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EDUCATION
Title 28

Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

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Title 28
EDUCATION
Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act
Subpart 1. Students with Disabilities

Chapter 1. State Eligibility
Subchapter A. FAPE Requirements
§101. Authority and Scope

A. General. A free appropriate public education shall be available to all students residing in the state between the ages of 3 and 21, inclusive, including students with disabilities who have been suspended or expelled from school as provided for in §530.D.

1. In accordance with R.S. 17:1941 et seq., the Board of Elementary and Secondary Education is:

a. responsible for the assurance of a free appropriate public education to all students residing in the state; and

b. directly responsible for the provision of a free appropriate public education to students within the jurisdiction of the Special School District, the Recovery School District, or in a Louisiana Special School (the Louisiana School for the Visually Impaired or the Louisiana School for the Deaf).

B. FAPE for Children Beginning at Age Three

1. The state board shall ensure that:

a. the obligation to make FAPE available to each eligible student residing in the state begins no later than the child's third birthday; and

b. an IEP is in effect for the student by that date, in accordance with §323.B.

2. if a student's third birthday occurs during the summer, the student's IEP Team shall determine the date when services under the IEP will begin.

C. Students Advancing from Grade to Grade

1. The state shall ensure that FAPE is available to any individual student with a disability who needs special education and related services, even though the student has not failed or been retained in a course or grade, and is advancing from grade to grade.

2. The determination that a student described in Subsection A of this Section is eligible under these regulations shall be made on an individual basis by the group responsible within the student's LEA for making eligibility determinations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2036 (October 2008), amended LR 46:180 (February 2020), amended LR 48:35 (January 2022).

§102. Limitation-Exception to FAPE for Certain Ages

A. General. The obligation to make FAPE available to all students with disabilities does not apply with respect to the following.

1. Students aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility:

a. were not actually identified as being a student with a disability as defined in §905; and

b. did not have an IEP under Part B of the IDEA:

i. the exception in Subparagraph A.1.a of this Section does not apply to students with disabilities, aged 18-21, who:

(a). had been identified as a student with a disability as defined in §905 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(b). did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability as defined in §905;

2.a. students with disabilities who have graduated from high school with a regular high school diploma:

b. the exception in Paragraph A.2 of this Section does not apply to students who have graduated from high school but have not been awarded a regular high school diploma;

c. graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §504;

d. as used in Subparagraphs A.2.a through A.2.c of 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).

B. Documents Relating To Exceptions. The LDE shall assure that the information it has provided to the secretary regarding the exceptions in Subsection A of this Section, as required by §701 (for purposes of making grants to states under these regulations), is current and accurate.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2036 (October 2008).

Subchapter B. Other FAPE Requirements
§103. FAPE—Methods and Payments

A. The state of Louisiana may use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of these regulations. If it is necessary to place a student with a disability in a residential facility, for example, the state could use joint agreements between the agencies involved for sharing the cost of that placement.

B. Nothing in these regulations relieves an insurer or similar third party from an otherwise valid obligation to

provide or to pay for services provided to a student with a disability.

C. Consistent with §323.C, the LDE ensures that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

§104. Residential Placement

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

§105. Assistive Technology

A. Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §905, are made available to a student with a disability if required as a part of the student's:

1. special education under §905;
2. related services under §905; or
3. supplementary aids under §§905 and 114.A.2.b.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

§106. Extended School Year Services

A. General

1. Each public agency shall ensure that extended school year (ESY) services are available as necessary to provide FAPE, consistent with Paragraph A.2 of this Section;

2. extended school year services shall be provided only if a student's IEP Team determines, on an individual basis, in accordance with §§320 through 324, that the services are necessary for the provision of FAPE to the student;

3. in implementing the requirements of this Section, a public agency may not:

a. limit ESY services to particular categories of disability; or

b. unilaterally limit the type, amount, or duration of those services; and

4. the IEP Team shall make its determination in accordance with the LDE's extended school year services eligibility criteria found in *Bulletin 1530—Louisiana's IEP Handbook*.

B. Definition. As used in this Section, the term *extended school year (ESY) service*—special education and related services that:

1. are provided to a student with a disability:

a. beyond the normal school year of the public agency;

b. in accordance with the student's IEP;

c. at no cost to the parents of the student; and

2. meet the standards of the LDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

§107. Nonacademic Services

A. The LDE shall ensure the following.

1. Each public agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

§108. Physical Education

A. The LDE shall ensure that public agencies in the state make available.

1. General. Physical education services, specially designed if necessary, to every student with a disability receiving FAPE, unless the public agency enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades.

B. Regular Physical Education. Each student with a disability shall be afforded the opportunity to participate in the regular physical education program available to non-disabled students unless:

1. the student is enrolled full time in a separate facility; or

2. the student needs specially designed physical education, as prescribed in the student's IEP.

C. Special Physical Education. If specially designed physical education is prescribed in the student's IEP, the public agency responsible for the education of that student shall 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 student with a disability who is enrolled in a separate facility shall ensure that the student receives appropriate physical education services in compliance with this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2038 (October 2008).

§109. Full Educational Opportunity Goal (FEOG)

A. The LDE shall have in effect policies and procedures to demonstrate that the LDE has established a goal of providing a full educational opportunity to all students with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2038 (October 2008).

§110. Program Options

A. The LDE shall ensure that each public agency takes steps to ensure that the students with disabilities residing in the area served by the public agency have available to them the variety of educational programs and services available to non-disabled students, including but not limited to art, music, industrial arts, consumer and homemaking education, and vocational education.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2038 (October 2008).

§111. Child Find

A. General

1. The LDE shall ensure that:

a. all students with disabilities residing in the state, including students with disabilities who are homeless children or who are wards of the state, and students with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

b. a practical method is developed and implemented to determine which students are currently receiving needed special education and related services.

2. Each public agency, in accordance with the requirements of these regulations, shall document that on-going identification activities are conducted to identify, locate, and evaluate each student who is suspected of having a disability, in need of special education and related services, and meets the criteria listed below:

a. is enrolled in an educational program operated by or under the jurisdiction of a public agency;

b. is enrolled in a private school program within the geographical jurisdiction of a public agency;

c. is enrolled in a public or private preschool or day care program; or

d. is not enrolled in a school, except for students who have graduated with a regular high school diploma.

B. Use of Term Developmental Delay. The following provisions apply with respect to implementing the Child Find requirements of this Section:

1. the LDE has defined the term developmental delay in the definition of student with a disability in §905 of this Part and determined that it applies to students aged three through eight.

2. an LEA is not required to adopt and use the term d*evelopmental delay* for any students within its jurisdiction;

3. if an LEA uses the term developmental delay for students described in Paragraph B of the definition of *student with a disability* as defined in §905, the LEA shall conform to both the definition and to the age range therein.

C. Other Students in Child Find. Child Find also shall include:

1. students who are suspected of being students with a disability under §905 and in need of special education, even though they are advancing from grade to grade; and

2. highly mobile students, including migrant students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2038 (October 2008).

§112. Individualized Education Programs (IEP)

A. The LDE shall ensure that an IEP, that meets the requirements of Section 636(d) of the IDEA, is developed, reviewed, and revised for each student with a disability in accordance with §§320 through 324, except as provided in §301B.3.b.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2038 (October 2008).

§113. Routine Checking of Hearing Aids and External Components of Surgically Implanted Medical Devices

A. Hearing Aids. Each public agency shall ensure that hearing aids worn in school by students are functioning properly.

B. External components of surgically implanted medical devices.

1. Subject to Paragraph B.2 of this Section, each public agency shall ensure that the external components of surgically implanted medical devices are functioning properly.

