or~~
~~(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and~~
~~(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that—~~
~~(A) Meets the requirements of 34 CFR 99.30 and §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and~~

~~(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.~~
~~(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with §300.503(c), to the child's parents, that includes—~~
~~(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;~~
~~(B) A statement of the "no cost" provisions in paragraphs (d)(2)(i) through (iii) of this section;~~
~~(C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and~~
~~(D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.~~

~~*(e) Children with disabilities who are covered by private insurance.*~~
~~(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with regulation § 300.9.~~
~~(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must—~~
~~(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and~~
~~(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.~~

~~(f) *Use of Part B funds.* (1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B or state funds to pay for the service.~~
~~(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).~~

~~*(g) Proceeds from public benefits or insurance or private insurance.*~~
~~(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.~~
~~(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 34 CFR 300.163 and 300.203.~~

~~(h) *Construction.* Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. §§ 1396 through 1396v and 42 U.S.C. §§ 1397aa through 1397jj, or any other public benefits or insurance program.~~

~~4.3.56~~

~~**Additional Eligibility Requirements**~~

~~**300.155 Reserved.**~~

~~4.3.57~~

~~**300.156 Personnel qualifications.**~~

~~(a) *General.* The LEA must ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. *Certification-Licensure*. All professional personnel, whether employed on a full-time or part-time basis, or under a contractual agreement, for whom certificates or licenses are required by State law and/or regulations, shall hold appropriate certificates or licenses. Where no such mandates exist, such personnel shall show evidence satisfactory to RIDE that they have appropriate professional training and/or experience to perform satisfactorily and successfully in their respective areas.~~

~~(b) *Related services personnel and paraprofessionals.* The qualifications under paragraph (a) of this section must apply to related services personnel and paraprofessionals that—~~
~~(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and~~
~~(2) Ensure that related services personnel who deliver services in their discipline or profession—~~
~~(i) Meet the requirements of paragraph (b)(1) of this section; and~~
~~(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and~~
~~(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.~~

~~(c) *Qualifications for special education teachers.* The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in § 1119(a)(2) of the ESEA.~~

~~(d) *Policy*. In implementing this section, LEAs must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.~~

~~(e) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.~~

~~4.3.58~~

~~**300.157 Personnel Requirements.**~~

~~(a) *Staffing*. It is the responsibility of the public agency to assess the needs of students with~~

~~disabilities, assign personnel in accordance with those needs, and evaluate the delivery of services to determine whether the agency's program conforms to the requirements of these regulations and the Individuals with Disabilities Act (IDEA).~~

~~(b) *Special Education Administrators*. Every public agency shall employ a sufficient number of special education administrators necessary to carry out the requirements of these regulations and the IDEA. Any public agency may enter into an agreement with one or more other public agencies to employ the required number of special education administrators in operation of a regional special education program~~

~~(c) *Other Personnel*. Every public agency shall employ a sufficient number of professionals, paraprofessionals, and assistants to meet all of the evaluation and placement timelines, as well as each student's individual service needs identified through the evaluation, and resulting in the individualized education program (IEP). Caseloads shall be assigned by the public agency in a prudent and equitable manner, based on the time required to properly serve the needs of the students with disabilities involved, as determined by the evaluation process and resulting in the IEP.~~

~~(d) *Reporting*. Every public agency shall provide RIDE with the agency's policy to determine the number and types of personnel required under this section, and a description of the public process the agency used to develop its policy. Every public agency shall report annually to RIDE the agency's plan, pursuant to said policy, to comply with this regulation, including the number of full-time equivalent positions of special education administrators, special education teachers, school psychologist, speech/language pathologists, school social workers, and physical and occupational therapists, respectively, it uses to meet the needs of students with disabilities.~~

~~(e) The Commissioner of Education may establish a class size maximum and/or staffing ratios for any group(s) of personnel, class, school, or district, if the commissioner determines that:~~
~~(1) The plan submitted by the district under paragraph (d) is insufficient to fulfill the requirements of this section,~~
~~(2) The district has failed to comply with the terms of the plan submitted by the district under paragraph (d), or~~
~~(3) Student performance within or throughout the district warrants intervention as dictated through R.I.G.L. 16-7.1-5~~

~~(f) Any decision made under this section by the Commissioner may be appealed under R.I.G.L. 16-39-3.~~

~~300.158 – 300.166 Reserved.~~

~~State Advisory Panel~~

~~300.167 State advisory panel.~~

~~RIDE must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.~~

~~300.168 Membership.~~

~~(a) *General*. The advisory panel must consist of members appointed by the Commissioner of Elementary and Secondary Education, be representative of the State population, and be composed of~~

~~individuals involved in, or concerned with the education of children with disabilities, including—~~
~~(1) Parents of children with disabilities (ages birth through twenty six (26));~~
~~(2) Individuals with disabilities;~~
~~(3) Teachers;~~
~~(4) Representatives of institutions of higher education that prepare special education and related services personnel;~~
~~(5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 *et seq.*);~~
~~(6) Administrators of programs for children with disabilities;~~
~~(7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;~~
~~(8) Representatives of private schools and public charter schools;~~
~~(9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and~~
~~(10) A representative from the State child welfare agency responsible for foster care; and~~
~~(11) Representatives from the State juvenile and adult corrections agencies.~~

~~(b) *Special rule*. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities.~~

~~300.169 Duties.~~

~~The advisory panel shall—~~
~~(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;~~

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

~~(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under § 618 of the Act;~~

~~(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the ACT; and (e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.~~

~~**Other Provisions Required for State Eligibility**~~

~~**300.170 – 300.172 Reserved**~~

~~**300.173 Overidentification and disproportionality.**~~

~~The State must have in effect, consistent with the purposes of this part and with § 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in § 300.8. The LEAs identified as having disproportionality must comply with the provisions of § 300.646 of these regulations.~~

~~**300.174 Prohibition on mandatory medication.**~~

~~(a) *General.* State and LEA personnel are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§ 300.300 through 300.311, or receiving services under this part.~~

~~(b) *Rule of construction.* Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under § 300.111 (related to child find).~~

~~**300.175 – 300.199 Reserved.**~~

~~Subpart C – Local Educational Agency Eligibility~~

~~**300.200 Condition of assistance**.~~

~~(a) An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in 34 C.F.R. §§ **300.201** through 300.213~~

~~(b) An LEA is eligible for assistance under Chapter 16 of the Rhode Island General Laws for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions as set forth in these regulations.~~

~~**300.201 Consistency with State policies.**~~

~~The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect and on file with RIDE, policies, procedures, and programs that are consistent with State policies and procedures.~~

~~300.202 Use of amounts~~.

~~(a) *General.* Amounts provided to the LEA under Part B of the Act—~~
~~(1) Must be expended in accordance with the applicable provisions of this part;~~
~~(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and~~
~~(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.~~

~~(b) *Excess cost requirement*—(1) *General.* (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.~~
~~(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.~~
~~(2)(i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.~~
~~(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of *excess costs* in § 300.16. That amount may not include capital outlay or debt service.~~
~~(3) If two or more LEAs jointly establish eligibility in accordance with § 300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in § 300.16 in those agencies for elementary or secondary school students, as the case may be.~~

~~300.203 Maintenance of effort.~~

~~(a) *General.* Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.~~

~~(b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA shall determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:~~
~~(i) Local funds only.~~
~~(ii) The combination of State and local funds.~~
~~(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.~~
~~(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.~~

~~300.204 – 300.205 Reserved~~

~~300.206 Schoolwide programs under Title I of the ESEA.~~

~~(a) *General.* Notwithstanding the provisions of §§ 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under § 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed —~~
~~(1)(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by~~
~~(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by~~
~~(2) The number of children with disabilities participating in the schoolwide program.~~

~~(b) *Funding conditions.* The funds described in paragraph (a) of this section are subject to the following conditions:~~
~~(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §§ 300.202(a)(2) and (a)(3).~~
~~(2) The funds may be used without regard to the requirements of § 300.202(a)(1).~~

~~(c) *Meeting other Part B requirements.* Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools —~~
~~(1) Receive services in accordance with a properly developed IEP; and~~
~~(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.~~

~~300.207 Personnel development.~~

~~The LEA must ensure that all personnel necessary to carry out Part B of the Act and these regulations are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and § 2122 of the ESEA.~~

~~300.208 Permissive use of funds.~~

~~(a) *Uses.* Notwithstanding §§ 300.202 and 300.203(a), funds provided to an LEA under Part B of the Act may be used for the following activities:~~
~~(1) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.~~
~~(2) *Early intervening services.* To develop and implement coordinated, early intervening educational services in accordance with § 300.226.~~
~~(3) *High cost special education and related services.* To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.~~

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

~~300.209 Treatment of charter schools and their students.~~

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

~~(b) *Charter schools that are public schools of the LEA.* (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must—~~
~~(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and~~
~~(ii) Provide funds under Part B of the Act to those charter schools—~~
~~(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and~~
~~(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.~~
~~(2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools—~~
~~(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and~~
~~(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.~~

~~(c) *Public charter schools that are LEAs.* If the public charter school is an LEA, consistent with § 300.28, that receives funding under 34 CFR 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.~~

~~(d) *Public charter schools that are not an LEA or a school that is part of an LEA.* (1) If the public charter school is not an LEA receiving funding under 34 CFR 300.705, or a school that is part of an LEA receiving funding under 34 CFR 300.705, the SEA is responsible for ensuring that the requirements of this part are met.~~
~~(2) Paragraph (d)(1) of this section does not preclude the State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA shall maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR 300.149.~~

~~300.210 Access to and purchase of instructional materials.~~

~~(a) *General.* Each public agency must—~~
~~(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner; and~~
~~(2) Each public agency must ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, and must take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.~~

~~(b) *Rights of LEA.* (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.~~

~~(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.~~
~~(3) Nothing in this section relieves a public agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities within (e) of this section or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.~~

~~(c) *Preparation and delivery of files.* Each public agency that chooses to coordinate with the NIMAC, as of December 3, 2006, must—~~
~~(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to—~~
~~(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or~~
~~(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.~~
~~(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.~~

~~(d) *Assistive technology.* In carrying out this section, the Public Agency, to the maximum extent possible, must work collaboratively with the SEA assistive technology program(s).~~

~~(e) *Definitions.* (1) In this section—~~
~~(i) *Blind persons or other persons with print disabilities* means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled ''An Act to provide books for adult blind,'' approved March 3, 1931, 2 U.S.C 135a;~~
~~(ii) *National Instructional Materials Access Center* or *NIMAC* means the center established pursuant to § 674(e) of the Act;~~
~~(iii) *National Instructional Materials Accessibility Standard* or *NIMAS* has the meaning given the term in § 674(e)(3)(B) of the Act;~~
~~(iv) *Specialized formats* has the meaning given the term in § 674(e)(3)(D) of the Act.~~
~~(2) The definitions in paragraph (e)(1) of this section apply to each public agency, whether or not the public agency chooses to coordinate with the NIMAC.~~

~~300.211 Information for SEA.~~

~~The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.~~

~~300.212 Public information.~~

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

~~300.213 Records regarding migratory children with disabilities.~~

~~The LEA must cooperate in the Secretary's efforts under § 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.~~

~~300.214 – 300.219 Reserved.~~

~~300.220 Exception for prior local plans.~~

~~(a) *General.* If an LEA or a State agency described in 34 CFR 300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.200, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA shall consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act.~~

~~(b) *Modification made by an LEA or State agency.* Subject to paragraph (c) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until the LEA or State agency submits to the SEA the modifications that the LEA or State agency determines are necessary.~~

~~(c) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with Part B of the Act or these regulations including —~~
~~(1) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, amendments to the applicable provisions of the Act (or the regulations developed to carry out the Act) or these regulations;~~
~~(2) New interpretations of an applicable provision of the Act by Federal or State courts; or~~
~~(3) Official findings of noncompliance with Federal or State law or regulations.~~

~~300.221 Notification of LEA or State agency in case of ineligibility.~~

~~If the SEA determines that an LEA or State agency is not eligible under Part B of the Act or these regulations, then the SEA shall —~~
~~(a) Notify the LEA or State agency of that determination; and~~
~~(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.~~

~~300.222 LEA and State agency compliance.~~

~~(a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart or subpart C of 34 C.F.R. Part 300 is failing to comply with any requirement described in §§ 300.201 through 300.213, the SEA shall reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.~~

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

~~(c) *Consideration.* In carrying out its responsibilities under this section, the SEA shall consider any decision resulting from a hearing held under §§ 300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.~~

~~300.223 Joint establishment of eligibility.~~

~~(a) *General.* The SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.~~

~~(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.~~

~~(c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under § 300.705 of 34 C.F.R. Part 300 if the agencies were eligible for those payments.~~

~~300.224 Requirements for establishing eligibility.~~

~~(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—~~
~~(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.101 through 300.174; and~~
~~(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.~~

~~(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—~~
~~(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and~~
~~(2) Must be carried out only by that educational service agency.~~

~~(c) *Additional requirement.* Notwithstanding any other provision of §§ 300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by § 300.114.~~

~~300.225 Reserved.~~

~~300.226 Early intervening services.~~

~~(a) *General.* An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in~~

~~a general education environment. (See Appendix D of 34 C.F.R. Part 300 for examples of how § 300.205(d), regarding local maintenance of effort, and § 300.226(a) affect one another.)~~

~~(b) *Activities.* In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—~~
~~(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and~~
~~(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.~~

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

~~(d) *Reporting.* Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on—~~
~~(1) The number of children served under this section who received early intervening services; and~~
~~(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.~~

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

~~300.227 Direct services by the SEA.~~

~~(a) *General.* (1) The SEA shall use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency—~~
~~(i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act;~~
~~(ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;~~
~~(iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or~~
~~(iv) Has one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children.~~
~~(2) *SEA administrative procedures.* (i) In meeting the requirements in paragraph (a)(1) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.~~
~~(ii) The excess cost requirements of § 300.202(b) do not apply to the SEA.~~

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

~~300.228 Reserved.~~

~~300.229 Disciplinary information.~~

~~(a) A public agency must include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.~~

~~(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.~~

~~(c) If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.~~

~~300.230 Reserved.~~

~~Subpart D — Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements~~

~~Parental Consent~~

~~300.300 Parental consent.~~

~~(a) *Parental consent for initial evaluation.* (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with § 300.9, from the parent of the child before conducting the evaluation.~~
~~(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.~~
~~(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.~~
~~(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if —~~
~~(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;~~
~~(ii) The rights of the parents of the child have been terminated in accordance with State law; or~~
~~(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.~~
~~(3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507~~

~~through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.~~
~~(ii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation.~~

~~(b) *Parental consent for services.* (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.~~
~~(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.~~
~~(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—~~
~~(i) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;~~
~~(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and~~
~~(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child.~~
~~(4) If, at any time subsequent to the initial provision of special education and related services, the parent of the child revokes consent in writing for the continued provision of special education and related services, the public agency—~~
~~(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with§300.503 before ceasing the provision of special education and related services;~~
~~(ii) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;~~
~~(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and~~
~~(iv) Is not required to convene an IEP Team meeting or develop an IEP under§§300.320 and 300.324 for the child for further provision of special education and related services.~~

~~*(c) Parental consent for reevaluations.*~~
~~(1) Subject to paragraph (c)(2) of this section, each public agency—~~
~~(i) Must obtain informed parental consent, in accordance with § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.~~
~~(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.~~
~~(iii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.~~
~~(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—~~
~~(i) It made reasonable efforts to obtain such consent; and~~
~~(ii) The child's parent has failed to respond.~~

~~(d) *Other consent requirements.*~~
~~(1) Parental consent is not required before—~~
~~(i) Reviewing existing data as part of an evaluation or a reevaluation; or~~
~~(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.~~
~~(2) In addition to the parental consent requirements described in paragraph (a) of this section, the State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.~~
~~(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.~~
~~(4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and~~
~~(ii) The public agency is not required to consider the child as eligible for services under §§ 300.132 through 300.144.~~
~~(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in § 300.322(d).~~