2. For a student with a surgically implanted medical device who is receiving special education and related services under these regulations, 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).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2039 (October 2008), amended LR 43:2494 (December 2017).

Subchapter C. Least Restrictive Environment (LRE)

§114. LRE Requirements

A. General

1. Except as provided in §324.D.2 (regarding students with disabilities in adult prisons), the LDE adopts the policies and procedures in this Section and in §§115 through 120 to ensure that public agencies in the state meet the federal LRE requirements of this Section and §§115 through 120.

2. Each public agency shall ensure that:

a. to the maximum extent appropriate, students with disabilities, including students in public or private

institutions or other care facilities, are educated with students who are nondisabled; and

b. special classes, separate schooling, or other removal of students 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. Additional Requirement—State Funding Mechanism

1. General

a. The state funding mechanism shall not result in placements that violate the requirements of Subsection A of this Section; and

b. the state shall not use a funding mechanism by which it distributes funds on the basis of the type of setting in which a student is served that will result in the failure to provide a student with a disability FAPE according to the unique needs of the student, as described in the student's IEP.

2. Assurance. The state has policies and procedures to ensure compliance with Paragraph B.1 of this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2039 (October 2008).

§115. Continuum of Alternative Placements

A. Each public agency shall ensure that a continuum of alternative educational placements is available to meet the need of students with disabilities for special education and related services.

B The continuum required in Subsection A of this Section shall:

1. include the alternative placements listed in the definition of special education under §905 (instruction in regular classes, special classes, special schools, home instruction, instruction in hospitals, and institution); and

2. make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2039 (October 2008).

§116. Placements

A. In determining the educational placement of a student with a disability, including a preschool student with a disability, each public agency shall ensure that:

1. the placement decision:

a. is made by a group of persons including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and

b. is made in conformity with the LRE provisions of this Section, including §§114 through 118;

2. the student's placement:

a. is determined at least annually;

b. is based on the student's IEP; and

c. is as close as possible to the student's home;

3. unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if non-disabled;

4. in selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs; and

5. a student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum;

6. for students with a hearing or visual impairment, parents shall be informed of all placement options, including the Louisiana School for the Deaf and the Louisiana School for the Visually Impaired, that will appropriately meet the students' unique educational needs;

7. each completed IEP shall document the placement requirements described in *Bulletin 1530—Louisiana's IEP Handbook*.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2039 (October 2008).

§117. Nonacademic Settings

A. In providing or arranging for the provision of nonacademic and extracurricular services and activities including meals and recess periods and the services and activities set forth in §107, each public agency shall ensure that each student with a disability participates with non-disabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP Team to be appropriate and necessary for the student to participate in nonacademic settings.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2039 (October 2008).

§118. Students in Public or Private Institutions

A. Except as provided in §149.D (regarding agency responsibility for general supervision for some individuals in adult prisons), the LDE shall ensure that §114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

§119. Technical Assistance and Training Activities

A. The LDE shall carry out activities to ensure that teachers and administrators in all public agencies:

1. are fully informed about their responsibilities for implementing §114; and

2. are provided with technical assistance and training necessary to assist them in this effort.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

§120. Monitoring Activities

A. The LDE shall carry out activities to ensure that §114 is implemented by each public agency.

B. If there is evidence that a public agency makes placements that are inconsistent with §114, the LDE shall:

1. review the public agency's justification for its actions; and

2. assist in planning and implementing any necessary corrective action.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

Subchapter D. Additional Eligibility Requirements

§121. Procedural Safeguards

A. General. The LDE shall have procedural safeguards in effect to ensure that each public agency in the state meets the requirements of §§500 through 536.

B. Procedural Safeguards Identified. Students with disabilities and their parents shall be afforded the procedural safeguards identified in Subsection A of this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

§122. Evaluation

A. Students with disabilities shall be evaluated in accordance with §§301 through 308 of these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

§123. Confidentiality of Personally Identifiable Information

A. The LDE shall have policies and procedures in effect to ensure that public agencies in the state comply with §§611 through 626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under part B of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

§124. Transition of Children from the Part C Program to Preschool Programs

A. The state shall have in effect policies and procedures to ensure that:

1. children participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with Section 637(a)(9) of the IDEA;

2. by the third birthday of a child described in Paragraph 1 of this Section, an IEP has been developed and is being implemented for the child consistent with §101.B; and

3. each affected LEA will participate in transition planning conferences arranged by the designated lead agency under Section 635(a)(10) of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

§§125-128. Reserved.

Subchapter E. Students in Private Schools

§129. State Responsibility regarding Students in Private Schools

A. The state shall have in effect policies and procedures that ensure that LEAs, and, if applicable, the LDE, meet the private school requirements in §§130 through 148.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

Subchapter F. Students with Disabilities Enrolled by their Parents in Private Schools

§130. Definition of Parentally-Placed Private School Students with Disabilities

A. *Parentally-Placed Private School Students with Disabilities*—students with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary or secondary school as defined in §905, other than students with disabilities covered under §§145 through 147.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

§131. Child Find for Parentally-Placed Private School Students with Disabilities

A. Each LEA shall locate, identify, and evaluate all students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools, located in the school district served by the LEA, in accordance with Subsections B through E of this Section and §§112 and 202.

B. Child Find Design. The Child Find process shall be designed to ensure:

1. the equitable participation of parentally-placed private school students; and

2. an accurate count of those students.

C. Activities. In carrying out the requirements of this Section, the LEA shall undertake activities similar to the activities undertaken for the agency's public school students.

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 §133.

E. Completion Period. The Child Find process shall be completed in a time period comparable to that for students attending public schools in the LEA consistent with §302.

F. Out-of-State Students. Each LEA in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally-placed private school students who reside in a state other than the state in which the private schools that they attend are located.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2041 (October 2008).

§132. Provision of Services for Parentally-Placed Private School Students with Disabilities—Basic Requirements

A. General. To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district served by the LEA, provision is made for the participation of those students in the program assisted or carried out under part B of the IDEA by providing them with special education and related services, including direct services determined in accordance with §137 unless the secretary has arranged for services to those students under the by-pass provision in 34 CFR §§300.190 through 300.198.

B. Services Plan for Parentally-Placed Private School Students with Disabilities. In accordance with Subsection A of this Section and §§137 through 139, a services plan shall be developed and implemented for each private school student 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 these regulations.

C. Recordkeeping. Each LEA shall maintain in its records and provide to the LDE, the following information related to parentally-placed private school students covered under §§130 through 144:

1. the number of students evaluated;

2. the number of students determined to be students with disabilities; and

3. the number of students served.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2041 (October 2008).

§133. Expenditures

A. Formula. To meet the requirement of §132.A, each LEA shall spend the following on providing special education and related services (including direct services) to parentally-placed private school students with disabilities.

1. For students aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under Section 611(f) of the IDEA as the number of private school students with disabilities aged 3 through 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 students with disabilities in its jurisdiction aged 3 through 21.

2.a. For students aged three through five, an amount that is the same proportion of the LEA's total subgrant under Section 619(g) of the IDEA as the number of parentally-placed private school students with disabilities aged three through five 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 students with disabilities in its jurisdiction aged three through five.

b. As described in Subparagraph A.2.a of this Section, students with disabilities aged three through five are considered to be parentally-placed private school students 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 §905.

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 shall obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school students 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 students with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §134, shall conduct a thorough and complete Child Find process to determine the number of parentally-placed private school students with disabilities attending private schools located in the LEA. (See Appendix B of the IDEA Part B Regulations for an example of how proportionate share is calculated.)

C. Annual Count of the Number of Parentally-Placed Private School Students with Disabilities

1. Each LEA shall:

a. after timely meaningful consultation with representatives of parentally-placed private school students with disabilities (consistent with §134), determine the number of parentally-placed private school students with disabilities attending private schools located in the LEA; and

b. ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

2. The count shall be used to determine the amount that the LEA shall spend on providing special education and related services to parentally-placed private school students 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 students with disabilities under these regulations.

E. School Choice Program for Certain Students with Exceptionalities

1. Introduction

a. The purpose of the school choice program for certain students with exceptionalities, hereafter referred to as the "program," shall be to provide certain students with exceptionalities the opportunity to attend schools of their parents' choice that provide educational services specifically tailored to address said students' specific needs.

2. Definitions

a. *Approved Non-public School*—

i. non-public school that meets the following criteria:

(a). approved by the state Board of Elementary and Secondary Education pursuant to R.S. 17:11 and according to Brumfield, et al. v. Dodd, et al. 425 F. Supp. 528.

b. *Continuous Attendance*—

i. student is enrolled and actively attending school.

c. *Educational Certificate*—

i. award amount allocated to an eligible school on behalf of an eligible student by the Louisiana Department of Education that shall be equivalent to 50 percent of the per pupil allocation of state funds to the city, parish, or other local public school district in which the eligible student is residing for that school year, but shall not exceed the amount of tuition charged by the eligible nonpublic school.

d. *Enrollment Status*—

i. the category of enrollment at an eligible non-public school as evidenced by attendance and registration.

e. *Entrance Requirements*—

i. requirements for entry into a participating non-public school.

f. *IEP*—

i. a plan that provides the basis for programming for students with exceptionalities as specified in Bulletin 1530.

g. *Transfer*—

i. a change in enrollment status resulting from the movement of an eligible student from one approved non-public school to another eligible non-public school during the current school year.

h. *Tuition*—

i. the total costs associated with one year of enrollment at an eligible non-public school as assessed to similarly situated students.

i. *Services Plan*—a plan that provides the basis for services programming for students with exceptionalities as specified in Bulletin 1530; or

j. *Nonpublic School Created Plan*—a plan that is created by the nonpublic school that the student will attend that clearly identifies the services provided by the school and specifies how those services adequately address the student's needs.

3. Eligibility

a. Student Eligibility

i. A student shall be eligible to participate in the program after submission of an application to the Louisiana Department of Education on a timeline established by the department and in accordance with the following requirements:

(a). evaluation of the student by a local education agency as defined in R.S. 17:1942 and resulting in a determination that services are required for one of the following exceptionalities:

(i). autism;

(ii). intellectual disability;

(iii). emotional disturbance;

(iv). developmental delay;

(v). other health impairment;

(vi). specific learning disability; or

(vii). traumatic brain injury;

(b). having an individual education plan or a services plan for any service in accordance with title 34 of the *Code of Federal Regulations* part 300.37 or a nonpublic school created plan;

(c). eligibility to attend public school and enter into kindergarten or grades 1-12.

ii. An eligible student may be expelled from the school in accordance with the school's discipline policies or may be disqualified from enrollment if the student is no longer eligible for the program as determined by the department.

b. School Eligibility

i. A non-public school shall be eligible to enroll students through the program if it:

(a). is an approved non-public school, as determined by the state Board of Elementary and Secondary Education pursuant to R.S. 17:11 and has been so approved for the school year prior to the school's participation in the program; and

(b). has provided needed educational services to students with exceptionalities, as defined in R.S. 17:1942, excluding students deemed to be gifted or talented, for at least two years;

(c). has provided needed services to students by teachers holding appropriate special education certification or other appropriate education and training as defined in Bulletin 1706; and

(d). provides services and instruction in accordance with a student's individual education plan and/or services plan; and

(e). operates in a parish having a population in excess of 190,000 persons according to the most recent federal decennial census.

ii. A non-public school seeking eligibility for this program shall provide the Louisiana Department of Education with the following documents in accordance with timelines determined by the Louisiana Department of Education:

(a). a list of student exceptionalities that the school is able and willing to serve, as defined in R.S. 17:1942;

(b). an itemized tuition calculation including all costs for special education services and all mandatory fees for the upcoming year, as well as the previous year.

iii. Any non-public school that does not meet these requirements shall not receive approval for program participation.

c. Eligible School Obligations

i. Once a non-public school is determined to be eligible for the program it shall provide the following assurances and information, as well as meet the following deadlines in order to retain eligibility:

(a). determination of the number of eligible students it will accept in any year of program participation and establishment of criteria for enrollment of students;

(b). no student seeking to enroll and participate in the program shall be required to take an entrance exam;

(c). provision of all rules, policies, and procedures of the school, including but not limited to academic policies and disciplinary policies and procedures, to the parent or guardian of an eligible student;

(d). completion of student enrollment by April thirtieth of the school year prior to the non-public school's participation in the program;

(e). submission to the Louisiana Department of Education of a list of all eligible students conditionally

enrolled in the school by June first of the year prior to the program year.

4. Finances

a. Parental Obligations

i. Parents of eligible students shall be responsible for paying any outstanding tuition obligations regardless of the educational certificate award, except for undisbursed educational certificate funds.

b. School Obligations

i. Any eligible school shall not increase tuition above itemized calculations provided to the Louisiana Department of Education by the school during eligibility determination.

ii. Any eligible school shall not require parents to pay for undisbursed educational certificate funds, unless student becomes ineligible for the program but remains at the school.

iii. Any eligible school shall be subject to an audit of educational certificate funds by the Department of Education.

c. Louisiana Department of Education Obligations

i. The Louisiana Department of Education shall determine the total amount of the educational certificate.

ii. The Louisiana Department of Education shall disburse educational certificate funds in four separate payments to the eligible school in the months of September, November, February, and May.

iii. Payments shall be based on per pupil count dates as determined by the Louisiana Department of Education. The count dates used are the fifteenth of September, November, February, and the fifth of May.

iv. Should any of the count dates occur on a weekend, the count shall take place no later than the next business day.

v. Should an eligible student begin attending an eligible non-public school after the start of the school year, the Louisiana Department of Education shall determine the method of disbursing the appropriate educational certificate amount.

5. Notifications of Change

a. School Notification Requirements

i. Any participating school shall notify the Louisiana Department of Education in writing within 10 days when there are changes in eligibility requirements including but not limited to: tuition, enrollment status, transfer, IEP, continuous attendance, and other types of financial aid as defined in this bulletin.

6. Student Records

a. Any participating school shall make all program participants' records available upon request by the Louisiana Department of Education.

7. Re-enrollment

a. Each eligible school and student shall submit a re-enrollment application to continue participation in the program the following school year. If either the school or student loses eligibility, another initial application for the program may be submitted to the Louisiana Department of Education.

8. Lottery

a. The Louisiana Department of Education shall hold a lottery for eligible, non-continuing students prior to the start of the school year, if demand for the program exceeds available slots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:4031 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2041 (October 2008), amended LR 38:1401 (June 2012), LR 40:2533 (December 2014), LR 42:235 (February 2016).

§134. Consultation

A. To ensure timely and meaningful consultation, an LEA, or, if appropriate, the LDE, shall consult with private school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and related services for the students regarding the following.

1. Child Find. The Child Find process, including:

a. how parentally-placed private school students suspected of having a disability can participate equitably; and

b. how parents, teachers, and private school officials will be informed of the process.

2. Proportionate Share of Funds. The determination of the proportionate share of federal funds available to serve parentally-placed private school students with disabilities under §133.B, including the determination of how the proportionate share of those funds was calculated.

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

4. Provision of Special Education and Related Services. How, where, and by whom special education and related services will be provided for parentally-placed private school students with disabilities, including a discussion of:

a. the types of services, including direct services and alternate service delivery mechanisms; and

b. how special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school students; and

c. how and when those decisions will be made.