~~Evaluations and Reevaluations~~

~~300.301 Initial evaluations.~~

~~(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.~~

~~(b) *Request for initial evaluation.* Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.~~

~~*(c) Procedures and timeframe for initial evaluation.*~~
~~(1) Each public agency must ensure that:~~
~~(i) Within ten (10) school days of the receipt of a referral for special education services a team of qualified professionals and the parent that includes the individuals described in § 300.321 and other qualified professionals, as appropriate, known as the *Evaluation Team*, meet to determine if a special education evaluation is needed.~~
~~(ii) The initial evaluation shall commence no later than ten (10) school days after the receipt of parental consent to conduct such an evaluation. If the parent does not notify the public agency within five (5) school days of their consent to evaluate, the team must document its efforts to obtain consent. If the public agency has not obtained parental consent to evaluate within fifteen (15) school days of the request to evaluate, the Evaluation Team must reconvene to consider what action the public agency will take including, (as appropriate) the requirements described in § 300.300(a)~~
~~(iii) A full individual initial evaluation is conducted before the initial provision of special education and related services~~
~~(2) Within sixty (60) calendar days of receipt of parental consent to an initial evaluation:~~

~~(i) The child is evaluated; and~~
~~(ii) A written report of the Evaluation Team is made available to the public agency and the parent(s); and a team of qualified professionals and the parent(s) of the child meet as an eligibility team to determine whether the child is a child with a disability and in need of special education and related services.~~
~~(3) If determined eligible under this part, an IEP meeting is conducted and an IEP is developed and special education and related services are made available to the child in accordance with an IEP within fifteen (15) school days of the eligibility determination.~~
~~(4) If it is determined that an initial evaluation is not needed, the evaluation team shall consider referring the student's case back to general education for appropriate action.~~

~~(d) *Exception.* The procedures and timeframe described in paragraph (c) of this section do not apply to a public agency if—~~
~~(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or~~
~~(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.~~
~~(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.~~

~~300.302 Screening for instructional purposes is not evaluation.~~

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

~~300.303 Reevaluations.~~

~~(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—~~
~~(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or~~
~~(2) If the child's parent or teacher requests a reevaluation.~~

~~(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—~~
~~(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and~~
~~(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.~~

~~*(c) Procedures and timeframe for reevaluation.*~~
~~(1) Each public agency must ensure that:~~
~~(i) The reevaluation shall commence no later than ten (10) school days after the receipt of parental consent to conduct such an evaluation. If the parent does not notify the public agency within five (5) school days of their consent to evaluate, the IEP Team must document its efforts to obtain consent. If the public agency has not obtained parental consent to evaluate within fifteen (15) school days of the request to evaluate, the IEP Team must reconvene to consider what action the public agency will take including, (as appropriate) the requirements described in §§ 300.300(c) and (d).~~

~~(2) Within sixty (60) calendar days of receipt of parental consent to conduct a reevaluation:~~
~~(i) The child is reevaluated; and~~
~~(ii) A written report of the IEP Team is made available to the public agency and the parent(s); and the IEP Team meets to determine continued eligibility for special education and related services.~~
~~(3) If determined eligible under this part, the public agency must ensure that continued special education and related services are made available to the child.~~

~~300.304 Evaluation procedures.~~

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

~~(b) *Conduct of evaluation*. In conducting the evaluation, the public agency must—~~
~~(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—~~
~~(i) Whether the child is a child with a disability under § 300.8; and~~
~~(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);~~
~~(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and~~
~~(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.~~

~~(c) *Other evaluation procedures*. Each public agency must ensure that—~~
~~(1) Assessments and other evaluation materials used to assess a child under this part—~~
~~(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;~~
~~(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;~~
~~(iii) Are used for the purposes for which the assessments or measures are valid and reliable;~~
~~(iv) Are administered by trained and knowledgeable personnel; and~~
~~(v) Are administered in accordance with any instructions provided by the producer of the assessments.~~
~~(vi) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child who is learning English as a second language, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's linguistic difference, in accordance with § 300.173.~~
~~(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.~~
~~(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).~~

~~(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;~~
~~(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §§ 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.~~
~~(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.~~
~~(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.~~

~~**300.305 Additional requirements for evaluations and reevaluations.**~~

~~(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals must—~~
~~(1)Review existing evaluation data on the child, including—~~
~~(i) Evaluations and information provided by the parents of the child;~~
~~(ii) Current classroom-based, local, or state assessments and classroom-based observations; and~~
~~(iii) Observations by teachers and related services providers; and~~
~~(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—~~
~~(i)(A) Whether the child is a child with a disability, as defined by § 300.8, and the educational needs of the child; or~~
~~(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;~~
~~(ii) The present levels of academic achievement and related developmental needs of the child;~~
~~(iii) (A) Whether the child needs special education and related services; or~~
~~(B) in the case of a reevaluation of a child, whether the child continues to need special education and related services; and~~
~~(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.~~

~~(b) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.~~

~~**(c)** *Requirements if additional data are not needed.*~~
~~(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—~~
~~(i) That determination and the reasons for the determination; and~~
~~(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.~~
~~(2) The public agency is not required to conduct the assessment described in paragraph (c)(1)(ii) of this section unless requested to do so by the child's parents.~~

~~(d) *Evaluations before change in eligibility*. (1) Except as provided in paragraph (d)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.~~
~~(2) The evaluation described in paragraph (d)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.~~
~~(3) For a child whose eligibility terminates under circumstances described in paragraph (d)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post secondary goals.~~

~~300.306 Determination of eligibility.~~
~~(a) *General*. Upon completion of the administration of assessments and other evaluation measures—~~
~~(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and~~
~~(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.~~

~~(b) *Special rule for eligibility determination*. A child must not be determined to be a child with a disability under this part—~~
~~(1) If the determinant factor for that determination is—~~
~~(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in § 1208(3) of the ESEA);~~
~~(ii) Lack of appropriate instruction in math; or~~
~~(iii) Limited English proficiency; and~~
~~(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).~~

~~(c) *Procedures for determining eligibility and educational need*. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—~~
~~(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and~~
~~(ii) Ensure that information obtained from all of these sources is documented and carefully considered.~~
~~(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.~~

~~Additional Procedures for Identifying Children with Specific Learning Disabilities~~

~~300.307 Specific learning disabilities.~~

~~(a) *General*. The State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State—~~
~~(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10);~~

~~(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and~~
~~(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10).~~

~~(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.~~

~~300.308 Additional group members.~~
~~The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.8, must be made by the child's parents and a team of qualified professionals, which must include—~~

~~(a)(1) The child's regular teacher; or~~
~~(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or~~
~~(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and~~

~~(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.~~

~~300.309 Determining the existence of a specific learning disability.~~

~~(a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—~~
~~(1) The child does not achieve adequately for the child's age or meet State-approved grade-level/span expectations in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level expectations:~~
~~(i) Oral expression.~~
~~(ii) Listening comprehension.~~
~~(iii) Written expression.~~
~~(iv) Basic reading skill.~~
~~(v) Reading fluency skills.~~
~~(vi) Reading comprehension.~~
~~(vii) Mathematics calculation.~~
~~(viii) Mathematics problem solving.~~
~~(2) The child does not make sufficient progress to meet age or State-approved grade-level expectations in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention;~~
~~(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—~~
~~(i) A visual, hearing, or motor disability;~~
~~(ii) Mental retardation;~~
~~(iii) Emotional disturbance;~~
~~(iv) Cultural factors;~~
~~(v) Environmental or economic disadvantage; or~~
~~(vi) Limited English proficiency.~~

~~(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306—~~
~~(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate and specific instruction and interventions in regular education settings, delivered by qualified personnel; and~~
~~(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.~~

~~(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.306(a)(1)—~~
~~(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and~~
~~(2) Whenever a child is referred for an evaluation and is suspected of having a disability.~~

~~300.310 Observation.~~

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

~~(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must~~
~~(1) Use information from an observation during routine classroom instruction and monitoring of the child's progress that was done before the child was referred for an evaluation; (2) Have at least one member of the group described in § 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.~~

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

~~300.311 Specific documentation for the eligibility determination.~~

~~(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—~~
~~(1) Whether the child has a specific learning disability;~~
~~(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);~~
~~(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;~~
~~(4) The educationally relevant medical findings, if any;~~
~~(5) Whether—~~
~~(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level expectations consistent with § 300.309(a)(1); and~~

~~(ii) The child does not make sufficient progress to meet age or State-approved grade-level/span expectations consistent with § 300.309(a)(2)(i);~~
~~(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and~~
~~(7) If the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, recommendations for tailoring instruction and interventions to support the child's progress;~~
~~(8) Regarding the process that assessed the child's response to scientific, research-based intervention—~~
~~(i) The instructional strategies and student-centered data collection, with evidence of fidelity of implementation; and~~
~~(ii) The documentation that the child's parents were notified about—~~
~~(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;~~
~~(B) Strategies for increasing the child's rate of learning; and~~
~~(C) The parents' right to request an evaluation.~~

~~(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.~~

~~Individualized Education Programs~~

~~300.320 Definition of individualized education program.~~

~~(a) *General.* As used in this part, the term *individualized education program* or *IEP* means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and must include—~~

~~(1) A statement of the child's present levels of academic achievement and functional performance, including—~~
~~(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or~~
~~(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;~~

~~(2)(i) A statement of measurable annual goals, including academic and functional goals and short-term objectives, aligned, where applicable, to the child's personal literacy and/or individual learning plan, designed to—~~
~~(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and~~
~~(B) Meet each of the child's other educational needs that result from the child's disability;~~
~~(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives (in accordance with paragraph (2)(i) of this section);~~

~~(3) A description of—~~
~~(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and~~

~~(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;~~

~~(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —~~
~~(i) To advance appropriately toward attaining the annual goals;~~
~~(ii) To be involved and make progress in the general education curriculum in accordance with paragraph (a)(l) of this section and to participate in extracurricular and other nonacademic activities; and~~
~~(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;~~

~~(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;~~

~~(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State or district-wide assessments consistent with § 612(a)(16) of the Act; and~~
~~(ii) If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why —~~
~~(A) The child cannot participate in the regular assessment; and~~
~~(B) The particular alternate assessment selected is appropriate for the child; and~~

~~(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.~~

~~(b) *Transition services*. For a child with a disability, beginning at age fourteen (14), or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include —~~
~~(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and~~
~~(2) The transition services (including courses of study) needed to assist the child in reaching those goals.~~

~~(c) *Transfer of rights at age of majority*. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.~~

~~(d) *Construction*. Nothing in this section shall be construed to require —~~
~~(1) That additional information be included in a child's IEP beyond what is explicitly required in § 614 of the Act or these regulations; or~~
~~(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.~~

~~**300.321 IEP Team.**~~

~~(a) *General.* The public agency must ensure that the IEP Team for each child with a disability includes—~~
~~(1) The parents of the child;~~
~~(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);~~
~~(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;~~
~~(4) A representative of the public agency who—~~
~~(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;~~
~~(ii) Is knowledgeable about the general education curriculum; and~~
~~(iii) Is knowledgeable about the availability of resources of the public agency and has the authority to commit those resources.~~
~~(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;~~
~~(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and~~
~~(7) Whenever appropriate, the child with a disability.~~

~~*(b) Transition services participants.*~~
~~(1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under § 300.320(b).~~
~~(2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the student's preferences and interests are considered.~~
~~(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.~~

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

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

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

~~(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—~~
~~(i) The parent, in writing, and the public agency consent to the excusal; and~~
~~(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.~~

~~(f) *Initial IEP Team meeting for child under Part C.* In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.~~

~~300.322 Parent participation.~~

~~(a) *Public agency responsibility—general.* Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—~~
~~(1) Notifying parents of the meeting ten (10) school days prior to the meeting to ensure that they will have an opportunity to attend (the parent may agree to waive the ten (10) day notice requirement in order to expedite the IEP Team meeting); and~~
~~(2) Scheduling the meeting at a mutually agreed on time and place.~~

~~*(b) Information provided to parents.*~~
~~(1) The notice required under paragraph (a)(l) of this section must—~~
~~(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and~~
~~(ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).~~
~~(2) For a child with a disability beginning at age 14, or younger, if determined appropriate by the IEP Team, the notice must (i) Indicate—~~
~~(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and~~
~~(B) That the agency will invite the student; and~~
~~(ii) Identify any other agency that will be invited to send a representative.~~

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

~~(d) *Conducting an IEP meeting without a parent in attendance.* A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as~~
~~(1) Detailed records of telephone calls made or attempted and the results of those calls;~~
~~(2) Copies of correspondence sent to the parents and any responses received; and~~

~~(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.~~

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

~~(f) *Parent copy of child's IEP.* The public agency must give the parent a copy of the child's IEP at no cost to the parent and not later than ten (10) calendar days after—~~
~~(1) An IEP has been developed for the child; and~~
~~(2) After the receipt of a request for a copy of the IEP.~~

~~300.323 When IEPs must be in effect.~~

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

~~*(b) IEP or IFSP for children aged three through five.*~~
~~(1) In the case of a child with a disability aged three through five, the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in § 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—~~
~~(i) Consistent with State policy; and~~
~~(ii) Agreed to by the agency and the child's parents.~~
~~(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—~~
~~(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and~~
~~(ii) If the parents choose an IFSP, obtain written informed consent from the parents.~~

~~(c) *Initial IEPs; provision of services.* Each public agency must ensure that—~~
~~(1) A meeting to develop an IEP for a child is conducted within 15 school days of a determination that the child needs special education and related services; and~~
~~(2) As soon as possible following development of the IEP, but not later than ten (10) school days, special education and related services are made available to the child in accordance with the child's IEP.~~

~~(d) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that—~~
~~(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and~~
~~(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—~~
~~(i) His or her specific responsibilities related to implementing the child's IEP; and~~
~~(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.~~

~~(e) *IEPs for children who transfer public agencies in the same State*. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—~~
~~(1) Adopts the child's IEP from the previous public agency; or~~
~~(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324.~~

~~(f) *IEPs for children who transfer from another State*. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency—~~
~~(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and~~
~~(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.~~

~~(g) *Transmittal of records*. To facilitate the transition for a child described in paragraphs (e) and (f) of this section—~~
~~(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and~~
~~(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.~~

~~**Development of IEP**~~

~~**300.324 Development, review, and revision of IEP.**~~

~~(a) *Development of IEP*—~~

~~(1) *General*. In developing each child's IEP, the IEP Team, must consider—~~
~~(i) The strengths of the child;~~
~~(ii) The concerns of the parents for enhancing the education of their child;~~
~~(iii) The results of the initial or most recent evaluation of the child; and~~
~~(iv) The academic, developmental, and functional needs of the child.~~

~~(2) Consideration of special factors. The IEP Team must—~~
~~(i) In the case of a child whose behavior impedes the child's learning or that of others, consider, the use of positive behavioral interventions and supports, and other strategies, to address that behavior;~~
~~(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;~~
~~(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future~~

~~needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;~~
~~(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and~~
~~(v) Consider whether the child needs assistive technology devices and services.~~

~~(3) *Requirement with respect to regular education teacher.* A regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—~~
~~(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and~~
~~(ii) Supplementary aids and services, program modifications and supports for school personnel consistent with § 300.320(a)(4).~~

~~(4) *Agreement.* (i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.~~
~~(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.~~
~~(iii) If there is a request for an IEP meeting, each LEA shall ensure that an IEP meeting is scheduled within ten (10) school days of the request by the parent or the LEA to meet to review the child's IEP. (The parent may agree to waive this 10 school day meeting requirement if such parental waiver is documented by the LEA)~~

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

~~(6) *Amendments.* Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.~~

~~(b) *Review and revision of IEPs*—~~
~~(1) *General.* Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—~~
~~(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and~~
~~(ii) Revises the IEP, as appropriate, to address—~~
~~(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;~~
~~(B) The results of any reevaluation conducted under § 300.303;~~
~~(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);~~
~~(D) The child's anticipated needs; or~~
~~(E) Other matters.~~
~~(2) *Consideration of special factors.* In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.~~