5. Written Explanation by LEA Regarding Services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the type 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2042 (October 2008).

§135. Written Affirmation

A. When timely and meaningful consultation, as required by §134, has occurred, the LEA shall 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 shall forward the documentation of the consultation process to the LDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2042 (October 2008).

§136. Compliance

A. General. A private school official has the right to submit a complaint to the LDE 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 officials.

B. Procedure:

1. if the private school official wishes to submit a complaint, the official shall provide to the LDE the basis of the noncompliance by the LEA with the applicable private school provisions in these regulations; and

2. the LEA shall forward the appropriate documentation to the LDE;

3.a. if the private school official is dissatisfied with the decision of the LDE, the official may submit a complaint to the secretary by providing the information on noncompliance described in Paragraph B.1 of this Section; and

b. the LDE shall forward the appropriate documentation to the secretary.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2042 (October 2008).

§137. Equitable Services Determined

A. No Individual Right to Special Education and Related Services. No parentally-placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school.

B. Decisions

1. Decisions about the services that will be provided to parentally-placed private school students with disabilities under §§130 through 144 shall be made in accordance with Subsection C of this Section and §134.A.3.

2. The LEA shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school students with disabilities.

C. Services Plan for Each Student Served under §§130 through 144. If a student with a disability is enrolled in a religious or other private school by the student's parents and will receive special education or related services from an LEA, the LEA shall:

1. initiate and conduct meetings to develop, review and revise a services plan for the student in accordance with §138; 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2042 (October 2008).

§138. Equitable Services Provided

A. General

1. The services provided to parentally-placed private school students with disabilities shall 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 students with disabilities do not have to meet the highly qualified special education teacher requirements contained in the definition of highly qualified special education teachers in §905.

2. Parentally-placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools.

B. Services Provided in Accordance with a Services Plan

1. Each parentally-placed private school student with a disability who has been designated to receive services under §132 shall have a services plan that describes the specific special education and related services that the LEA will provide to the student in light of the services that the LEA has determined, through the process described in §§134 and 137, it will make available to parentally-placed private school students with disabilities.

2. The services plan shall, to the extent appropriate:

a. meet the requirements at §320, or for a child ages three through five, meet the requirements of §323.B with respect to the services provided; and

b. be developed, reviewed, and revised consistent with §§321 through 324.

C. Provision of Equitable Services

1. The provision of services pursuant to this Section and §§139 through 143 shall be provided:

a. by employees of a public agency; or

b. 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 students with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2043 (October 2008).

§139. Location of Services and Transportation

A. Services on Private School Premises. Services to parentally-placed private school students with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

B. Transportation

1. General

a. If necessary for the student to benefit from or participate in the services provided under these regulations, a parentally-placed private school student with a disability shall be provided transportation:

i. from the student’s school or the student’s home to a site other than the private school; and

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

b. LEAs are not required to provide transportation from the student's home to the private school.

2. Cost of Transportation. The cost of the transportation described in Subparagraph B.1.a of this Section may be included in calculating whether the LEA has met the requirements of §133.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2043 (October 2008).

§140. Requests for Due Process Hearings and State Complaints

A. Due Process not Applicable, Except for Child Find

1. Except as provided in Subsection B of this Section, the procedures in §505 through 519 do not apply to requests for due process hearings alleging that an LEA has failed to meet the requirements of §§132 through 139, including the provision of services indicated on the student's services plan.

B. Child Find complaints—to be filed with the LEA in which the private school is located.

1. The procedures in §505 through 519 apply to requests for due process hearings alleging that an LEA has failed to meet the Child Find requirements, in §131, including the requirements in §§301 through 308.

2. Any request for due process hearing regarding the child find requirements (as described in Paragraph B.1 of this Section) shall be filed with the LEA in which the private school is located and a copy shall be forwarded to the LDE.

C. State Complaints

1. Any complaint that the LDE or LEA has failed to meet the requirements in §§132 through 135 and 137 through 144 shall be filed in accordance with the procedures described in §§151 through 153.

2. A complaint filed by a private school official under §136.A shall be filed with the LDE in accordance with the procedures in §136.B.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2043 (October 2008).

§141. Requirement that Funds Not Benefit a Private School

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

B. The LEA shall use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally-placed private school students 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2043 (October 2008).

§142. Use of Personnel

A. Use of Public School Personnel. An LEA may use funds available under §§611 and 619 of the IDEA to make public school personnel available in other than public facilities:

1. to the extent necessary to provide services under §§130 through 144 for parentally-placed private school students 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 IDEA to pay for the services of an employee of a private school to provide services under §§130 through 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

§143. Separate Class Prohibited

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

1. the classes are at the same site; and

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

A§UTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

§144. Property, Equipment, and Supplies

A. A public agency shall control and administer the funds used to provide special education and related services under §§137 through 139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the IDEA.

B. The public agency may place equipment and supplies in a private school for the period of time needed for the IDEA part B program.

C. The public agency shall 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 shall remove equipment and supplies from a private school if:

1. the equipment and supplies are no longer needed for IDEA part B purposes; or

2. removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA part B purposes.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

Subchapter G. Students with Disabilities in Private Schools Placed or Referred by Public Agencies

§145. Applicability of §§146 through 147

A. Sections 146 through 147 apply only to students with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

§146. Responsibility of the LDE

A. The LDE shall ensure that a student with a disability who is placed in or referred to a private school or facility by a public agency:

1. is provided special education and related services:

a. in conformance with an IEP that meets the requirements of §§320 through 325; and

b. at no cost to the parents;

2. is provided an education that meets the standards that apply to education provided by the LDE and LEAs including the requirements of these regulations, except for requirements contained in the definition of highly qualified special education teachers in §905 and §156.C; and

3. has all of the rights of a student with a disability who is served by a public agency.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

§147. Implementation by the LDE

A. In implementing §146, the LDE 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 a public agency has referred or placed a student with a disability; and

3. provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

Subchapter H. Students with Disabilities Enrolled by their Parents in Private Schools when FAPE is an Issue

§148. Placement of Students by Parents when FAPE is at Issue

A. General. These regulations do not require an LEA to pay for the cost of the education, including special education and related services, of a student with a disability at a private school or facility if that agency made a FAPE available to the student, and the parents elected to place the student in a private school or facility. However, the public agency shall include that student in the population whose needs are addressed consistent with §§131 through 144.

B. Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the student, and the question of financial reimbursement, are subject to the due process procedures in §§505 through 520.

C. Reimbursement for Private School Placement. If the parents of a student with a disability, who previously received special education and related services under the authority of a public agency, enroll the student 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 student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if the placement does not meet the state standards that apply to education provided by the LEAs and the LDE.

D. Limitation on Reimbursement. The cost of reimbursement described in Subsection C of this Section may be reduced or denied:

1. if:

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

b. at least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the public agency of the information described in Subparagraph D.1.a of this Section;

2. if, prior to the parents' removal of the student from the public school, the public agency informed the parents, through the notice requirements described in §504.A.1, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

3. if, 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. shall not be reduced or denied for failure to provide the notice if:

a. the school prevented the parents from providing the notice;

b. the parents had not received notice, pursuant to §505, of the notice requirement in Paragraph D.1 of this Section; or

c. compliance with Paragraph D.1 of this Section would likely result in physical harm to the student; 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:

a. the parents are not literate or cannot write in English; or

b. compliance with Paragraph D.1 of this Section would likely result in serious emotional harm to the student.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2045 (October 2008).