~~(3) *Requirement with respect to regular education teacher.* A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.~~

~~(c) *Failure to meet transition objectives*—~~
~~(1) *Participating agency failure.* If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.~~
~~(2) *Construction.* Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.~~

~~(d) *Children with disabilities in adult prisons*—~~
~~(1) *Requirements that do not apply.* The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:~~
~~(i) The requirements contained in § 612(a)(16) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments).~~
~~(ii) The requirements in § 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.~~
~~*(2) Modifications of IEP or placement.*~~
~~(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.~~
~~(ii) The requirements of §§ 300.320 (relating to IEPs), and 300.114 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.~~

~~300.325 Private school placements by public agencies.~~

~~(a) *Developing IEPs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 through 300.324.~~
~~(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.~~

~~(b) *Reviewing and revising IEPs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.~~
~~(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—~~
~~(i) Are involved in any decision about the child's IEP; and~~
~~(ii) Agree to any proposed changes in the IEP before those changes are implemented.~~

~~(c) *Responsibility*. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.~~

~~300.326 Reserved.~~

~~300.327 Educational placements.~~

~~Consistent with § 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.~~

~~300.328 Alternative means of meeting participation.~~

~~When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under § 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.~~

~~Subpart E—Procedural Safeguards~~

~~Due Process Procedures for Parents and Children~~

~~Responsibility of SEA and other public agencies.~~

~~The SEA shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500 through 300.536.~~

~~*Definitions* of "consent," "evaluation," and "personally identifiable."~~
~~As used in this part—~~
~~(1) *Consent* means that—~~
~~(i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;~~
~~(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and~~
~~(iii)(A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.~~
~~(B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).~~

~~(2) *Evaluation* means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs; and~~
~~(3) *Personally identifiable* means that information includes—~~
~~(i) The name of the child, the child's parent, or other family member;~~
~~(ii) The address of the child;~~
~~(iii) A personal identifier, such as the child's social security number or student number; or~~
~~(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.~~

~~**Opportunity to examine records; parent participation in meetings.**~~

~~(a) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—~~
~~(1) The identification, evaluation, and educational placement of the child; and~~
~~(2) The provision of FAPE to the child.~~

~~*(b) Parent participation in meetings.*~~
~~(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—~~
~~(i) The identification, evaluation, and educational placement of the child; and~~
~~(ii) The provision of FAPE to the child.~~
~~(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.~~
~~(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.~~

~~*(c) Parent involvement in placement decisions.*~~
~~(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.~~
~~(2) In implementing the requirements of paragraph (c)(l) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1).~~
~~(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.~~
~~(4) A placement decision may be made by a group without the involvement of the parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempts to ensure their involvement.~~
~~(5) The LEA shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for sign or language interpreters.~~

~~**Independent educational evaluation.**~~

~~(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.~~
~~(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.~~
~~(3) For the purposes of this part—~~
~~(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and~~

~~(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.~~

~~(b) *Parent right to evaluation at public expense*. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.~~
~~(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, and not later than 15 calendar days from receipt of a request, either —~~
~~(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or~~
~~(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.~~
~~(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the public agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.~~
~~(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.~~
~~(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.~~

~~(c) *Parent-initiated evaluations*. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation —~~
~~(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and~~
~~(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of these regulations regarding that child.~~

~~(d) *Requests for evaluations by hearing officers*. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.~~

~~(e) *Agency criteria*. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.~~
~~(2) Except for the criteria described in paragraph (e)(l) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.~~

~~**Prior notice by the public agency; content of notice.**~~

~~(a) *Notice*. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability within a reasonable time (ten school days) before the public agency —~~
~~(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or~~
~~(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.~~

~~(b) *Content of notice*. The notice required under paragraph (a) of this section must include —~~
~~(1) A description of the action proposed or refused by the agency;~~
~~(2) An explanation of why the agency proposes or refuses to take the action;~~
~~(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;~~
~~(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;~~
~~(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;~~
~~(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and~~
~~(7) A description of other factors that are relevant to the agency's proposal or refusal.~~

~~(c) *Notice in understandable language*. (1) The notice required under paragraph (a) of this section must be —~~
~~(i) Written in language understandable to the general public; and~~
~~(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.~~
~~(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure —~~
~~(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;~~
~~(ii) That the parent understands the content of the notice; and~~
~~(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.~~

~~**Procedural safeguards notice.**~~

~~(a) *General*. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents —~~
~~(1) Upon initial referral or parent request for evaluation;~~
~~(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;~~
~~(3) In accordance with the discipline procedures in § 300.530(h); and~~
~~(4) Upon request by a parent.~~

~~(b) *Internet web site*. A public agency may place a current copy of the procedural safeguards notice on its internet web site if a web site exists.~~

~~(c) *Contents*. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, § 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, § 300.520, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to—~~
~~(1) Independent educational evaluations;~~
~~(2) Prior written notice;~~
~~(3) Parental consent;~~
~~(4) Access to education records;~~
~~(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—~~
~~(i) The time period in which to file a complaint;~~
~~(ii) The opportunity for the agency to resolve the complaint; and~~
~~(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;~~
~~(6) The availability of mediation;~~
~~(7) The child's placement during the pendency of any due process complaint;~~
~~(8) Procedures for students who are subject to placement in an interim alternative educational setting;~~
~~(9) Requirements for unilateral placement by parents of children in private schools at public expense;~~
~~(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;~~
~~(11) State-level appeals (if applicable in the State);~~
~~(12) Civil actions, including the time period in which to file those actions; and~~
~~(13) Attorneys' fees.~~

~~(d) *Notice in understandable language*. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c).~~

~~**Electronic mail.**~~

~~A parent of a child with a disability may elect to receive notices required by §§ 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.~~

~~**Mediation.**~~

~~(a) *General*. (1) The SEA offers and implements a conflict resolution procedure called "mediation" to allow parties to disputes involving any matter described in these regulations and the Act, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.~~
~~(2) Each public agency must ensure that procedures are established to implement paragraph (a)(1) of this section, including referring a party seeking mediation under the section to the SEA.~~

~~(b) *Requirements*. The procedures must meet the following requirements:~~
~~(1) The procedures must ensure that the mediation process—~~
~~(i) Is voluntary on the part of the parties;~~
~~(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and~~

~~(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.~~
~~(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—~~
~~(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under §§ 671 or 672 of the Act; and~~
~~(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.~~
~~(3)(i) The SEA 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.~~
~~(ii) The SEA shall select mediators on a random, rotational, or other impartial basis.~~
~~(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.~~
~~(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.~~
~~(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—~~
~~(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and~~
~~(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.~~
~~(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part~~

~~(c) *Impartiality of mediator*. (1) An individual who serves as a mediator under this part—~~
~~(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and~~
~~(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.~~
~~(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency solely because he or she is paid by the agency to serve as a mediator.~~

~~**Filing a due process complaint.**~~

~~(a) *General.* (1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).~~
~~(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.~~

~~(b) *Information for parents*. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—~~

~~(1) The parent requests the information; or~~
~~(2) The parent or the agency files a due process complaint under this section.~~

~~**Due process complaint.**~~

~~(a) *General.* (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).~~
~~(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.~~

~~(b) *Content of complaint.* The due process complaint required in paragraph (a)(1) of this section must include —~~
~~(1) The name of the child;~~
~~(2) The address of the residence of the child;~~
~~(3) The name of the school the child is attending;~~
~~(4) In the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;~~
~~(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and~~
~~(6) A proposed resolution of the problem to the extent known and available to the party at the time.~~

~~(c) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.~~

~~(d) *Sufficiency of complaint.* (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.~~
~~(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.~~
~~(3) A party may amend its due process complaint only if —~~
~~(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 300.510; or~~
~~(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.~~
~~(4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint.~~

~~(e) *LEA response to a due process complaint.* (1) If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes —~~

~~(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;~~
~~(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;~~
~~(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and~~
~~(iv) A description of the other factors that are relevant to the agency's proposed or refused action.~~
~~(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.~~

~~(f) *Other party response to a due process complaint.* Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.~~

~~**Model forms.**~~

~~(a) The SEA shall develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§ 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§ 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.~~
~~(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in § 300.508(b) for filing a due process complaint, or the requirements in § 300.153(b) for filing a State complaint.~~

~~**Resolution process.**~~

~~(a) *Resolution meeting.* (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—~~
~~(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and~~
~~(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.~~
~~(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.~~
~~(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—~~
~~(i) The parent and the LEA agree in writing to waive the meeting; or~~
~~(ii) The parent and the LEA agree to use the mediation process described in § 300.506.~~
~~(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.~~

~~(b) *Resolution period.* (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.~~
~~(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period.~~
~~(3) Except where the parties have jointly agreed to waive the resolution process or to use~~

~~mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.~~
~~(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.~~
~~(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.~~

~~(c) *Adjustments to 30-day resolution period.* The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events:~~
~~(1) Both parties agree in writing to waive the resolution meeting;~~
~~(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;~~
~~(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.~~

~~(d) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is —~~
~~(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and~~
~~(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States.~~

~~(e) *Agreement review period.* If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.~~

~~**Impartial due process hearing**.~~

~~(a) *General.* Whenever a due process complaint is received under § 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507, 300.508, and 300.510.~~

~~(b) *Agency responsible for conducting the due process hearing.* The hearing described in paragraph (a) of this section must be conducted by the SEA, which —~~
~~(i) Must establish, implement, determine financial responsibility, and develop procedures for administering a system of due process under this section.~~

~~(c) *Impartial hearing officer.* (1) At a minimum, a hearing officer —~~
~~(i) Must not be —~~
~~(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or~~
~~(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;~~
~~(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;~~

~~(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and~~
~~(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.~~
~~(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.~~
~~(3) RIDE shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.~~

~~(d) *Subject matter of due process hearings.* The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.~~

~~(e) *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.~~

~~(f) *Exceptions to the timeline.* The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—~~
~~(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or~~
~~(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.~~

~~**Hearing rights.**~~

~~(a) *General.* Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to—~~
~~(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;~~
~~(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;~~
~~(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;~~
~~(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and~~
~~(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.~~

~~(b) *Additional disclosure of information.* (1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.~~
~~(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.~~

~~(c) *Parental rights at hearings.* Parents involved in hearings must be given the right to—~~

~~(1) Have the child who is the subject of the hearing present;~~
~~(2) Open the hearing to the public; and~~
~~(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.~~

~~**Hearing decisions.**~~

~~(a) *Decision of hearing officer on the provision of FAPE.* (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.~~
~~(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies—~~
~~(i) Impeded the child's right to FAPE;~~
~~(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or~~
~~(iii) Caused a deprivation of educational benefit.~~
~~(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536.~~

~~*(b) Reserved.*~~

~~(c) *Separate request for a due process hearing.* Nothing in §§ 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.~~

~~(d) *Findings and decision to advisory panel and general public.* The SEA, after deleting any personally identifiable information, must—~~
~~(1) Transmit the findings and decisions referred to in § 300.512(a)(5) to the State advisory panel established under § 300.167; and~~
~~(2) Make those findings and decisions available to the public.~~

~~**Finality of decision; appeal.**~~

~~(a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of § 300.516.~~

~~*(b) Reserved.*~~

~~**Timelines and convenience of hearings and reviews.**~~

~~(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c)—~~
~~(1) A final decision is reached in the hearing; and~~
~~(2) A copy of the decision is mailed to each of the parties.~~

~~(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—~~
~~(1) A final decision is reached in the review; and~~
~~(2) A copy of the decision is mailed to each of the parties.~~

~~(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.~~

~~(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.~~

~~**Civil action.**~~

~~a) *General.* Any party aggrieved by the findings and decision made under §§ 300.507 through 300.513 or §§ 300.530 through 300.534 has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under § 300.507 or §§ 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.~~
~~(b) *Time limitation.* The party bringing the action shall have 30 days from the date of the receipt of the decision of the hearing officer to file a civil action.~~

~~(c) *Additional requirements.* In any action brought under paragraph (a) of this section, the court —~~
~~(1) Receives the records of the administrative proceedings;~~
~~(2) Hears additional evidence at the request of a party; and~~
~~(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.~~

~~(d) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under § 615 of the Act without regard to the amount in controversy.~~

~~(e) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under § 615 of the Act, the procedures under §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under § 615 of the Act.~~

~~300.517 Attorneys' fees.~~

~~(a) *In general.* (1) In any action or proceeding brought under § 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to —~~
~~(i) The prevailing party who is the parent of a child with a disability;~~
~~(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or~~
~~(iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.~~

~~(b) *Prohibition on use of funds.* (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under § 615 of the Act and subpart E of this part.~~

~~(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under § 615 of the Act.~~

~~(c) *Award of fees.* A court awards reasonable attorneys' fees under § 615(i)(3) of the Act consistent with the following:~~
~~(1) Fees awarded under § 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.~~
~~(2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under § 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if —~~
~~(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;~~
~~(B) The offer is not accepted within 10 days; and~~
~~(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.~~
~~(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in § 300.506.~~
~~(iii) A meeting conducted pursuant to § 300.510 shall not be considered —~~
~~(A) A meeting convened as a result of an administrative hearing or judicial action; or~~
~~(B) An administrative hearing or judicial action for purposes of this section.~~
~~(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.~~
~~(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under § 615 of the Act, if the court finds that —~~
~~(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;~~
~~(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;~~
~~(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or~~
~~(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with § 300.508.~~
~~(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of § 615 of the Act.~~

~~300.518 Child's status during proceedings.~~

~~(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.~~

~~(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.~~

~~(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.~~

~~(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.~~

~~300.519 Surrogate parents.~~
~~(a) *General.* Each public agency must ensure that the rights of a child are protected when—~~
~~(1) No parent (as defined in § 300.30) can be identified;~~
~~(2) The public agency, after reasonable efforts, cannot locate a parent;~~
~~(3) The child is a ward of the State under the laws of that State; or~~
~~(4) The child is an unaccompanied homeless youth as defined in § 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).~~

~~(b) *Duties of public agency.* The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—~~
~~(1) For determining whether a child needs a surrogate parent; and~~
~~(2) For assigning a surrogate parent to the child.~~

~~(c) *Wards of the State.* In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.~~

~~*(d) Criteria for selection of surrogate parents.*~~
~~(1) The public agency may select a surrogate parent in any way permitted under State law.~~
~~(2) Public agencies must ensure that a person selected as a surrogate parent—~~
~~(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;~~
~~(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and~~
~~(iii) Has knowledge and skills that ensure adequate representation of the child.~~

~~(e) *Non-employee requirement; compensation.* A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.~~

~~(f) *Unaccompanied homeless youth.* In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.~~

~~(g) *Surrogate parent responsibilities.* The surrogate parent may represent the child in all matters relating to —~~
~~(1) The identification, evaluation, and educational placement of the child; and~~
~~(2) The provision of FAPE to the child.~~

~~(h) *SEA responsibility.* The SEA shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.~~

~~300.520 Transfer of parental rights at age of majority.~~

~~The State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law) —~~
~~(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and~~
~~(ii) All rights accorded to parents under Part B of the Act transfer to the child;~~
~~(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and~~
~~(3) Whenever the State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.~~

~~300.521 – 300.529 Reserved.~~

~~Discipline Procedures~~

~~300.530 Authority of school personnel; emergency removal~~.

~~(a) *Case-by-case determination.* (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.~~
~~(2)If school personnel determine that a child with a disability presents an immediate threat to him or herself or to others, the child may be removed from school for the remainder of the school day regardless of the number of days of suspension the child had already accrued during that school year.~~
~~(3)For any emergency removal under paragraph (2) of this section the public agency must follow the requirements of this section.~~

~~*(b) School Removal.*~~
~~(1) *Removals for less than ten (10) days cumulative*. School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more~~

~~than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities).~~
~~(i) During the first ten (10) school days of removal (cumulative) during the course of a school year, a public agency may, but is not required to:~~
~~(A) Provide educational services to the child;~~
~~(B) Conduct a manifestation determination prior to the disciplinary removal;~~
~~(C) Perform a functional behavioral assessment of the child; or~~
~~(D) Develop a behavioral intervention plan to address the behavioral factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.~~
~~(2) *Removals for more than ten (10) days cumulative*. After a child with a disability has been removed from his or her current placement for more than ten (10) school days cumulative in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.~~

~~(c) *Additional authority*. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.~~

~~(d) *Services.* (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—~~
~~(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and~~
~~(ii) Receive a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.~~
~~(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.~~
~~(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.~~
~~(4) After a child with a disability has been removed from his or her current placement for ten (10) school days cumulative in the same school year, any subsequent removal constitutes a change in placement under § 300.536.~~
~~(5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.~~

~~(e) *Manifestation determination.* (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—~~
~~(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or~~
~~(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.~~

~~(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.~~
~~(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.~~

~~(f) *Determination that behavior was a manifestation.* If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—~~
~~(1) Either—~~
~~(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or~~
~~(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and~~
~~(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.~~

~~(g) *Special circumstances.* The LEA may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—~~
~~(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;~~
~~(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or~~
~~(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.~~

~~(h) *Notification.* On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.~~
~~(i) *Definitions.* For purposes of this section, the following definitions apply:~~
~~(1) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).~~
~~(2) *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.~~
~~(3) *Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of § 1365 of title 18, United States Code.~~
~~(4) *Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of § 930 of title 18, United States Code.~~

~~300.531 Determination of setting.~~

~~The child's IEP Team determines the interim alternative educational setting for services under § 300.530(c), (d)(5), and (g).~~

~~300.532 Appeal.~~

~~(a) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).~~

~~(b) *Authority of hearing officer.* (1) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.~~
~~(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—~~
~~(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or~~
~~(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.~~
~~(3) The procedures under paragraphs~~
~~(a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.~~

~~(c) *Expedited due process hearing.* (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507 and 300.508(a) through (c) and §§ 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.~~
~~(2) RIDE shall arrange the expedited due process hearing, which must conclude within 20 school days of the date that the complaint requesting the hearing is filed. The due process hearing officer must render a decision within 10 school days of the conclusion of the hearing.~~
~~(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in § 300.506—~~
~~(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and~~
~~(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.~~
~~(4) The decisions on expedited due process hearings are appealable consistent with § 300.514.~~

~~300.533 Placement during appeals.~~

~~When an appeal under § 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.~~

~~300.534 Protections for children not determined eligible for special education and related services.~~

~~(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.~~

~~(b) *Basis of knowledge*. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred —~~
~~(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;~~
~~(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or~~
~~(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.~~

~~(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if —~~
~~(1) The parent of the child —~~
~~(i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or~~
~~(ii) Has refused services under this part; or~~
~~(2) The child has been evaluated in accordance with §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.~~

~~(d) *Conditions that apply if no basis of knowledge*. (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.~~
~~(2)(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.530, the evaluation must be conducted in an expedited manner.~~
~~(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.~~
~~(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.536 and § 612(a)(1)(A) of the Act.~~

~~300.535 Referral to and action by law enforcement and judicial authorities.~~

~~(a) *Rule of construction.* Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.~~

~~(b) *Transmittal of records.* (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.~~
~~(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.~~

~~300.536 Change of placement because of disciplinary removals.~~

~~For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if the removal is for more than 10 school days cumulative in the same school year.~~

~~300.537 – 300.599 Reserved.~~

~~Subpart F — State Monitoring and Enforcement~~

~~300.600 State Monitoring and enforcement.~~

~~(a) The State must~~
~~(1) Monitor the implementation of this part;~~
~~(2) Make determinations annually about the performance of each LEA using the categories in 34 CFR §300.603 (b)(1);~~
~~(3) Enforce this part, consistent with 34 CFR §300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in 34 CFR §300.604 (a)(1)(technical assistance), (a)(3)(conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v)(withholding funds, in whole or in part, by the SEA), and (c)(2)(withholding funds, in whole or in part, by the SEA); and~~
~~(4) Report annually on the performance of the State and of each LEA under this part, as provided in 34 CFR §300.602 (b)(1)(i)(A) and (b)(2).~~

~~(b) The primary focus of the State's monitoring activities must be on —~~
~~(1) Improving educational results and functional outcomes for all children with disabilities; and~~
~~(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.~~

~~(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.~~

~~(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:~~
~~(1) Provision of FAPE in the least restrictive environment.~~

~~(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution session meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).~~
~~(3)Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.~~

~~(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.~~

~~**300.601 Monitoring activities.**~~

~~(a) The SEA shall carry out activities to ensure that § 300.114 is implemented by each public agency.~~

~~(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.114, the SEA shall—~~
~~(1) Review the public agency's justification for its actions; and~~
~~(2) Assist in planning and implementing any necessary corrective action.~~

~~**300.602 – 300.609 Reserved.**~~

~~**Confidentiality of Information**~~

~~**300.610 Reserved.**~~

~~**Definitions.**~~

~~As used in §§ 300.611 through 300.625—~~
~~(a) *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.~~

~~(b) *Education records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).~~

~~(c) *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.~~

~~**Notice to Parents.**~~

~~(a) RIDE shall give notice that is adequate to fully inform parents of the policies and procedures in effect to ensure that public agencies comply with §§300.611 through 300.624, including~~
~~(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;~~
~~(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom valuable information is gathered), and the uses to be made of the information;~~

~~(3) A summary of the policies and procedures that participating agencies must follow regarding the storage, disclosure to third parties, retention, and destruction of personally identifiable information; and~~
~~(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.~~

~~(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.~~

~~**Access rights.**~~

~~(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than ten (10) calendar days after the request has been made.~~

~~(b) The right to inspect and review education records under this section includes—~~
~~(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;~~
~~(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and~~
~~(3) The right to have a representative of the parent inspect and review the records.~~

~~(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.~~

~~**Record of access.**~~

~~Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.~~

~~**Records on more than one child.**~~

~~If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.~~

~~**List of types and locations of information.**~~

~~Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.~~

~~**Fees.**~~

~~(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.~~

~~(b) A participating agency may not charge a fee to search for or to retrieve information under this part.~~

~~**Amendment of records at parent's request.**~~

~~(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.~~

~~(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.~~

~~(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619.~~

~~**Opportunity for a hearing.**~~

~~The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.~~

~~**Result of hearing.**~~

~~(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.~~

~~(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.~~

~~(c) Any explanation placed in the records of the child under this section must —~~
~~(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and~~
~~(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.~~

~~**Hearing procedures.**~~

~~A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22.~~

~~**Consent.**~~

~~(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.~~

~~(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.~~
~~(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with § 300.321(b)(3).~~
~~(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.~~

~~**Safeguards.**~~

~~(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.~~

~~(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.~~

~~(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under 34 CFR 300.123 and 34 CFR part 99.~~

~~(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.~~

~~**Destruction of information.**~~

~~(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.~~

~~(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.~~

~~**300.645 Reserved**~~

~~300.646 Disproportionality~~

~~Each LEA that meets the standard of "disproportionality" under 34 CFR 300.646(a) must—~~

~~(a) Reserve the maximum amount of funds under § 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups who were significantly overidentified under 34 CFR 300.646(a); and~~

~~(b) Publicly report on the revisions of policies, practices, and procedures described in 34 CFR 300.646(b).~~

~~Subpart G~~

~~300.700 Reserved.~~

~~Subpart H~~

~~300.800 Reserved.~~

~~Subpart I – Rhode Island Specific Regulations~~

~~Advisory Committees~~

~~Local Advisory Committee on Special Education~~

~~300.900 Local advisory committee on special education (LAC).~~

~~(a) The school committee of each local educational or regional special education program shall appoint an Advisory Committee on Special Education. The school committee shall approve the by-laws of the advisory committee.~~

~~(b) *Membership*: Each local or regional committee shall be composed of persons involved in or concerned with the education of students with disabilities. Parents of students with disabilities shall compose a majority of the committee membership, and at least fifty percent (50%) of this majority shall be selected by the parents of students with disabilities. A regional committee shall reflect an equal distribution of representatives from each of the school districts that comprise the regional program. Membership shall include an individual with a disability, a public school administrator, a special education teacher, a general education teacher and other members of the community at the discretion of the committee and school board.~~

~~(c) *Functions and Responsibilities of the LAC*: The committee shall advise the school district or regional program on matters concerning the unmet needs of students with disabilities, comment on improvement plans including school support plans resulting from Part B compliance reports, local compliance with state and federal laws pertaining to the education of students with disabilities, comment on applications for federal and state funds and serve as advocates in partnership with~~

~~parents for students with disabilities to ensure that they receive the entitlements provided to them under state and federal laws.~~

~~(d) *Duties and Responsibilities of the Local or Regional Agency*: The local or regional educational agency shall provide support to the committee by contracting for technical assistance services with the Rhode Island designated Parent Training and Technical Assistance Agency or other community-based non-profit parent organization. Such technical assistance shall include the role of advisory committees in advocating for children, state and federal regulations, community resources, strategic planning and development of an annual report to the school committee. The local or regional educational agency shall also provide school and district improvement plans to the committee for comment and make available appropriate records and data as permitted by law. The public agency shall also support the committee in disseminating information to parents of students regarding the role of the advisory committee, information pertaining to special education and inform the committee of professional development opportunities that are available within the LEA.~~

~~(e) *Conduct of Meetings*: The committee shall meet as often as necessary to conduct its business but at least four times annually. Official minutes shall be kept of all committee meetings and be available for public review. All committee meetings and agendas shall be publicly announced prior to any meeting, and meetings shall be open to the public.~~

~~(f) Members of the committee shall serve without compensation but may be reimbursed for reasonable and necessary expenses for attending meetings and performing duties.~~

~~(g) *Parent Notification of Local or Regional Advisory Committee*: When a child is referred to special education, each school district or regional special education program shall provide the parents with notification of the existence of the Local or Regional Advisory Committee for Special Education established in compliance with these regulations. The notification shall specify that a majority of the Local Advisory Committee (LAC) on Special Education is parents of children with disabilities, and shall inform the parents how the chairperson of the Local Advisory Committee (LAC) for Special Education or the Regional Advisory Committee on Special Education may be contacted.~~

~~Regional Transition Services Advisory Committee~~

~~300.901 Regional transition services advisory committee (TAC).~~

~~Within each of the legislatively created Collaboratives and Providence, there shall be a Transition Advisory Committee (TAC) that will conform to guidelines issued by RIDE. The membership of the TAC shall meet monthly during the school year. By the first of July of each year, the TAC shall submit to the State Transition Council an annual report of activities and recommendations.~~

~~Transportation~~

~~300.902 Transportation services for children with disabilities.~~

~~(a) *Responsibility*. All students with disabilities who need special transportation as a related service and as determined by the evaluation process and described in the individual education program (IEP) shall be provided such service. It shall include free transportation from home to the educational program in which the child is enrolled. It shall also include free transportation to and from the~~

~~clinical, diagnostic and therapeutic facilities when the clinical, diagnostic and therapeutic services are necessary to complete the child's evaluation or to provide the services required in the child's IEP.~~

~~(b) *Specific Requirements*. (1) Appropriate devices, which accommodate specific transportation needs of the child, must be provided on an individualized basis.~~
~~(2) A minimum of one (1) aide must be assigned to each bus used for special transportation. Such aide, in addition to providing general care and supervision to all children with disabilities on such bus, shall also provide assistance (from street level entrance of the child's dwelling) to such children lacking the mobility to leave the home and board transportation vehicles, and shall further assist such children in disembarking the vehicle and entering school. When children are transported to clinical, diagnostic or therapeutic facilities, determination of whether a bus aide is necessary shall be based on the judgment of the IEP Team.~~
~~(3) School districts shall provide inservice training for administrative personnel, drivers and aides providing special education transportation services in order that they may effectively deal with the children with disabilities and understand the issues and concerns of the parents of such children.~~
~~(4) Scheduling of transportation vehicles shall be planned whenever possible in such a manner as to provide for the least amount of travel time necessary to transport children with disabilities from home to school and back home again. When travel time for children with disabilities who are receiving special transportation is found to exceed one (1) hour to or from the location of special education services, the parent(s) shall be notified in writing. This notice will include the reason(s) for the duration of the travel time and the notification must include a description of the parent(s) right to an appeal. The school district will submit a copy of the notification to the Director of the Office of Student, Community and Academic Supports at RIDE. This notice will include the reason(s) for the duration of the travel time.~~
~~(5) All vehicles used in the transportation of children with disabilities as a related service shall be equipped with two-way communication devices in case of an emergency.~~

~~**Non-Public and State Operated School Programs**~~

~~**300.903 Non-public and State operated school programs.**~~

~~(a) To be eligible for approval by RIDE, special education programs conducted in private and state operated schools in Rhode Island shall meet the regulations governing the approval of school programs. Private and state operated school programs shall be evaluated in the same manner, on the same schedule and with the same criteria and procedures as utilized for public schools in Rhode Island and shall be subject to on-site visits by the Rhode Island Commissioner of Elementary and Secondary Education or the Commissioner's authorized representative as often as is deemed necessary by RIDE. Approval of such programs shall be on a triennial basis.~~

~~(b) All special education programs in any private and state operated day or residential school shall meet the same standards as those established for public school programs.~~

~~(c) Private and state operated school programs shall provide services by appropriately certified personnel in accordance with the needs of the students with disabilities to be served, as determined by the IEP process. Caseloads for specialized personnel shall be assigned based on the time required to meet the needs of children with disabilities, as determined by the IEP process.~~

~~(d) Monitoring of a child's progress in a private day or residential school program shall be conducted by the special education director or designee, trained in the child's area of need, who shall be from the school district where the child resides.~~

~~(e) Special Education programs for children with disabilities in state operated schools shall be monitored by RIDE.~~

~~(f) Private day or residential programs shall employ a certified administrator of special education, whose basic responsibilities shall be the overall administration and supervision of the special education program, and whose schedule shall be determined based on the time required to meet the needs of the children with disabilities~~

~~(g) Each private day and residential school program shall have a statement of financial stability which identifies sufficient assets to establish and maintain a satisfactory program of education on a continuing basis. The owner(s) of a school, whether for initial approval or renewal of approval, shall also furnish statements of income and retained earnings and changes in financial position. These statements shall include in a clearly identifiable manner, records of receipts and expenditures, personnel salaries, and tuition. All statements shall be prepared by a Public Accountant or Certified Public Accountant, but need not be certified by the Accountant or supported by an audit. These statements shall be accompanied by a notarized statement by the owner(s) or the director of the school that the financial statements are true and correct, and shall identify the name of the Public Accountant or Certified Public Accountant who prepared the statements.~~

~~(h) Information on tuition and/or fee schedule shall be submitted to RIDE in accordance with forms and instructions supplied by RIDE as part of the school approval application.~~

~~(i) Each non-public day and residential school program shall use and have available for inspection written administrative procedures that encompass the following:~~
~~(1) Provision for emergency and early termination of children including prior consultation with the special education director in the school district of the child's residence in order to provide for an orderly transfer of responsibility back to this special education director.~~
~~(2) Provision of procedural safeguards which cover the same areas required for public schools.~~
~~(3) Provision for parental involvement including parental education and counseling.~~
~~(4) Provision for staff training.~~
~~(5) Provision of measures which protect all students from exposure to humiliation or verbal abuse or any form of corporal punishment that could be construed as cruel or severe.~~

~~**PROVISION OF WRITTEN REPORTS ON EACH CHILD WHICH ARE MAILED TO THE CHILD'S PARENTS AND THE SPECIAL EDUCATION DIRECTOR IN THE CHILD'S RESIDENT SCHOOL DISTRICT AT LEAST AS OFTEN AS THE PUBLIC SCHOOL DISTRICT REPORTS PROGRESS TO PARENTS OF NON DISABLED CHILDREN.**~~

200-RICR-20-30-1

TITLE 200 – BOARD OF EDUCATION

CHAPTER 20 – COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 30 - STUDENT SUPPORTS

PART 1 – Regulations Governing the Education of Children with Disabilities

1.1 Authority

This Part is promulgated pursuant to R.I. Gen. Laws Chapter 16-24 and the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Chapter 33, 1400 *et. seq.*)

1.2 Purpose

The Purpose of this Part is to govern the education of children with disabilities in accordance with 34 C.F.R. § 300.1, incorporated in § 1.3 of this Part.