Subchapter I. LDE Responsibilities for General Supervision and Implementation of Procedural Safeguards

§149. LDE Responsibility for General Supervision

A. The LDE shall ensure:

1. that all requirements under these regulations are carried out; and

2. that each educational program for students with disabilities administered within the state, including each program administered by any other state or local agency (but not including elementary schools and secondary schools for Indian students operated or funded by the Secretary of the Interior):

a. is under the general supervision of the persons responsible for educational programs for students with disabilities in the state; and

b. meets the educational standards of the LDE (including the requirements of these regulations);

3. in carrying out these regulations with respect to homeless children, the requirements of Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

B. The LDE adopts written procedures in *Bulletin 1922—Compliance Monitoring Procedures*, as well as the provisions of §601, to ensure that it complies with the monitoring and enforcement requirements in §§601 through 606.

C. Part B of the IDEA does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to students with disabilities in the state.

D. Notwithstanding Subsection A of this Section, the governor (or another individual pursuant to state law) may assign to any public agency in the state the responsibility of ensuring that the requirements of Part B of the IDEA are met with respect to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2045 (October 2008).

§150. LDE Implementation of Procedural Safeguards

A. The LDE (and any agency assigned responsibility pursuant to §149.D) shall have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the students with disabilities served by that public agency.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2045 (October 2008).

Subchapter J. State Complaint Procedures

§151. Adoption of State Complaint Procedures and Early Resolution Program

A. General. The LDE adopts written procedures herein and in Bulletin 1573—*Complaint Management Procedures*, for:

1. the purpose of resolving any complaint alleging that a public agency has violated a requirement of Part B of the Act, including a complaint filed by an organization or individual from another state, that meets the requirements of §§151 through 153 by providing:

a. for the implementation of an early resolution process (ERP); and/or

b. the filing of a formal written complaint with the LDE.

B. The LDE shall widely disseminate to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities:

1. the state procedures under §§151 through 153 and Bulletin 1573—*Complaint Management Procedures*; and

2. the appropriate contact information for LEAs and other public agencies serving students.

C. Informal Complaints. It is the policy of the LDE to encourage and support prompt and effective resolution of any complaint described in §151.A.1 in the least adversarial manner possible. The LDE shall effect such policy to promote dispute prevention and the swift resolution of disputes by implementing an early resolution process.

1. Early Resolution Process (ERP)—an ongoing and systematic, informal dispute resolution process.

a. ERP shall include a systematic, local level process for the prompt and orderly resolution of complaints by each public educational agency, including public charter schools.

b. Each LEA in the state shall establish an internal ERP in accordance with standards outlined in Bulletin 1573—*Complaint Management Procedures*, which shall include:

i. the designation of a local ERP representative and notice of the name, address, telephone number; and

ii. other contact information for the LEA's designated ERP representative.

c. The implementation of the ERP by each LEA draws on the traditional model of parents and schools

working cooperatively in the educational interest of the student to achieve their shared goal of meeting the educational needs of students with disabilities.

d. To promote the cooperative resolution of complaints at the local level, the LDE shall not be involved in the informal resolution process (ERP) implemented at the local level, but shall route to the public agency's ERP representative, verbal and other informal complaints or allegations received by the LDE.

2. Requesting ERP. A parent, adult student, individual, or organization shall initiate a request for ERP on one or more issues described in §151.A.1 by contacting the local level ERP representative or the LDE's ERP Intake Coordinator(s).

a. Informal complaints to the LDE shall only be made through the LDE's Intake Coordinator(s) who shall refer the complaint to the ERP representative of the LEA immediately, if possible, but not later than two calendar days after receiving the complaint.

b. The LDE's Intake Coordinator(s) shall:

i. be the LDE's only designated individual(s) to perform complaint intake duties and responsibilities;

ii. not have a *juris doctorate* degree;

iii. have completed specific training in accepted methods and practices for recording information in a neutral and confidential manner; and

iv. perform duties consisting of receipt of informal complaints and request for ERP; providing local agency ERP contact information to the complainant(s); and referral of such informal complaint or ERP request to the local agency's ERP Representative in accordance with Subsection C of this Section.

3. Early Resolution Period. If a resolution of the informal complaint cannot be achieved within 15 calendar days of the public agency's receipt of the complaint, or an extended period agreed upon by the parties in writing, the LEA's ERP representative shall advise the complainant of the availability of other dispute resolution processes available through the LDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2046 (October 2008), amended LR 36:1499 (July 2010).

§152. Formal Written Complaints Filing and Content Requirements

A. An organization or individual, including those from another state, may file a signed written complaint under the procedures described in §§151 through 153.

B. The complaint shall include:

1. a statement that a public agency has violated a requirement of Part B of the IDEA or these regulations;

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 student:

a. the name and address of the residence of the student;

b. the name of the school the student is attending;

c. in the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;

5. a description of the nature of the problem of the student, 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 the complaint is filed.

C. The complaint shall allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §§151 through 153.

D. The party filing the complaint shall forward a copy of the complaint to the LEA or public agency serving the student, at the same time the party files the complaint with the LDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2046 (October 2008), repromulgated LR 36:1500 (July 2010).

§153. Formal Written Complaint Procedures

A. Time Limit; Minimum Procedures. The time limits in this Section commence after LDE receives a signed written complaint filed in accordance with §152 of this Chapter. The LDE will refer the complaint to the LEA superintendent, special education director/supervisor, or ERP representative in accordance with §151 of this Chapter.

1. The LDE will:

a. not commence investigation of a formal written complaint until after the expiration of the 15-day early resolution period described in §151 of this Chapter; but

b. shall complete its investigation of unresolved allegations and issue a decision within 45 days after the expiration of the early resolution period in accordance with the procedures contained in this Section.

2. Upon expiration of the resolution period, the LDE shall review the allegations contained in the complaint and shall provide written notice to the LEA or public agency serving the student, including the following:

a. a request for specific information needed by the LDE to carry out its independent investigation of the complaint;

b. reasonable timelines established for providing such information to the LDE;

c. a statement of the opportunity to respond to the complaint, including at a minimum:

i. the opportunity to provide a proposal to resolve the complaint, at their discretion; and

ii. the opportunity to offer to the parent who has filed a complaint, mediation consistent with §506 or neutral IEP facilitation as available through the LDE.

B. The LDE shall provide written notice to the complainant including a statement of the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

C. All information relevant to the complaint shall be reviewed by the LDE, and a decision shall be made as to whether an independent on-site investigation is needed.

D. The LDE shall review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the IDEA.

E. Decision. Within 45 days of expiration of the early resolution process, the LDE shall issue a written decision to the complainant and the public agency that addresses each remaining allegation of the complaint and contains:

1. findings of fact and conclusions; and
2. the reasons for the LDE's final decision.

F. Time Extension; Final Decision; Implementation. The LDE shall permit an extension of the time limit under Subsection A of this Section only if:

1. exceptional circumstances exist with respect to a particular complaint; or
2. the parent (or individual or organization) and the public agency involved agree to extend the time to engage in mediation, IEP facilitation, or other alternative means of dispute resolution.

G. Complaints Filed under this Section and Due Process Hearings Under §507 and §§530 through 532.

1. If a written complaint received is also the subject of a due process hearing under §507 or §§530 through 532 or, if it contains multiple issues, of which one or more is part of that hearing, the LDE shall 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 of the complaint that is not a part of the due process action shall be resolved, using the time limit and procedures described in Subsections A and B of this Section.

2. If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:

a. the due process hearing decision shall be binding on that issue; and

b. the LDE shall inform the complainant to that effect.

3. A complaint alleging an agency's failure to implement a due process hearing decision shall be resolved by the LDE.

H. Remedies for Denial of Appropriate Services. In resolving a complaint in which it has found a failure to provide appropriate services, the LDE, pursuant to its general supervisory authority under Part B of the IDEA, shall address:

1. the failure to provide appropriate services including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement); and
2. appropriate future provision of services for all students with disabilities.

I. Reconsideration Requests. If either the public agency or the complainant believes that the LDE has made an error in one or more findings of fact and/or law, a reconsideration of the investigative findings and decision may be requested, in writing, to the LDE's legal division in accordance with the following procedures:

1. the request shall be simultaneously submitted to the LDE and the other party subject to the complaint; and
2. for each error submitted for reconsideration, the requestor shall provide the reference number assigned by the LDE to the complaint at issue; the page number of the written decision where such alleged error can be found; highlighted sections of data submitted for investigation that would assert a fact contrary to what is reflected in the written decision; and citations to applicable law, regulations, or jurisprudence, where applicable, to support the alleged error of law; and
3. the requestor shall provide a written explanation that indicates how originally-submitted documentation changes the respective finding(s) of fact or law and/or how the alleged error impacts the conclusion of the LDE with respect to the allegation(s) at issue;
4. documents and other information not originally submitted regarding the allegation(s) shall not be accepted for review; and
5. reconsideration requests, including all documentation relevant to the reconsideration request, shall be received by the LDE no later than 10 calendar days after the date of receipt of the investigative report. Should the other party to the complaint wish to respond to the reconsideration request, the response shall be received by the LDE no later than 10 calendar days after the LDE received the original reconsideration request; and
6. reconsideration requests received by the LDE after the 10 calendar day deadline shall not be reviewed;
7. reconsideration requests received timely and that meet criteria established by this subsection shall be reviewed by a panel of individuals appointed by the division director and the LDE shall inform the complainant and the public agency of its determinations, in writing, within 30 calendar days from the date the LDE receives the written reconsideration request;
8. reconsideration requests by third parties shall not be accepted;
9. reconsideration requests shall not be used to delay or deny implementation of FAPE for a student with a disability;
10. implementation of any corrective actions required in the state's initial (pre-reconsideration) decision shall not be delayed pending the reconsideration process.

J. The LDE shall ensure effective implementation of the final decision, if needed, including:

1. technical assistance activities;
2. negotiations; and
3. corrective actions to achieve compliance.

K. Correction of Non-Compliance. If a complaint results in a finding of non-compliance, the public agency shall be required to document that it has taken corrective action as required by the complaint decision.

1. The LDE shall refer and recommend to BESE the delay or denial of funding or an offset of future funding for any LEA that, after due notice:

a. refuses or fails to submit requested documentation of corrective action; or

b. refuses or fails to take or complete required corrective action.

2. The state board shall provide reasonable notice and an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations

(EDGAR) at 34 CFR 76.401 before the LDE delays, denies, or offsets the funding of any LEA under IDEA Part B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2047 (October 2008), amended LR 36:1500 (July2010), LR 46:180 (February 2020).

Subchapter K. Methods of Ensuring Services

§154. Methods of Ensuring Services

A. Establishing Responsibility for Services. The governor of Louisiana or the designee of the governor shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in Subsection B of this Section and the LDE, in order to ensure that all services described in Subsection B 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 shall 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 students with disabilities. The financial responsibility of each non-educational public agency described in Subsection B of this Section, including the state Medicaid agency and other public insurers of students with disabilities, shall precede the financial responsibility of the LEA (or the state agency responsible for developing the student's IEP);

2. the conditions, terms, and procedures under which an LEA shall 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 Non-Educational Public Agencies

1.a. 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 Subsection 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 §905 relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services) that are necessary for ensuring FAPE to students with disabilities within the state, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to Subsection A of this Section or an agreement pursuant to Subsection C of this Section.

b. A non-educational public agency described in Subparagraph B.1.a 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.1 of this Section, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or state agency is authorized to claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or state agency in accordance with the terms of the interagency agreement or other mechanism described in Subsection A of this Section.

C. Special Rule. The requirements of Subsection 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 governor or designee and approved by the secretary.

D. Students 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 student participates to provide or pay for services required under these regulations, 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 student under these regulations, the public agency:

a. 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 IDEA;

b. may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to, these regulations, but pursuant to Paragraph G.2 of this Section, may pay the cost that the parents otherwise would be required to pay;

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

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

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

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

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

d.i. shall obtain parental consent as defined in §905, to access public benefits or insurance one time for the specific services and duration of services identified in a student's IEP unless IEP revisions require additional services that would result in additional charges to the student's or parents' public benefits or public insurance. Such consent to

access public benefits may be obtained at an IEP meeting or at some time after the IEP is developed; and

ii. notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

E. Students with Disabilities Who Are Covered by Private Insurance

1. With regard to services required to provide FAPE to an eligible student under these regulations, a public agency may access the parents' private insurance proceeds only if the parents provide informed consent as defined in §905.

2. Each time the public agency proposes to access the parents' private insurance proceeds, the agency shall:

a. obtain parental consent in accordance with Paragraph E.1 and D.2.d.i of this Section; and

b. inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

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 these regulations, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

2. To avoid financial cost to parents who otherwise would consent to use private insurance, or public 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 shall not be treated as program income for purposes of 34 CFR 80.25.

2. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under these regulations, those funds shall 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 these requirements 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2048 (October 2008).

Subchapter L. Additional Eligibility Requirements

§155. Hearings Relating to LEA Eligibility

A. The state board shall provide a reasonable notice and an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 34 CFR 76.401d before the LDE determines any LEA is ineligible for assistance under Part B of the IDEA or before the LDE finds that an LEA is failing to comply with any requirements of the application. (different or exceeds).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2049 (October 2008).

§156. Personnel Qualifications

A. General. The LDE shall establish and maintain qualifications through *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, to ensure that personnel necessary to carry out the purposes of these regulations are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities.

B. Related Services Personnel and Paraprofessionals. The qualifications under Subsection A of this Section, found in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, include qualifications for related services personnel and paraprofessionals.

C. Qualifications for Special Education Teachers. The qualifications described in Subsection A of this Section shall 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 Section 1119(a)(2) of the ESEA.

D. Policy. The LDE's required policy for ensuring that LEAs in the state take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under these regulations to students with disabilities is established in *Bulletin 741—Louisiana Handbook for School Administrators.*

E. Rule of Construction. Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations 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 LDE employee or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the LDE as provided for under these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2049 (October 2008).

§157. Performance Goals and Indicators

A. The LDE shall have in effect goals for the performance of students with disabilities in the state that:

1. promote the purposes of these regulations as stated in §901;

2. are the same as the state's objectives for progress by students in its definition of adequate yearly progress, including the state's objectives for progress by students with disabilities, under Section 1111(b)(2)(c) of the ESEA, 20 U.S.C. 6311;

3. address graduation rates and dropout rates, as well as such other factors as the state may determine; and

4. are consistent, to the extent appropriate, with any other goals and academic standards for students established by the state.

B. The LDE shall have in effect performance indicators that the state will use to assess progress toward achieving the goals described in Subsection A of this Section, including measurable annual objectives for progress by students with disabilities under Section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311.

C. The LDE shall annually report to the secretary and the public on the progress of the state, and of students with disabilities in the state, toward meeting the goals established under Subsection A of this Section, which may include elements of the reports required under Section 1111(h) of the ESEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2050 (October 2008).

§§158-159. Reserved.

§160. Participation in Assessments

A. General. The LDE shall ensure that all students with disabilities are included in all general state and district-wide assessment programs, including assessments described under Section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

B. Accommodation Guidelines

1. The LDE's guidelines for providing appropriate accommodations are established in Bulletin 118–*Statewide Assessment Standards and Practices*, for the provision of appropriate accommodations. In case of district-wide assessment programs, the LEA shall establish those guidelines.