1.3 Incorporated Materials

A. This Part hereby adopts and incorporates 34 C.F.R. Part 300 (2012) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

B. Notwithstanding § 1.3(A) of this Part, the following are not incorporated by reference or have been modified in this Part for application in Rhode Island: 34 C.F.R §§ 300.8(a)(1), 300.8(c)(1)(i), 300.11(c)(1), 300.11(c)(2), 300.34(c)(9), 300.34(c)(16), 300.41, 300.101(a), 300.101(d), 300.102(a)(3)(iv), 300.103(a), 300.103(c), 300.106, 300.111, 300.114, 300.116, 300.118, 300.124, 300.129, 300.130, 300.131(b), 300.146, 300.153(c), 300.156(a), 300.157, 300.168, 300.173, 300.200, 300.201, 300.203, 300.210, 300.229(a), 300.229(c), 300.301(c), 300.303, 300.304(c)(1), 300.311(a), 300.320(a)(2)(i), 300.320(a), 300.320(b), 300.321(a)(4)(iii), 300.322(a), 300.322(b)(2), 300.322(f), 300.323(a), 300.323(c), 300.323(e), 300.501(c), 300.502(b), 300.503(a), 300.504(c), 300.506(a), 300.511(b), 300.514, 300.516(a), 300.516(b), 300.520, 300.530(a), 300.530(b), 300.532(c), 300.536, 300.601, 300.613(a).

1.4 Definitions

A. "Act" means the Individuals with Disabilities Education Act in accordance with 34 C.F.R. § 300.4, incorporated by reference above.

B. "Assistive technology device" has the same meaning as used in 34 C.F.R. § 300.5, incorporated by reference above.

C. "Assistive technology service" has the same meaning as used in 34 C.F.R. § 300.6, incorporated by reference above.

D. "Charter school" has the same meaning as used in 34 C.F.R. § 300.7, incorporated by reference above.

E. "Child with a disability" has the same meaning as used in 34 C.F.R. § 300.8, incorporated by reference above; provided, however:

1. A "Child with a disability" as defined in 34 C.F.R. § 300.8(a)(1) applies to children aged three (3) to twenty-one (21).

2. Includes children aged three (3) through eight (8) experiencing developmental delays.

   a. Child with a disability, for children aged three (3) through eight (8) (up to the child's ninth birthday), includes a child who shall qualify for special education and related services when the child is experiencing a developmental delay or a disability, as determined by the evaluation process; and

   b. Who, by reason thereof, needs special education and related services.

   c. A developmental delay or disability is defined as a twenty-five per cent (25%) delay and/or score equal to or greater than two standard deviations below the mean in one of the following areas of development; or a score equal to or greater than 1.5 standard deviations below the mean in two (2) or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development.

3. "Autism", as used in 34 C.F.R. § 300.8 (c)(1)(i) means "Autism Spectrum Disorder," a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Included in the spectrum are: Autism, Pervasive Developmental Disorder Not Otherwise Specified, Rett's Disorder, Asperger's Disorder and Childhood Disintegrative Disorder. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined herein.

   a. A child who manifests the characteristics of autism spectrum disorder after age three (3) could be diagnosed as having autism spectrum disorder if the criteria of this section are satisfied.

F. "Consent" has the same meaning as used in 34 C.F.R. § 300.9, incorporated by reference above.

G. "Day; business day; school day" has the same meaning as used in 34 C.F.R. § 300.11, incorporated by reference above, provided, however:

1. "School day" is defined the same as used in 34 C.F.R. § 300.11 (c)(1), provided however, "school day" includes a partial day that children are in attendance at school for instructional purposes.

2. "School day" is defined the same as used in 34 C.F.R. § 300.11 (c)(2), provided however, "school day" has the same meaning for all children in school, including children with and without disabilities, except for pre-school aged children with mild to moderate disabilities for whom a school day shall consist of a minimum of a two and one-half (2 ½) hours.

a. A school day for pre-school aged children with severe or profound intellectual disability or multiple disabilities shall consist of a minimum of five (5) hours.

H. "Educational service agency (ESA)" has the same meaning as used in 34 C.F.R. § 300.12, incorporated by reference above.

I. "Elementary school" has the same meaning as used in 34 C.F.R. § 300.13, incorporated by reference above.

J. "Equipment" has the same meaning as used in 34 C.F.R. § 300.14, incorporated by reference above.

K. "Evaluation" has the same meaning as used in 34 C.F.R. § 300.15, incorporated by reference above.

L. "Excess costs" has the same meaning as used in 34 C.F.R. § 300.16, incorporated by reference above.

M. "Free appropriate public education" or "FAPE" has the same meaning as used in 34 C.F.R. § 300.17, incorporated by reference above.

N. "Homeless children" has the same meaning as used in 34 C.F.R. § 300.19, incorporated by reference above.

O. "Include" has the same meaning as used in 34 C.F.R. § 300.20, incorporated by reference above.

P. "Indian" and "Indian tribe" has the same meaning as used in 34 C.F.R. § 300.21, incorporated by reference above.

Q. "Individualized education program" or "IEP" has the same meaning as used in 34 C.F.R. § 300.22, incorporated by reference above.

R. "Individualized education program team" or "IEP team" has the same meaning as used in 34 C.F.R. § 300.23, incorporated by reference above.

S. "Individualized family service plan" or "IFSP" has the same meaning as used in 34 C.F.R. § 300.24, incorporated by reference above.

T. "Infant or toddler with a disability" has the same meaning as used in 34 C.F.R. § 300.25, incorporated by reference above.

U. "Institution of higher education" has the same meaning as used in 34 C.F.R. § 300.26, incorporated by reference above.

V. "Limited English proficient" has the same meaning as used in 34 C.F.R. § 300.27, incorporated by reference above.

W. "Local educational agency" has the same meaning as used in 34 C.F.R. § 300.28, incorporated by reference above.

X. "Native language" has the same meaning as used in 34 C.F.R. § 300.29, incorporated by reference above.

Y. "Parent" has the same meaning as used in 34 C.F.R. § 300.30, incorporated by reference above.

Z. "Parent training and information center" has the same meaning as used in 34 C.F.R. § 300.31, incorporated by reference above.

AA. "Personally identifiable" has the same meaning as used in 34 C.F.R. § 300.32, incorporated by reference above.

BB. "Public agency" has the same meaning as used in 34 C.F.R. § 300.33, incorporated by reference above.

CC. "Related services" has the same meaning as used in 34 C.F.R. § 300.34, incorporated by reference above, provided however:

1. "Physical therapy" has the same meaning as used in 34 C.F.R. § 300.34 (c)(9), provided, however, services may also be provided by a qualified physical therapy assistant under the supervision of a qualified physical therapist.

2. "Transportation" has the same meaning as 34 C.F.R. § 300.34 (c)(16), provided however, "transportation" includes:

a. Travel to and from school and between schools;

b Travel in and around school buildings, travel to and from community and work-based instruction sites as determined by the IEP team;

c. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability; and

d. Those requirements in § 1.10.3 of this Part.

DD. "Secondary school" has the same meaning as used in 34 C.F.R. § 300.36, incorporated by reference above.

EE. "Services plan" has the same meaning as used in 34 C.F.R. § 300.37, incorporated by reference above.

FF. "Secretary" has the same meaning as used in 34 C.F.R. § 300.38, incorporated by reference above.

GG. "Special education" has the same meaning as used in 34 C.F.R. § 300.39, incorporated by reference above.

HH. "State educational agency" or "SEA" means the Rhode Island Department of Elementary and Secondary Education (RIDE) which is responsible for the general supervision of all education programs for children with disabilities in Rhode Island including all such programs administered by any other state or local agency.

II. "Supplementary aids and services" has the same meaning as used in 34 C.F.R. § 300.42, incorporated by reference above.

JJ. "Transition services" has the same meaning as used in 34 C.F.R. § 300.43, incorporated by reference above.

KK. "Universal design" has the same meaning as used in 34 C.F.R. § 300.44, incorporated by reference above.

LL. "Ward of the State" has the same meaning as used in 34 C.F.R. § 300.45, incorporated by reference above.

MM. "Vocational evaluation" is a strength-based, student-centered process, by which information is obtained to assist students in designing individualized education and vocational services to reach their career goals. This includes the use of formal and informal methods to collect information, including: Interest inventories, student interviews, parent interviews, skill and aptitude tests, on-campus and off-campus situational assessments, work samples, vocational evaluations, performance in career related courses and other methods. Vocational evaluation is an ongoing process, not a single test or procedure. The results of Vocational

evaluation are shared at IEP meetings, and the information obtained through the Vocational evaluation should be infused into designing the student's educational services and in developing appropriate, measurable post-secondary goals.

1.5 Local Education Agency General Requirements

1.5.1 Free appropriate public education (FAPE) Requirements

A. An LEA must provide free appropriate public education in accordance with 34 C.F.R § 300.101, incorporated by reference above; provided, however, that each LEA shall:

1. Under 34 C.F.R § 300.101(a), provide FAPE until the child's twenty-first (21st) birthday or until the child receives a regular high school diploma.

2. Ensure FAPE is available in accordance with § 1.5.3 of this Part for children enrolled by their parents in private schools.

3. Provide FAPE for children suspended or expelled from school:

   a. An LEA need not provide services to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

   b. In the case of a child with a disability who has been removed from his or her current placement for more than ten (10) school days in that school year, the LEA, for the remainder of the removals, must:

      (1) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability.

   c. In the case of a child who is removed from his or her current placement to an interim alternative educational setting for reasons described in §§1.5.1(c)(2) and (3) of this Part, the LEA must

      (1) Provide services consistent with 34 C.F.R. § 300.530, regarding determination of the appropriate interim alternative educational setting, if the removal is:

(AA) For drug or weapons offenses under 34 C.F.R. § 300.530; or

(BB) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with 34 C.F.R. § 300.532.

B. The limitation-exception to FAPE for certain ages shall be in accordance with 34 C.F.R. § 300.102, incorporated by reference above; provided, however:

1. Under 300.102(a)(3)(iv), the term "regular high school diploma" does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED).

C. FAPE-methods and payments are required in accordance with 34 C.F.R. § 300.103, incorporated above; provided, however:

1. Under 34 C.F.R. §300.323(a), each public agency may use whatever State, local, Federal, and private sources of support available in the State to meet the requirements of this part.

2. Under 34 C.F.R. § 300.323(c), the LEA must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

D. Residential placement shall be provided in accordance with 34 C.F.R. § 300.104, incorporated by reference above.

E. Assistive technology shall be provided in accordance with 34 C.F.R. § 300.105, incorporated by reference above.

F. Extended school year services shall be made available in accordance with 34 C.F.R. § 300.106, incorporated by reference above. In addition to the requirements set forth in 34 C.F.R. § 300.106, each public agency must also meet the following extended school year standards:

1. Extended school year services eligibility is determined by the IEP team through regression and recoupment analysis of the severity of academic achievement and/or functional skill regression a child experiences as a result of an interruption in special education services, the amount of time required to recoup the prior level of skill, likelihood of retention of learned skills, rate of progress during the school year, and whether meaningful progress on IEP goals is likely to be significantly jeopardized if ESY services are not provided.

a. IEP team decisions regarding extended school year services are based upon a variety of data including retrospective data, predictive data, peer reviewed research, evidenced based best practice and other critical factors.

b. IEP team considerations include, but are not limited to the following possible factors when determining the child's individual need for ESY services:

(1) the nature and/or severity of the child's disability;

(2) the child's rate of learning;

(3) the degree of progress towards IEP goals and objectives or for children transitioning from IDEA Part C services (Early Intervention) to IDEA Part B services, consideration of the degree of progress toward Individual Family Service Plan (IFSP) outcomes;

(4) the child's stereotypic, ritualistic, aggressive or self-injurious interfering behaviors;

(5) the physical needs of the child;

(6) emerging skills and breakthrough opportunities;

(7) the ability of the child to interact with typically developing peers;

(8) the child's post-school outcomes and vocational needs;

(9) other special circumstances as determined by the IEP team.

c. ESY instruction is focused on those specific IEP goals and objectives severely impacted by extended breaks in instruction.

G. Nonacademic services shall be provided in accordance with 34 C.F.R. § 300.107, incorporated by reference above.

H. Physical education services shall be provided in accordance with 34 C.F.R. § 300.108, incorporated by reference above.

I. Program options shall be provided by each public agency in accordance with 34 C.F.R. § 300.110, incorporated by reference above.

J. Child find.

1. General. Each LEA must have in effect policies and procedures to ensure that all of the following children with disabilities are identified, located, and

evaluated, regardless of the severity of their disabilities, and who are in need of special education and related services:

a. All children aged three (3) through twenty-one (21) residing in the LEA, including children with disabilities who are homeless children or are wards of the state, excluding, children parentally placed in private, including religious, schools located outside the LEA that meet the definitions under 34 C.F.R § 300.13 and 34 C.F.R. § 300.36;

b. All children with disabilities, regardless of residence, enrolled by their parents in private, including religious, schools that are located in the district served by the LEA and meet the State definition of an elementary or secondary school, in accordance with 34 C.F.R § 300.131 (Child Find for parentally-place private school children with disabilities); 34 C.F.R § 300.13 (Elementary School); and 34 C.F.R § 300.36 (Secondary School); and

c. For children aged three (3) through five (5) years, the screening procedures must be consistent with the Rhode Island Guidelines for Implementing Child Outreach Screening, as adopted by the Rhode Island Board of Regents.

2. Children currently served. Each local education agency must have in effect policies and procedures to ensure that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

3. Provisions implementing child find. The following provisions apply with respect to implementing the child find requirements of this section:

a. Documents relating to child find. Each LEA must have on file the policies and procedures described in §§1.5.1(J)(3)(a)((1)) and ((2)) of this Part below, including:

(1) The name of the LEA Representative responsible for coordinating the planning and implementation of the policies and procedures under § 1.5.1(J)(1) of this Part;

(2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;

(3) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(4) Information adequate to evaluate the effectiveness of those policies and procedures; and

(5) A description of the method the LEA uses to determine which children are currently receiving special education and related services.

b. Child find for children from birth through age two (2) (until the child turns age three) with the Department of Human Services as the lead agency administering Part C of the Act. The RI Department of Human Services is the lead agency for administering Part C of the Act, and implements a comprehensive system of child find activities including:

(1) Prior notice;

(2) Universal screening;

(3) Acting on direct referrals; and

(4) Evaluation and assessment procedures.

4. Interagency agreement. The RI Department of Education and the RI Department of Human Services have executed interagency agreements which serve as the primary mechanism through which universal screening is conducted and which specify the administrative, fiscal, and programmatic responsibility of each department relative to Child Find activities. The use of an interagency agreement or other mechanism for providing for the Early Intervention lead agency's participation does not alter or diminish the responsibility of the LEA to ensure compliance with the requirements of this section.

5. Confidentiality of child find data. The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of these regulations.

K. Individualized education programs (IEP) shall be provided by each public agency in accordance with 34 CFR § 300.112, incorporated by reference above.

L. Routine checking of hearing aids and external components of surgically implanted medical devices shall be conducted in accordance with 34 C.F.R. § 300.113, incorporated by reference above.

1.5.2 Least Restrictive Environment (LRE) requirements

A. Except as provided in § 1.7.5(A) of this Part (34 C.F.R. § 300.324(d)(2)) (regarding children with disabilities in adult prisons), each public agency must ensure that:

1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and

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

B. Continuum of alternative placements shall be in accordance with 34 C.F.R. § 300.115, incorporated by reference above.

C. Continuum of special education placements and services.

1. Each public agency shall make available to children with disabilities the following continuum of special education programs:

a. Placement of the child in a general education class with special education consultation, supplementary aids and services or part-time services in a special class. The special educator(s) shall consult with the child's parent and general education teachers.

b. Placement in a special class integrated in a school district building. Placement must be based on similarity of student strengths and needs for the purpose of ensuring academic achievement and functional performance. Such classes must be taught by a special education teacher, together with other appropriately certified specialists providing related services. These professionals shall also consult with the child's parents.

c. Home or hospital instruction provided by special education teachers, general education classroom teachers or regular education, subject-matter teachers, together with other appropriately certified specialists providing related services, as needed; to any child with a disability whose health status warrants home or hospital instruction.

d. Special education day school placement in a separate public school or non-public facility whose special education program has been approved by the Rhode Island Commissioner of Elementary and Secondary Education.

e. Special education residential school placement in a separate public or non-public facility whose special education program has been approved by the Rhode Island Commissioner of Elementary and Secondary Education.

f. A continuum of services must be available to enable each child ages fourteen (14) to twenty-one (21) or earlier if appropriate, or upon graduation with a regular high school diploma, to achieve his or her measurable post-secondary goals as defined in §§ 1.4(JJ) and 1.7.4(A)(2) of this Part.

D. Continuum of special education placements and services for children aged three (3) through five (5).

1. General. All preschool children (ages 3 through 5) with disabilities shall receive an IEP or IFSP suited to their particular needs which shall include, but not be limited to, language development, symbol recognition, communication and socialization skills, health, perceptual and sensory-motor development, art, music and physical education.

2. Each public agency must make available to each child with a disability, aged three (3) through (5) years old, a program which represents the least restrictive environment (LRE) and the appropriate placement given the student's individualized education program (IEP) or individualized family service plan (IFSP). Unless the individualized education program (IEP) or individualized family service plan (IFSP) requires otherwise, special education and related services shall be provided in that setting in which the child would normally be placed if he or she did not have a disability. The SEA has guidelines to assist IEP teams in determining delivery of services decisions. The array of educational settings shall include the following placement opportunities:

a. Temporary placement in any educational setting as described in this Section, for a period of no more than thirty (30) days, when necessary to aid in determining educational objectives and the appropriate placement for an eligible child with a disability. Prior to such placement, an interim individualized education program (IEP) or individualized family service plan (IFSP) shall be developed which specifies the conditions and timelines for the temporary placement. Upon the close of the interim period, an individualized education program (IEP) or individualized family service plan (IFSP) meeting shall be conducted to finalize the child's individualized education program (IEP) or individualized family service plan (IFSP).

b. Placement in a general early childhood setting with on-site consultation by an early childhood special educator and/or provider(s) of related services to the general education teacher and/or to the family and, when indicated by the individualized education program (IEP) or individualized family service plan (IFSP), direct intervention with the child. Early childhood settings include, but are not limited to: general kindergarten classes, public

and non-public preschools, Head Start programs, early care and education centers, home/early childhood combinations, home/Head Start combinations, or home based child care, which meet federal or state requirements. In these settings, children receive all of their special education and related services in programs designed primarily for children without disabilities.

c. Placement in an integrated preschool class designed primarily for preschool children with disabilities and including children without disabilities that is located in a public school building. The maximum class size shall be no more than fifteen (15) children with less than fifty percent (50%) being children with disabilities. The staff shall include at a minimum, an early childhood special educator and teacher assistant with the provision of additional staff as indicated by the needs of the children and their individualized education programs (IEPs) or individualized family service plans (IFSPs.)

d. Home-based special education and, where appropriate, related services provided to the child together with his or her parent(s) or primary care provider. Home visits shall include instruction for the parent or primary care provider, demonstration of specific tasks and provision of developmental toys and materials for the parents or primary care provider to use with the child. A home-based program may supplement placement in another program option or, for pre-kindergarten-aged students be available as the primary placement, unless the child's needs, as determined by the evaluation process, can more appropriately be met in a group setting. When implemented as the primary placement, home visits shall be scheduled at least weekly and in accordance with the individualized education program (IEP) or individualized family service plan (IFSP.)

e. Placement at home or in a general early childhood setting with supplementary placement in an early childhood special education setting for a portion of the school day or week.

f. Full-time placement in an early childhood special education setting which is located in a public school building or other community based early childhood facility.

g. Placement in a special education day school.

h. Placement in a residential special education school.

E. Continuum of special education placements and services: homebound and hospital instructional programs.

1. General. In determining the educational services for a child with a disability in homebound and hospital instruction programs, the IEP Team shall determine what constitutes an appropriate program, including the consideration of whether the child is in need of an extended school year program, as required by § 1.5.1(F) of this Part.

2. Homebound Instructional Programs.

   a. The home atmosphere shall be conducive to learning. Special conditions recommended by the physician shall be observed.

   b. The minimum number of hours of instruction shall be five (5) hours per school week at the elementary level of education and six (6) hours at the secondary level of education unless fewer hours are recommended by the physician. Depending on the physical condition of the child, a number of instructional hours greater than the minimum number of hours required per week is permissible.

   c. A complete record of homebound teaching activities shall be maintained.

   d. Homebound instruction shall be coordinated with the work of the regular education class so that return to school (if this is possible) will require little readjustment, or so that the long-term homebound instruction may approximate the regular education curriculum to the highest degree possible.

   e. The use of a home-to-school telephone system or other appropriate technological system should be employed whenever possible. In such cases, however, a teacher should provide instruction in the student's home for at least one (1) hour each school week.

   f. Children with disabilities who receive homebound instruction shall be provided with summer tutoring, if they are unable to complete their current school year because of health reasons.

   g. Teachers of homebound instruction shall hold Rhode Island teaching certificates in the area appropriate to educate and provide related services to the student with a health impairment, a physical disability or to the student's disability condition.

   h. School districts shall not use home tutoring programs as a substitute for in-school programs nor as a means of excluding students with disabilities from in-school programs.

3. Hospital Instructional Programs.

a. Hospital special education instructional programs shall meet the same criteria as that specified for homebound instructional programs when dealing with acute medical problems. In addition, private and State hospitals wishing to establish their in-patient educational programs or out-patient instructional programs must be approved by the Rhode Island Commissioner of Elementary and Secondary Education before they may operate such programs in Rhode Island and shall follow the same procedure and criteria for approval as outlined for non-public schools and State-operated school programs.

b. Certification of Hospital Teaching Personnel.

c. All teachers employed in hospital programs shall be trained and certified to provide special education in the area of basic disability for which the hospital program is established.

F. Placements shall be in accordance with 34 C.F.R. § 300.116, incorporated by reference above; provided, however:

1. Under 34 C.F.R. § 300.116(a), in determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that:

a. The placement decision:

(1) Is made by an IEP team, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this section, including §§ 1.5.2(A) through (H) of this Part, and

2. In addition to the requirements of 34 C.F.R. § 300.116:

a. In providing services to children with disabilities in special classes the age range of the children shall not exceed four (4) years. An exception to this requirement can be made only by the IEP team based on the documented needs of the child and with the agreement of the parents of all of the other students in the class where placement is sought.

G. Nonacademic settings shall be provided in accordance with 34 C.F.R. § 300.117, incorporated by reference above.

H. Each public agency shall ensure that LRE requirements are met in accordance with 34 C.F.R. § 300.118, incorporated by reference above.

I. Technical assistance and training activities shall be carried out by each public agency in accordance with 34 C.F.R. § 300.119, incorporated by reference above.

J. Transition of children from Part C of the Act to preschool programs:

1. Not later than the child's third (3rd) birthday, an IEP or IFSP must be in effect for each eligible child with a disability.

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

3. At the time the child turns thirty (30) months, a transition team minimally consisting of a resident school district representative, the parent(s), an Early Intervention Program representative, and at the discretion of the parent(s) or agencies, other individuals who have knowledge or expertise regarding the child (including child care, Head Start, advocates and home provider, other family members, and related services personnel) must meet to develop a written plan which includes the activities to take place during the transition period, the timelines in which the activities will occur, and the persons responsible for carrying out these activities. Each LEA must respond within ten (10) school days to the Early Intervention (EI) transition notice and send an LEA representative to the thirty (30) month transition team meeting.

4. These activities will occur over a six (6) month period of time and will reflect the individual needs of the child and the participation of the child's family. For a child who will become thirty-six (36) months of age between May and September, these activities will occur on an adjusted timeline that will allow for the participation of all parties, and to ensure that the child will begin receiving special education and related services upon the opening of school, or when the child turns thirty-six (36) months if a child is eligible for an extended school year program.

5. As part of the transition plan, if a child is determined to be ineligible for special education services, the transition team will refer the family and child to appropriate community resources.

6. The LEA representative must have authority to commit resources.

1.5.3 Children with Disabilities Enrolled by Their Parents in Private Schools

A. FAPE for children with disabilities enrolled by their parents in private schools:

1. Definition of "private school children with disabilities."

a. As used in this part, private school children with disabilities means children with disabilities, beginning at age three (3), enrolled by

their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 1.4(I) of this Part or secondary school in § 1.4(DD) of this Part, other than children with disabilities covered under § 1.5.4 of this Part.

2. Services Available Under State Law.

a. As required by R.I. Gen. Law § 16-24-1, each private school child with a disability is entitled to FAPE provided by the school committee of the city or town where the child resides. A parent of a private school child may seek FAPE by requesting from the LEA of residence an initial evaluation to determine if the child is a child with a disability. The LEA of residence shall evaluate and determine the child's eligibility for FAPE. A determination of eligibility for services under §§ 1.5.3(B) through (P) of this Part shall not be a prerequisite to a request for FAPE. Absent a request for FAPE, the LEA of residence will not be considered to be in violation of the requirement to make FAPE available to the private school child with a disability.

3. Provision of services—basic requirement.

a. General. Each LEA of residence shall make FAPE available to eligible students with disabilities who are enrolled by their parents in private schools. The LEA of residence shall determine the student's eligibility for FAPE.

b. LEA Responsibility. Each LEA of residence shall ensure that, an IEP is developed and implemented for each eligible child with a disability enrolled by their parents in a private school and that the child is afforded all of the rights of a child with a disability served by the LEA.

4. Services determined.

a. A private school child with a disability has a right to FAPE.

b. Decisions about the services that will be provided to private school children with disabilities must be made by the IEP team.

5. Services provided.

a. General. The services provided to private school children with disabilities by the LEA must be provided by personnel meeting the same standards as personnel providing services in the public schools.

b. Services provided in accordance with an IEP.

(1) Each private school child with a disability who has been designated by the LEA of residence to receive special education and related services must have an IEP.

B. Definition of parentally-placed private school children with disabilities.

1. Parentally-placed private school children with disabilities has the same meaning as used in 34 C.F.R. § 300.130, incorporated by reference above; provided, however, the definition includes children with disabilities beginning at age three (3).

C. Each LEA must conduct child find in accordance with 34 C.F.R. § 300.131. In addition to the requirements of 34 C.F.R. § 300.131 (b), each LEA must provide notice to parents of the right to FAPE under § 1.5.3(A) of this Part.

D. Services for parentally-placed private school children with disabilities shall be provided in accordance with 34 C.F.R. § 300.132, incorporated by reference above.

E. Expenditures shall be in accordance with 34 C.F.R. § 300.133, incorporated by reference above.

F. Consultation shall take place in accordance with 34 C.F.R. § 300.134, incorporated by reference above.

G. Written affirmation shall be required in accordance with 34 C.F.R. § 300.135, incorporated by reference above.

H. Compliance shall take place in accordance with 34 C.F.R. § 300.136, incorporated by reference above.

I. Equitable services shall be determined in accordance with 34 C.F.R. § 300.137, incorporated by reference above.

J. Equitable services shall be provided in accordance with 34 C.F.R. § 300.138, incorporated by reference above.

K. Location of services and transportation shall be determined in accordance with 34 C.F.R. § 300.139, incorporated by reference above.

L Due process complaints and State complaints shall be in accordance with 34 C.F.R. § 300.140, incorporated by reference above.

M. The requirement that funds not benefit a private school shall be in accordance with 34 C.F.R. § 300.141, incorporated by reference above

N. Use of personnel shall be in accordance with 34 C.F.R. § 300.142, incorporated by reference above.

O. The prohibition of separate classes shall be in accordance with 34 C.F.R. § 300.143, incorporated by reference above.

P. Property, equipment, and supplies shall be provided in accordance with 34 C.F.R. § 300.144, incorporated by reference above.

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

A. §§ 1.5.4(B) and 1.5.4(C) of this Part shall apply in accordance with 34 C.F.R. § 300.145, incorporated by reference above.

B. Responsibility of LEA.

1. Each LEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

a. Is provided special education and related services:

(1) In conformance with an IEP that meets the requirements of §§ 1.7.4(A) through 1.7.5(B) of this Part and

(2) At no cost to the parents;

2. Is provided an education that meets the standards that apply to education provided by the SEA and the LEA including the requirements of this part, except for the personnel requirements at § 1.5.8(A) of this Part; and

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

C. Implementation by SEA shall be in accordance with 34 C.F.R. § 300.147, incorporated by reference above.

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

Placement of children by parents when FAPE is at issue shall be in accordance with 34 C.F.R. § 300.148, incorporated by reference above.

1.5.6 State Complaint Procedures

A. The State has adopted complaint procedures in accordance with 34 C.F.R. § 300.151, incorporated by reference above.

B. The State complaint procedures shall include those set forth in 34 C.F.R. § 300.152, incorporated by reference above.

C. Complaints shall be filed in accordance with 34 C.F.R. § 300.153, incorporated by reference above; provided, however:

1. Under 34 C.F.R. § 300.153(c), the complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received in accordance with these regulations unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under these regulations and in accordance with § 1.5.6(A) of this Part.

1.5.7 Methods of Ensuring Services

Methods of ensuring services shall be in accordance with 34 C.F.R. § 300.154, incorporated by reference above.

1.5.8 Additional Eligibility Requirements

A. Personnel qualifications shall be in accordance with 34 C.F.R. § 300.156, incorporated by reference above; provided, however:

1. Under 34 C.F.R. § 300.156(a):

a. The LEA must ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

b. Certification-Licensure. All professional personnel, whether employed on a full-time or part-time basis, or under a contractual agreement, for whom certificates or licenses are required by State law and/or regulations, shall hold appropriate certificates or licenses. Where no such mandates exist, such personnel shall show evidence satisfactory to RIDE that they have appropriate professional training and/or experience to perform satisfactorily and successfully in their respective areas.

B. Personnel Requirements

1. Staffing. It is the responsibility of the public agency to assess the needs of students with disabilities, assign personnel in accordance with those needs, and evaluate the delivery of services to determine whether the agency's program conforms to the requirements of this Part and the IDEA.

2. Special Education Administrators. Every public agency shall employ a sufficient number of special education administrators necessary to carry out the requirements of this Part and the IDEA. Any public agency may enter into an agreement with one or more other public agencies to employ

the required number of special education administrators in operation of a regional special education program

3. Other Personnel. Every public agency shall employ a sufficient number of professionals, paraprofessionals, and assistants to meet all of the evaluation and placement timelines, as well as each student's individual service needs identified through the evaluation, and resulting in the individualized education program (IEP). Caseloads shall be assigned by the public agency in a prudent and equitable manner, based on the time required to properly serve the needs of the students with disabilities involved, as determined by the evaluation process and resulting in the IEP.

4. Reporting. Every public agency shall provide RIDE with the agency's policy to determine the number and types of personnel required under this section, and a description of the public process the agency used to develop its policy. Every public agency shall report annually to RIDE the agency's plan, pursuant to said policy, to comply with this regulation, including the number of full-time equivalent positions of special education administrators, special education teachers, school psychologist, speech/language pathologists, school social workers, and physical and occupational therapists, respectively, it uses to meet the needs of students with disabilities.

5. The Commissioner of Education may establish a class size maximum and/or staffing ratios for any group(s) of personnel, class, school, or district, if the commissioner determines that:

   a. The plan submitted by the district under § 1.5.8(B)(4) of this Part is insufficient to fulfill the requirements of this section,

   b. The district has failed to comply with the terms of the plan submitted by the district under § 1.5.8(B)(4) of this Part, or

   c. Student performance within or throughout the district warrants intervention as dictated through R.I. Gen. Laws § 16-7.1-5

6. Any decision made under this section by the Commissioner may be appealed under R.I. Gen. Laws § 16-39-3.

1.5.9 State Advisory Panel

A. State advisory panel

1. RIDE shall establish and maintain an advisory panel in accordance with 34 C.F.R. § 300.167, incorporated by reference above.