2. The LDE's (or, in the case of a district-wide assessment, the LEA's) guidelines shall:

a. identify only those accommodations for each assessment that do not invalidate the score; and

b. instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

C. Alternate Assessments

1. The LDE's guidelines to implement alternate assessments and guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in Paragraph A of this Section, are detailed in Bulletin 1530–*Louisiana's IEP Handbook for Students with Exceptionalities*. In case of district-wide assessment programs, the LEA shall develop and implement those guidelines.

2. For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in Subparagraph C.1 of this Section shall provide for alternate assessments that:

a. are aligned with the state's challenging academic content standards and challenging student academic achievement standards;

b. measure the achievement of students with disabilities meeting the state's criteria under Sec. 200.1(e)(2) against those modified academic achievement standards; and

c. measure the achievement of students with the most significant cognitive disabilities against those alternate academic achievement standards.

D. Explanation to IEP Teams. The LDE (or in the case of a district-wide assessment, an LEA) shall provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

E. Inform Parents. The LDE (or, in the case of a district-wide assessment, an LEA) shall ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

F. Reports. The LDE (or, in the case of a district-wide assessment, an LEA) shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of non-disabled students, the following:

1. the number of students with disabilities participating in regular assessments, and the number of those students who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments;

2. the number of students with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards;

3. the number of students with disabilities, if any, participating in alternate assessments based on modified academic achievement standards;

4. the number of students with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards;

5. compared with the achievement of all students, including students with disabilities, the performance results of students with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if:

a. the number of students participating in those assessments is sufficient to yield statistically reliable information; and

b. reporting that information will not reveal personally identifiable information about an individual student on those assessments.

G. Universal Design. The LDE (or, in the case of a district-wide assessment, an LEA) shall, to the extent possible, use universal design principles in developing and administering any assessments under this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2050 (October 2008), amended LR 36:1500 (July 2010).

§161. Reserved.

§162. Supplementation of State, Local, and other Federal Funds

A. Funds paid to the state under these regulations shall be administered in accordance with 34 CFR 300.162 through 164 and 300.166.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008).

§§163-164. Reserved.

§165. Public Participation

A. Prior to the adoption of any policies and procedures needed to comply with Part B of the IDEA (including any amendments to those policies and procedures), the LDE shall ensure that there are public hearings, adequate notice of the hearings, and opportunity for comment available to the general public, including individuals with disabilities and parents of students with disabilities by one or more of the following methods:

1. receiving input from the State Advisory Panel regarding proposed changes in policies and procedures;

2. submitting proposed revisions of policies and procedures to the State Board of Elementary and Secondary Education for advertisement, and as appropriate, as a Notice of Intent in the *Louisiana Register*;

3. publishing through one of the following media: newspapers, the LDE's official website, libraries, school board offices the timetable for final approval, the procedures for submitting written comments, and a list of the dates, times and places of public meetings to be held;

4. distributing to interested parties, and posting the policies and procedures on the LDE's official internet website for public comment.

B. Before submitting a state plan under these regulations, the LDE shall comply with the public participation requirements in Subsection A of this Section and those in 20 U.S.C. 1232d(b)(7).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008).

§166. Reserved.

Subchapter M. State Advisory Panel

§167. State Advisory Panel (State Special Education Advisory Panel)

A. The advisory panel is established and shall be maintained by the LDE for the purpose of providing policy guidance with respect to special education and related services for students with disabilities in the state.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), repromulgated LR 38:768 (March 2012).

§168. Membership

A. General. The advisory panel shall consist of members appointed by the state board or state superintendent, shall be representative of the state population, and shall be composed of individuals involved in or concerned with the education of students with disabilities, including:

1. parents of children with disabilities (ages birth through 26);

2. individuals with disabilities;

3. teachers;

4. representatives of institutions of higher education that prepare special education and related service personnel;

5. state and local education officials, including officials who carry out activities under the McKinney-Vento Homeless Assistance Act;

6. administrators of programs for students with disabilities;

7. representatives of other state agencies involved in the financing or delivery of related services to students with disabilities;

8. representatives 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 students with disabilities;

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 should be individuals with disabilities or parents of children with disabilities (ages birth through 26).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), amended LR 38:768 (March 2012).

§169. Duties

A. The advisory panel shall perform the following prescribed duties in matters concerning the education of students with disabilities:

1. advise the LDE of unmet needs within the state in the education of students with disabilities;

2. comment publicly on any rules or regulations proposed by the state regarding the education of students with disabilities;

3. advise the LDE in developing evaluations and reporting on data to the secretary under section 618 of the IDEA;

4. advise the LDE in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the IDEA; and

5. advise the state board and the LDE in developing and implementing policies related to the coordination of services for students with disabilities.

B. The advisory panel shall conduct its activities according to procedures prescribed by IDEA guidelines for state special education advisory panels.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), amended LR 38:769 (March 2012).

Subchapter N. Other Provisions Required for State Eligibility

§170. Suspension and Expulsion Rates

A. General. The LDE shall examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities:

1. among the LEAs in the state; or

2. compared to the rates for non-disabled students within those agencies.

B. Review and Revision of Policies. If the discrepancies described in Subsection A of this Section are occurring, the LDE shall review and, if appropriate, revise its policies, procedures, and practices or require the affected LEA to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

§171. Annual Description of Use of Part B Funds

A. In order to receive a grant in any fiscal year, the LDE shall comply with 34 CFR §300.171.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

§172. Access to Instructional Materials

A. General. The LDE adopted the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to Part 300 of the IDEA, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the *Federal Register* on July 19, 2006 (71 FR 41084) and consistent with *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual*.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

§173. Overidentification and Disproportionality

A. Consistent with the purposes of these regulations and with Section 618(d) of the IDEA, the LDE establishes the following policies and procedures to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of students as students with disabilities, including students with disabilities with a particular impairment as defined in §905.

1. The LDE shall annually collect and analyze data described in Subsecction A above.

2. When data described in Subsection A. above indicate overidentification or disproportionate identification, the LDE shall review the policies, procedures, and practices of the LDE or the affected LEA.

3. When the review indicates inappropriate identification, the LDE shall require the revision of the LDE's or the affected LEA's policies, procedures, and practices to ensure compliance with these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

§174. Prohibition on Mandatory Medication

A. General. LDE and LEA personnel shall not require a student to obtain a prescription for substances identified under schedules I, II, III, IV, or V in Section 202 (c) of the Controlled Substance Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§301 through 308, or receiving services under these regulations.

B. Rule of Construction. Nothing in Subsection A of this Section shall be construed to create a 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* as defined in §905 (related to Child Find).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

§175. The LDE as Provider of FAPE or Direct Services

A. If the LDE provides FAPE to students with disabilities, or provides direct services to these students, the agency:

1. shall comply with any additional requirements of §§202 and 203 and §§207 through 226 as if the agency were an LEA; and

2. shall use amounts that are otherwise available to the agency under Part B of the IDEA to serve those students without regard to §203.B (relating to excess costs).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

§176-189. Reserved.

§190. By-Pass for Students in Private Schools

A. Procedures governing the determination by the secretary to implement a by-pass for the state, an LEA, or other public agency are governed in accordance with 34 CFR §§300.190 through 198.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

§§191.-198. Reserved.

§199. State Administration

A. Rulemaking. The LDE, when receiving funds under part B of IDEA, shall:

1. ensure that any state rules, regulations, and policies relating to these regulations conform to the purposes of these regulations;

2. identify in writing to local education agencies and the secretary of the U.S. Department of Education any rule, regulation, or policy as a state-imposed requirement that is not required by Part B of IDEA and 34 CFR §300.1 et seq.; and

3. minimize the number of rules, regulations, and polices to which the local education agencies and schools located in the state are subject under Part B of the IDEA.