B. Membership

1. General. The advisory panel, consisting of members appointed by the Commissioner of Elementary and Secondary Education, shall meet the requirements of 34 C.F.R. § 300.168, incorporated by reference above.

C. Duties

1. The duties of the advisory panel shall be in accordance with 34 C.F.R. § 300.169, incorporated by reference above.

1.5.10 Other Provisions Required for State Eligibility

A. The requirements regarding the overidentification and disproportionality shall be met in accordance with 34 C.F.R. § 300.173, incorporated by reference above; provided, however:

1. The LEAs identified as having disproportionality must comply with the provisions of § 1.9.3 of this Part.

B. Mandatory medication shall be prohibited in accordance with 34 C.F.R. § 300.174, incorporated by reference above.

1.6 Local Educational Agency Eligibility

A. An LEA's condition of assistance shall be in accordance with 34 C.F.R. § 300.200, incorporated by reference above. In addition:

1. An LEA is eligible for assistance under Chapter 16 of the Rhode Island General Laws for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions as set forth in this Part.

B. The LEA shall maintain consistent policies in accordance with 34 C.F.R. § 300.201, incorporated by reference above, and have on file with RIDE, policies, procedures, and programs that are consistent with State policies and procedures.

C. Use of amounts.

1. General. The use of amounts provided to the LEA under Part B of the Act shall be in accordance with 34 C.F.R. § 300.202, incorporated by reference above.

D. Maintenance of effort.

1. General. Funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

2. Standard.

a. Except as provided in § 1.6(D)(2)(b) of this Part, the SEA shall determine that an LEA complies with § 1.6(D)(1) of this Part for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(1) Local funds only.

(2) The combination of State and local funds.

b. An LEA that relies on § 1.6(D)(2)(a)(1) of this Part for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in § 1.6(D)(2)(a)(1) of this Part was used to establish its compliance with this section.

c. The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in § 1.6(D)(1) of this Part.

E. Schoolwide programs under Title I of the ESEA shall be in accordance with 34 C.F.R. § 300.206, incorporated by reference above.

F. Personnel development requirements shall be in accordance with 34 C.F.R. § 300.207, incorporated by reference above.

G. Permissive use of funds shall be in accordance with 34 C.F.R. § 300.208, incorporated by reference above.

H. Treatment of charter schools and their students shall be in accordance with 34 C.F.R. § 300.209, incorporated by reference above.

I. Access to and purchase of instructional materials.

1. General. Each public agency must:

a. Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300 of the Act, for the

purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner; and

b. Each public agency must ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, and must take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

2. Rights of LEA.

a. Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.

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

c. Nothing in this section relieves a public agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities within § 1.6(I)(4) of this Part or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

3. Preparation and delivery of files. Each public agency that chooses to coordinate with the NIMAC must:

a. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

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

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

b. Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

4. Assistive technology. In carrying out this section, the Public Agency, to the maximum extent possible, must work collaboratively with the SEA assistive technology program(s).

a. Definitions.

(1) In this section:

(AA) Blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a;

(BB) National Instructional Materials Access Center or NIMAC means the center established pursuant to § 674(e) of the Act;

(CC) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in § 674(e)(3)(B) of the Act;

(DD) Specialized formats has the meaning given the term in § 674(e)(3)(D) of the Act.

(2) The definitions in §§ 1.6(I)(4)(a)((1))((AA)) through (CC)) of this Part apply to each public agency, whether or not the public agency chooses to coordinate with the NIMAC.

J. Information for SEA shall be provided in accordance with 34 C.F.R. § 300.211, incorporated by reference above.

K. Public information shall be made available in accordance with 34 C.F.R. § 300.212, incorporated by reference above.

L. Records regarding migratory children with disabilities shall be in accordance with 34 C.F.R. § 300.213, incorporated by reference above.

M. Exception for prior local plans shall be in accordance with 34 C.F.R. § 300.220, incorporated by reference above.

N. Notification of LEA or State agency in case of ineligibility shall be in accordance with 34 C.F.R. § 300.221, incorporated by reference above.

O. LEA and State agency compliance shall be in accordance with 34 C.F.R. § 300.222, incorporated by reference above.

P. Joint establishment of eligibility shall be in accordance with 34 C.F.R. § 300.223, incorporated by reference above.

Q. Requirements for establishing eligibility shall be in accordance with 34 C.F.R. § 300.224, incorporated by reference above.

R. Early intervening services shall be in accordance with 34 C.F.R. § 300.226, incorporated by reference above.

S. Direct services by the SEA shall be in accordance with 34 C.F.R. § 300.227, incorporated by reference above.

T. Disciplinary information shall be in accordance with 34 C.F.R. § 300.229, incorporated by reference above; provided, however:

1. Under 34 C.F.R. § 300.229(a), a public agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

2. Under 34 C.F.R. § 300.229(c), if the child transfers from one school to another, the transmission of any of the child's records shall include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

1.7 Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

1.7.1 Parental Consent

Parental consent shall be obtained in accordance with 34 C.F.R. § 300.300, incorporated by reference above.

1.7.2 Evaluations and Reevaluations

A. Initial evaluations shall be conducted in accordance with 34 C.F.R. § 300.301, incorporated by reference above; provided, however:

1. Procedures and timeframe for initial evaluation shall be conducted pursuant to 34 C.F.R. § 300.301(c); provided, however:

a. Each public agency must ensure that:

(1) Within ten (10) school days of the receipt of a referral for special education services a team of qualified professionals and the parent that includes the individuals described in § 1.7.4(B) of this Part and other qualified professionals, as

appropriate, known as the Evaluation Team, meet to determine if a special education evaluation is needed.

(2) The initial evaluation shall commence no later than ten (10) school days after the receipt of parental consent to conduct such an evaluation. If the parent does not notify the public agency within five (5) school days of their consent to evaluate, the team must document its efforts to obtain consent. If the public agency has not obtained parental consent to evaluate within fifteen (15) school days of the request to evaluate, the Evaluation Team must reconvene to consider what action the public agency will take including, (as appropriate) the requirements described in § 1.7.1 of this Part (34 C.F.R. § 300.300(a)).

(3) A full individual initial evaluation is conducted before the initial provision of special education and related services

b. Within sixty (60) calendar days of receipt of parental consent to an initial evaluation:

(1) The child is evaluated; and

(2) A written report of the Evaluation Team is made available to the public agency and the parent(s); and a team of qualified professionals and the parent(s) of the child meet as an eligibility team to determine whether the child is a child with a disability and in need of special education and related services.

c. If determined eligible under this part, an IEP meeting is conducted and an IEP is developed and special education and related services are made available to the child in accordance with an IEP within fifteen (15) school days of the eligibility determination.

d. If it is determined that an initial evaluation is not needed, the evaluation team shall consider referring the student's case back to general education for appropriate action.

B. A screening for instructional purposes is not an evaluation in accordance with 34 C.F.R. § 300.302, incorporated by reference above.

C. Reevaluations shall be conducted in accordance with 34 C.F.R. § 300.303, incorporated by reference above. In addition:

1. Procedures and timeframe for reevaluation.

a. Each public agency must ensure that:

(1) The reevaluation shall commence no later than ten (10) school days after the receipt of parental consent to conduct such an evaluation. If the parent does not notify the public agency within five (5) school days of their consent to evaluate, the IEP Team must document its efforts to obtain consent. If the public agency has not obtained parental consent to evaluate within fifteen (15) school days of the request to evaluate, the IEP Team must reconvene to consider what action the public agency will take including, (as appropriate) the requirements described in § 1.7.1 of this Part (34 C.F.R. §300.300(c) and (d)).

b. Within sixty (60) calendar days of receipt of parental consent to conduct a reevaluation:

(1) The child is reevaluated; and

(2) A written report of the IEP Team is made available to the public agency and the parent(s); and the IEP Team meets to determine continued eligibility for special education and related services.

c. If determined eligible under this part, the public agency must ensure that continued special education and related services are made available to the child.

D. Evaluation procedures shall be in accordance with 34 C.F.R. § 300.304, incorporated by reference above, provided however:

1. Other evaluation procedures shall be the same as 34 C.F.R. § 300.304(c)(1) with the following addition:

a. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child who is learning English as a second language, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's linguistic difference, in accordance with § 1.5.10(A) of this Part.

E. Additional requirements for evaluations and reevaluations shall be in accordance with 34 C.F.R. § 300.305, incorporated by reference above.

F. Determination of eligibility shall be in accordance with 34 C.F.R. § 300.306, incorporated by reference above.

1.7.3 Additional Procedures for Identifying Children with Specific Learning Disabilities

A. The procedure for identifying children with specific learning disabilities shall be in accordance with 34 C.F.R. § 300.307, incorporated by reference above. The State criteria for determining whether a student has a specific learning disability is as follows:

1. Response to Intervention Process Basis

a. In one or more of the eight (8) areas below the student's performance meets the description under Achievement Gap and Educational Progress.

(1) Achievement Gap: evidence from multiple reliable and valid sources indicate that the student's current achievement of State-approved Grade Level/Span Expectations and English Language Proficiency Standards is significantly different than his/her peers relative to national normative data with consideration of state and local data when provided with learning experiences and instruction appropriate for the child's age or state approved grade level/span expectations. The student's current achievement shall be determined after the provision of appropriate general education learning experiences including at least two periods of intensive interventions implemented with fidelity. English Language Learners shall additionally be provided with instruction appropriate for their English language proficiency.

(2) Educational Progress. The student does not make sufficient progress to meet age or State-approved Grade Level/Span Expectations and English Language Proficiency Standards, based on child's limited responsiveness to intensive scientific, research-based interventions which have been implemented with fidelity. Insufficient progress is determined using multiple reliable and valid measures. The process of determining insufficient progress considers the student's rate of improvement towards meeting age or State-approved Grade Level/Span Expectations and English Language Proficiency Standards during intensive intervention, student's past rate of improvement, and a normative rate based on the response of his/her local age peers with consideration of national data.

(AA) Oral expression.

(BB) Listening comprehension.

(CC) Written expression.

(DD) Basic reading skill.

(EE) Reading fluency skills.

(FF) Reading comprehension.

(GG) Mathematics calculation.

(HH) Mathematics problem solving.

b. Other considerations.

(1) Student performance in areas indicated above is not primarily the result of:

(AA) A visual, hearing, or motor disability;

(BB) Intellectual disability;

(CC) Emotional disturbance;

(DD) Cultural factors;

(EE) Environmental or economic disadvantage; or

(FF) Limited English Proficiency

(2) The determinant factor of the findings is not any of the following:

(AA) Student has lacked appropriate instruction in literacy.

(BB) Student has lacked appropriate instruction in math.

(CC) Student has had extended absences.

(DD) Student has had repeated change of schools.

(EE) Student has had an inconsistent or inappropriate educational program.

B. Additional group members shall be in accordance with 34 C.F.R. § 300.308, incorporated by reference above.

C. Determining the existence of a specific learning disability shall be in accordance with 34 C.F.R. § 300.309, incorporated by reference above.

D. Observation shall be in accordance with 34 C.F.R. § 300.310, incorporated by reference above.

E. Specific documentation for the eligibility determination shall be in accordance with 34 C.F.R. § 300.311, incorporated by reference above. In addition to the requirements of 34 C.F.R. § 300.311(a), the documentation must also contain:

1. If the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, recommendations for tailoring instruction and interventions to support the child's progress;

1.7.4 Individualized Education Programs

A. "Individualized education program" means the same as used in 34 C.F.R. § 300.320, incorporated by reference above; provided, however:

1. Under 34 C.F.R. § 300.320(a), as used in this Part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 1.7.4(A) through 1.7.5(A) of this Part and must also include:

a. A statement of measurable annual goals, including academic and functional goals and short- term objectives, aligned, where applicable, to the child's personal literacy and/or individual learning plan, designed to:

(1) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(2) Meet each of the child's other educational needs that result from the child's disability;

2. Transition services shall be in accordance with 34 C.F.R § 300.320(b), provided, however, this section shall apply to a child with a disability beginning at age fourteen (14), or younger, if determined appropriate by the IEP Team.

B. IEP Team shall be in accordance with 34 C.F.R. § 300.321, incorporated by reference above; provided, however, the representative of the public agency referenced in 34 C.F.R 300.321(a)(4)(iii) must also have the authority to commit the resources of the public agency.

C. Parent participation shall be in accordance with 34 C.F.R. § 300.322, incorporated by reference above; provided, however:

1. Pursuant to 34 C.F.R § 300.322(a), the public agency shall:

a. Schedule the IEP meeting within ten (10) school days of a request by the parent or the LEA to meet to review the child's IEP,

b. Schedule the meeting at a mutually agreed on time and place, and

c. Notify parents of the meeting ten (10) school days prior to the meeting to ensure that they will have an opportunity to attend (the parent may agree to waive the ten (10) day notice requirement in order to expedite the IEP Team meeting).

2. The notice required under 34 C.F.R § 300.322(b)(2) must be provided for a child with a disability beginning at age fourteen (14) or younger, if determined appropriate by the IEP Team. The notice must:

(1) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 1.7.4(A)(2) of this Part; and

(2) Indicate that the agency will invite the student; and

(3) Identify any other agency that will be invited to send a representative.

3. Under 34 C.F.R § 300.322(f), the public agency must give the parent a copy of the child's IEP at no cost to the parent and not later than ten (10) calendar days after:

a. An IEP has been developed for the child; and

b. After the receipt of a request for a copy of the IEP.

D. When IEPs must be in effect shall be in accordance with 34 C.F.R. § 300.323, incorporated by reference above; provided, however:

1. Initial IEPs; provision of services shall be pursuant to 34 C.F.R. § 300.323(c); provided, however, each public agency shall ensure that:

a. A meeting to develop an IEP for a child is conducted within fifteen (15) school days of a determination that the child needs special education and related services; and

b. As soon as possible following development of the IEP, but not later than ten (10) school days, special education and related services are made available to the child in accordance with the child's IEP.

2. IEPs for children who transfer public agencies in the same State, under 34 C.F.R. § 300.323(e), shall remain in effect pursuant to R.I. Gen. Laws § 16-4-21(e).

1.7.5 Development of IEP

A. The development, review, and revision of IEPs shall be in accordance with 34 C.F.R. § 300.324, incorporated by reference above.

B. Private school placements by public agencies shall be in accordance with 34 C.F.R. § 300.325, incorporated by reference above.

C. Educational placements shall be in accordance with 34 C.F.R. § 300.327, incorporated by reference above.

D. Alternative means of meeting participation shall be in accordance with 34 C.F.R. § 300.328, incorporated by reference above.

1.8 Procedural Safeguards

1.8.1 Due Process Procedures for Parents and Children

A. Responsibility of SEA and other public agencies shall be in accordance with 34 CFR § 300.500, incorporated by reference by above.

B. Opportunity to examine records; parent participation in meetings shall be in accordance with 34 C.F.R. § 300.501, incorporated by reference above; provided, however:

1. Parent involvement in placement decisions shall be in accordance with 34 C.F.R. § 300.501(c). In addition:

a. The LEA shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for sign or language interpreters.

C. Independent educational evaluation shall be in accordance with 34 C.F.R. § 300.502, incorporated by reference above; provided, however:

1. If a parent requests an independent educational evaluation at public expense, the public agency shall comply with 34 C.F.R. § 300.502(b) not later than fifteen (15) calendar days from receipt of a request.

D. Prior notice by the public agency; content of notice, shall be in accordance with 34 C.F.R. § 300.503, incorporated by reference above; provided, however:

1. The written notice required by 34 C.F.R. § 300.503(a) shall be given within ten (10) school days.

E. Procedural safeguards notice shall be in accordance with 34 C.F.R. § 300.504, incorporated by reference above; provided, however that the notice required in 34 C.F.R. § 300.504(c) shall also include a full explanation of the procedural safeguard available under 1.8.1(U).

F. The use of electronic mail shall be in accordance with 34 C.F.R. § 300.505, incorporated by reference above.

G. Mediation. The SEA shall offer and implement a conflict resolution procedure called "mediation" in accordance 34 C.F.R. § 300.506, incorporated by reference above; provided, however:

1. Under 34 C.F.R. § 300.506(a), each public agency must ensure that procedures are established to implement 34 C.F.R. § 300.506(a), including referring a party seeking mediation to the SEA.

H. The filing of a due process complaint shall be subject to the provisions of 34 C.F.R. § 300.507, incorporated by reference above.

I. Due process complaints shall be in accordance with 34 C.F.R. § 300.508, incorporated by reference above.

J. The development and use of model forms shall be provide in accordance with 34 C.F.R. § 300.509, incorporated by reference above.

K. The resolution process shall be in accordance with 34 C.F.R. § 300.510, incorporated by reference above.

L. Impartial due process hearings shall be conducted in accordance with 34 C.F.R. § 300.511, incorporated by reference above; provided, however:

1. Under 34 C.F.R. § 300.511(b), the SEA shall establish, implement, determine financial responsibility, and develop procedures for administering a system of due process under this section.

M. Hearing rights shall be provided in accordance with 34 C.F.R. § 300.512, incorporated by reference above.

N. Hearing decisions shall be issued in accordance with 34 C.F.R. § 300.513, incorporated by reference above.

O. Finality of decision; appeal.

1. Finality of hearing decision. A decision made in a hearing conducted pursuant to §§ 1.8.1(H) through (N) of this Part or §§ 1.8.2(A) through (E) of this Part is final, except that any party involved in the hearing may appeal the decision under the provisions of § 1.8.1(Q) of this Part.

P. Timelines and convenience of hearings and reviews shall be in accordance with 34 C.F.R. § 300.515, incorporated by reference above.

Q. Civil actions may be brought in accordance with 34 C.F.R. § 300.516, incorporated by reference above; provided, however:

1. General. Under 34 C.F.R. § 300.516(a), any party aggrieved by the findings and decision made under §§ 1.8.1(H) through (N) of this Part or §§ 1.8.2(A) through (E) has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §§ 1.8.1(H) or 1.8.2(A) through (C) of this Part. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

2. Time limitation. Under 34 C.F.R. § 300.516(b) the party bringing the action shall have thirty (30) days from the date of the receipt of the decision of the hearing officer to file a civil action.

R. Attorneys' fees shall be in accordance with 34 C.F.R. § 300.517, incorporated by reference above.

S. Child's status during proceedings shall be in accordance with 34 C.F.R. § 300.518, incorporated by reference above.

T. The assignment of surrogate parents shall be in accordance with 34 C.F.R. § 300.519, incorporated by reference above.

U. Transfer of parental rights at age of majority.

1. When a child with a disability reaches the age of eighteen (18) under R.I. Gen. Laws § 15-12-1 (except for a child with a disability who has been determined to be incompetent under State law):

a. The public agency must provide any notice required by this part to both the child and the parents; and

b. All rights accorded to parents under Part B of the Act transfer to the child;

2. All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

3. The public agency must notify the child and the parents of the transfer of rights.

1.8.2 Discipline Procedures

A. Authority of school personnel; emergency removal. Section 34 C.F.R. §§ 300.530 (c) through (h) is incorporated by reference above.

1. Section 34 C.F.R § 300.530(a) is superseded by the following (Case-by-case determination):

a. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

b. If school personnel determine that a child with a disability presents an immediate threat to him or herself or to others, the child may be removed from school for the remainder of the school day regardless of the number of days of suspension the child had already accrued during that school year.

c. For any emergency removal under § 1.8.2(A)(1)(b) of this Part the public agency must follow the requirements of this section.

2. Section 34 C.F.R. § 300.530(b) is superseded by the following (School Removal):

a. Removals for less than ten (10) days cumulative. School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities).

(1) During the first ten (10) school days of removal (cumulative) during the course of a school year, a public agency may, but is not required to:

(AA) Provide educational services to the child;

(BB) Conduct a manifestation determination prior to the disciplinary removal;

(CC) Perform a functional behavioral assessment of the child; or

(DD) Develop a behavioral intervention plan to address the behavioral factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

b. Removals for more than ten (10) days cumulative. After a child with a disability has been removed from his or her current placement for more than ten (10) school days cumulative in the same school year, during any subsequent days of removal the public agency must

provide services to the extent required under § 34 C.F.R. 300.530(d).

B. Determination of setting shall be in accordance with 34 C.F.R. § 300.531, incorporated by reference above.

C. Appeals and expedited due process hearings shall take place in accordance with 34 C.F.R. § 300.532, incorporated by reference above; provided, however:

1. An expedited due process hearing shall be in accordance with 34 C.F.R. § 300.532(c), except that the expedited due process hearing must conclude within twenty (20) school days of the date that the complaint requesting the hearing is filed.

D. The child's placement during an appeal shall be in accordance with 34 C.F.R. § 300.533, incorporated by reference above.

E. Protections for children not determined eligible for special education and related services shall be in accordance with 34 C.F.R. § 300.534, incorporated by reference above.

F. Referral to and action by law enforcement and judicial authorities shall be in accordance with 34 C.F.R. § 300.535, incorporated by reference above.

G. Change of placement because of disciplinary removals.

1. For purposes of removals of a child with a disability from the child's current educational placement under §§ 1.8.2(A) through (F) of this Part, a change of placement occurs if the removal is for more than ten (10) school days cumulative in the same school year.

1.9 Monitoring, Enforcement, Confidentiality, and Program Information

1.9.1 Monitoring, Technical Assistance, and Enforcement

State Monitoring and enforcement shall be in accordance with 34 C.F.R. § 300.600, incorporated by reference above.

1.9.2 Confidentiality of Information

A. As used in § 1.9.2 of this Part, the definitions of "destruction," "education records," and "participating agency" shall be in accordance with 34 C.F.R. § 300.611, incorporated by reference above.

B. Notice to parents shall be given by the SEA in accordance with 34 C.F.R. § 300.612, incorporated by reference above.

C. Access rights shall be in accordance with 34 C.F.R. § 300.613, incorporated by reference above; provided, however:

1. Under 34 C.F.R. § 300.613(a), each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §§ 1.8.1(H) or 1.8.2(A) through (C) of this Part, or resolution session pursuant to § 1.8.1(K) of this Part, and in no case more than ten (10) calendar days after the request has been made.

D. Record of access shall be in accordance with 34 C.F.R. § 300.614, incorporated by reference above.

E. Records on more than one child shall be in accordance with 34 C.F.R. § 300.615, incorporated by reference above.

F. List of types and locations of information shall be in accordance with 34 C.F.R. § 300.616, incorporated by reference above.

G. Fees shall be in accordance with 34 C.F.R. § 300.617, incorporated by reference above.

H. Amendment of records at parent's request shall be in accordance with 34 C.F.R. § 300.618, incorporated by reference above.

I. Opportunity for a hearing shall be in accordance with 34 C.F.R. § 300.619, incorporated by reference above.

J. Result of hearing shall be in accordance with 34 C.F.R. § 300.620, incorporated by reference above.

K. Hearing procedures shall be in accordance with 34 C.F.R. § 300.621, incorporated by reference above.

L. Consent shall be in accordance with 34 C.F.R. § 300.622, incorporated by reference above.

M. Safeguards of confidentiality shall be in accordance with 34 C.F.R. § 300.623, incorporated by reference above.

N. Destruction of information shall be in accordance with 34 C.F.R. § 300.624, incorporated by reference above.

1.9.3 Reports - Program Information

A. Disproportionality. Disproportionality shall be in accordance with 34 C.F.R. § 300.646, incorporated by reference above.

B. Determining significant disproportionality shall be in accordance with 34 C.F.R § 300.647, incorporated by reference above.

1.10 Additional Requirements

1.10.1 Local Advisory Committee on Special Education

A. Local advisory committee on special education (LAC).

1. The school committee of each local educational or regional special education program shall appoint an Advisory Committee on Special Education. The school committee shall approve the by- laws of the advisory committee.

2. Membership: Each local or regional committee shall be composed of persons involved in or concerned with the education of students with disabilities. Parents of students with disabilities shall compose a majority of the committee membership, and at least fifty percent (50%) of this majority shall be selected by the parents of students with disabilities. A regional committee shall reflect an equal distribution of representatives from each of the school districts that comprise the regional program. Membership shall include an individual with a disability, a public school administrator, a special education teacher, a general education teacher and other members of the community at the discretion of the committee and school board.

3. Functions and Responsibilities of the LAC: The committee shall advise the school district or regional program on matters concerning the unmet needs of students with disabilities, comment on improvement plans including school support plans resulting from IDEA Part B compliance reports, local compliance with state and federal laws pertaining to the education of students with disabilities, comment on applications for federal and state funds and serve as advocates in partnership with parents for students with disabilities to ensure that they receive the entitlements provided to them under state and federal laws.

4. Duties and Responsibilities of the Local or Regional Agency: The local or regional educational agency shall provide support to the committee by contracting for technical assistance services with the Rhode Island designated Parent Training and Technical Assistance Agency or other community- based non-profit parent organization. Such technical assistance shall include the role of advisory committees in advocating for children, state and federal regulations, community resources, strategic planning and development of an annual report to the school committee.

The local or regional educational agency shall also provide school and district improvement plans to the committee for comment and make available appropriate records and data as permitted by law. The public agency shall also support the committee in disseminating information to parents of students regarding the role of the advisory committee, information pertaining to special education and inform the committee of professional development opportunities that are available within the LEA.

5. Conduct of Meetings: The committee shall meet as often as necessary to conduct its business but at least four times annually. Official minutes shall be kept of all committee meetings and be available for public review. All committee meetings and agendas shall be publicly announced prior to any meeting, and meetings shall be open to the public.

6. Members of the committee shall serve without compensation but may be reimbursed for reasonable and necessary expenses for attending meetings and performing duties.

7. Parent Notification of Local or Regional Advisory Committee: When a child is referred to special education, each school district or regional special education program shall provide the parents with notification of the existence of the Local or Regional Advisory Committee for Special Education established in compliance with this Part. The notification shall specify that a majority of the Local Advisory Committee (LAC) on Special Education is parents of children with disabilities, and shall inform the parents how the chairperson of the Local Advisory Committee (LAC) for Special Education or the Regional Advisory Committee on Special Education may be contacted.

1.10.2 Regional Transition Services Advisory Committee

A. Regional transition services advisory committee (TAC).

1. Within each of the legislatively created Collaboratives and Providence, there shall be a Transition Advisory Committee (TAC) that will conform to guidelines issued by RIDE. The membership of the TAC shall meet monthly during the school year. By the first of July of each year, the TAC shall submit to the State Transition Council an annual report of activities and recommendations.

1.10.3 Transportation

A. Transportation services for children with disabilities.

1. Responsibility. All students with disabilities who need special transportation as a related service and as determined by the evaluation process and described in the individual education program (IEP) shall be provided such service. It shall include free transportation from home to the

educational program in which the child is enrolled. It shall also include free transportation to and from the clinical, diagnostic and therapeutic facilities when the clinical, diagnostic and therapeutic services are necessary to complete the child's evaluation or to provide the services required in the child's IEP.

2. Specific Requirements.

a. Appropriate devices, which accommodate specific transportation needs of the child, must be provided on an individualized basis.

b. A minimum of one (1) aide must be assigned to each bus used for special transportation. Such aide, in addition to providing general care and supervision to all children with disabilities on such bus, shall also provide assistance (from street level entrance of the child's dwelling) to such children lacking the mobility to leave the home and board transportation vehicles, and shall further assist such children in disembarking the vehicle and entering school. When children are transported to clinical, diagnostic or therapeutic facilities, determination of whether a bus aide is necessary shall be based on the judgment of the IEP Team.

c. School districts shall provide in-service training for administrative personnel, drivers and aides providing special education transportation services in order that they may effectively deal with the children with disabilities and understand the issues and concerns of the parents of such children.

d. Scheduling of transportation vehicles shall be planned whenever possible in such a manner as to provide for the least amount of travel time necessary to transport children with disabilities from home to school and back home again. When travel time for children with disabilities who are receiving special transportation is found to exceed one (1) hour to or from the location of special education services, the parent(s) shall be notified in writing. This notice will include the reason(s) for the duration of the travel time and the notification must include a description of the parent(s) right to an appeal. The school district will submit a copy of the notification to the Director of the Office of Student, Community and Academic Supports at RIDE. This notice will include the reason(s) for the duration of the travel time.

e. All vehicles used in the transportation of children with disabilities as a related service shall be equipped with two-way communication devices in case of an emergency.

1.10.4 Non-Public and State Operated School Programs

A. Non-public and State operated school programs.

1. To be eligible for approval by RIDE, special education programs conducted in private and state- operated schools in Rhode Island shall meet the regulations governing the approval of school programs. Private and state operated school programs shall be evaluated in the same manner, on the same schedule and with the same criteria and procedures as utilized for public schools in Rhode Island and shall be subject to on-site visits by the Rhode Island Commissioner of Elementary and Secondary Education or the Commissioner's authorized representative as often as is deemed necessary by RIDE. Approval of such programs shall be on a triennial basis.

2. All special education programs in any private and state operated day or residential school shall meet the same standards as those established for public school programs.

3. Private and state operated school programs shall provide services by appropriately certified personnel in accordance with the needs of the students with disabilities to be served, as determined by the IEP process. Caseloads for specialized personnel shall be assigned based on the time required to meet the needs of children with disabilities, as determined by the IEP process.

4. Monitoring of a child's progress in a private day or residential school program shall be conducted by the special education director or designee, trained in the child's area of need, who shall be from the school district where the child resides.

5. Special Education programs for children with disabilities in state operated schools shall be monitored by RIDE.

6. Private day or residential programs shall employ a certified administrator of special education, whose basic responsibilities shall be the overall administration and supervision of the special education program, and whose schedule shall be determined based on the time required to meet the needs of the children with disabilities

7. Each private day and residential school program shall have a statement of financial stability which identifies sufficient assets to establish and maintain a satisfactory program of education on a continuing basis. The owner(s) of a school, whether for initial approval or renewal of approval, shall also furnish statements of income and retained earnings and changes in financial position. These statements shall include in a clearly identifiable manner, records of receipts and expenditures, personnel salaries, and tuition. All statements shall be prepared by a Public Accountant or Certified Public Accountant, but need not be certified by the

Accountant or supported by an audit. These statements shall be accompanied by a notarized statement by the owner(s) or the director of the school that the financial statements are true and correct, and shall identify the name of the Public Accountant or Certified Public Accountant who prepared the statements.

8. Information on tuition and/or fee schedule shall be submitted to RIDE in accordance with forms and instructions supplied by RIDE as part of the school approval application.

9. Each non-public day and residential school program shall use and have available for inspection written administrative procedures that encompass the following:

   a. Provision for emergency and early termination of children including prior consultation with the special education director in the school district of the child's residence in order to provide for an orderly transfer of responsibility back to this special education director.

   b. Provision of procedural safeguards which cover the same areas required for public schools.

   c. Provision for parental involvement including parental education and counseling.

   d. Provision for staff training.

   e. Provision of measures which protect all students from exposure to humiliation or verbal abuse or any form of corporal punishment that could be construed as cruel or severe.

   f. Provision of written reports on each child which are mailed to the child's parents and the special education director in the child's resident school district at least as often as the public school district reports progress to parents of non-disabled children.

10. State responsibility.

   a. In ensuring that each LEA meets their responsibilities under §§ 1.5.4(A) through (C) of this Part, RIDE shall:

      (1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

      (2) Disseminate copies of applicable standards to each private school and facility to which an LEA has referred or placed a child with a disability; and

(3) Provide an opportunity for those private schools and facilities to participate in development and revision of State.

~~(6)~~