B. Support and Facilitation. State rules, regulations, and policies under Part B of the IDEA shall support and facilitate LEA and school-level system improvement designed to enable students with disabilities to meet the challenging state student academic achievement standards.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2053 (October 2008).

Chapter 2. Local Educational Agency Eligibility

§201. Condition of Assistance

A. An LEA is eligible for assistance under Part B of the IDEA for a fiscal year if the agency submits a plan that provides assurances to the LDE that the LEA meets each of the conditions in §§202 through 214.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2053 (October 2008).

§202. Consistency with State Policies

A. The LEA, in providing for the education of students with disabilities within its jurisdiction, shall have in effect policies, procedures, and programs that are consistent with the state's policies and procedures established under §§101 through 162, and §§165 through 174.

B. In meeting the requirements in Subsection A of this Section, the LEA may provide special education and related services through cooperative agreements with other LEAs, by contract, or through other arrangements.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2053 (October 2008).

§203. Use of Amounts

A. General. Amounts provided to the LEA under Part B of the IDEA:

1. shall be expended in accordance with applicable provisions of these regulations;

2. shall be used only to pay the excess cost of providing special education and related services to students with disabilities, consistent with Subsection B of this Section; and

3. shall be used to supplement state, local, and other federal funds and not to supplant those funds.

B. Excess Cost Requirement

1. General

a. The excess cost requirement prevents an LEA from using funds provided under Part B of the IDEA to pay for all of the costs directly attributable to the education of a student with a disability, subject to Subparagraph B.1.b of this Section.

b. 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 student with a disability in any of the ages of 3, 4, 5, 18, 19, 20, or 21, if no local or state funds are available for non-disabled students of these ages. However, the LEA shall comply with the non-supplanting and other requirements of these regulations, in providing the education and services for these students. IDEA Part B funds received shall not be commingled with state funds.

2.a. An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of each of its students with disabilities before funds under Part B of the IDEA are used.

b. The amount described in Subparagraph B.2.a is determined in accordance with the definition of *excess cost* in §905 and that amount may not include capital outlay or debt service.

3. If two or more LEAs jointly establish eligibility in accordance with §223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of *excess costs* in §905 in those agencies for elementary or secondary school students, as the case may be.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2053 (October 2008).

§204. Maintenance of Effort

A. General. Except as provided in §§205 and 206, funds provided to an LEA under Part B of the IDEA shall not be used to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

B. Standard

1. Except as provided in Subparagraph B.2 of this Section, the LDE shall determine that an LEA complies with Subsection 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 students 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:

a. local funds only.

b. the combination of state and local funds.

2. An LEA that relies on Subparagraph B.1.a of this Section for any fiscal year shall ensure that the amount of local funds it budgets for the education of students 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 Subparagraph B.1.a of this Section was used to establish its compliance with this Section.

3. The LDE may not consider any expenditures made from funds provided by the federal government for which the LDE 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 LDE in determining an LEA's compliance with the requirement in Subsection A of this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2053 (October 2008).

§205. Exception to Maintenance of Effort

A. Notwithstanding the restriction in §204.A, an LEA may reduce the level of expenditures by the LEA under part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

1. the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

2. a decrease in the enrollment of students with disabilities;

3. the termination of the obligation of the agency, consistent with these regulations, to provide a program of special education to a particular student with a disability that is an exceptionally costly program, as determined by the LDE, because the student:

a. has left the jurisdiction of the agency;

b. has reached the age at which the obligation of the agency to provide FAPE to the student has terminated; or

c. no longer needs the program of special education.

B. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

C. The assumption of cost by the high cost fund operated by the LDE under 34 CFR 300.704(c).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

§206. Adjustment to Local Fiscal Efforts in Certain Fiscal Years

A. Amounts in Excess. Notwithstanding §203.A.2 and B and §204.A, and except as provided in Subsection D of this Section and 34 CFR 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §204.A by not more than 50 percent of the amount of that excess.

B. Use of Amounts to Carry Out Activities under ESEA. If an LEA exercises the authority under Subsection A of this Section, the LEA shall use an amount of local funds equal to the reduction in expenditures under Subsection A of this Section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

C. State Prohibition. Notwithstanding Subsection A of this Section, if the LDE determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirement of Section 613(a) of the IDEA and these regulations or the LDE has taken action against the LEA under Section 616 of the IDEA and Chapter Six of these regulations, the LDE shall prohibit the LEA from reducing the level of expenditure under Subsection A of this Section for that fiscal year.

D. Special Rule. The amount of funds expended by the LEA for early intervening services under §226 shall count toward the maximum amount of expenditure that the LEA may reduce under Paragraph 1 of this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

§207. School-wide Programs under Title I of the ESEA

A. General. Notwithstanding the provisions of §203 and 204 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under Section 1114 of the ESEA, except that the amount used in any school-wide program may not exceed:

1.a. the amount received by the LEA under Part B of the Act for that fiscal year; divided by

b. the number of students with disabilities in the jurisdiction of the LEA; and multiplied by

2. the number of students with disabilities participating in the school-wide program.

B. Funding Conditions. The funds described in Subsection A of this Section are subject to the following conditions:

1. the funds shall be considered as federal Part B funds for purposes of the calculations required by §203.A.2 and A.3; and

2. the funds may be used without regard to the requirements of §203.A.1.

C. Meeting Other Part B Requirements. Except as provided in Subsection B of this Section, all other requirements of Part B of the IDEA shall be met by an LEA using Part B funds in accordance with Subsection A of this Section, including ensuring that students with disabilities in school-wide program schools:

1. receive services in accordance with a properly developed IEP; and

2. are afforded all the rights and services guaranteed to students with disabilities under the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

§208. Personnel Development

A. The LEA shall ensure that all personnel necessary to carry out Part B of the IDEA are appropriately and adequately prepared, subject to the requirements of §156 (related to personnel qualifications) and Section 2122 of the ESEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

§209. Permissive Use of Funds

A. Uses. Notwithstanding §§203, 204.A, and 162.B, funds provided to an LEA under Part B of the IDEA may be used for the following activities:

1. services and aids that also benefit non-disabled student for the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a student with a disability in accordance with the IEP of the student,

even if one or more non-disabled students benefit from these services;

2. early intervening services to develop and implement coordinated, early intervening educational services in accordance with §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 IDEA 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 students with disabilities that is needed for the implementation of those case management activities.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

§210. Treatment of Charter Schools and their Students

A. Rights of Students with Disabilities. Students with disabilities who attend public charter schools and their parents retain all rights under these regulations.

B. Charter schools that are public schools of the LEA

1. In carrying out Part B of the IDEA, and these regulations, with respect to charter schools that are public schools of the LEA, the LEA shall:

a. serve students with disabilities attending those charter schools in the same manner as it serves students 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 of its other public schools; and

b. provide funds under Part B of the IDEA to those charter schools:

i. on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of students with disabilities; and

ii. 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 §705 and includes other public schools:

a. the LEA shall be responsible for ensuring that the requirements of these regulations are met, unless state law assigns that responsibility to some other entity; and

b. the LEA shall 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 the definition of LEA in §905, that receives funding under §705, that charter school is responsible for ensuring that the requirements of these regulations 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 §705, or a school that is part of an LEA receiving funding under §705, including a type 5 charter school, the LDE is responsible for ensuring that the requirements of these regulations are met.

2. Paragraph D.1 of this Section does not preclude the state from assigning initial responsibility for ensuring the requirements of these regulations are met to another entity. However, the LDE shall maintain the ultimate responsibility for ensuring compliance with these regulations, consistent with §149.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2055 (October 2008).

§211. Purchase of Instructional Materials

A. General. Each LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, shall acquire those instructional materials in the same manner, and subject to the same conditions as the LDE in these regulations at §172, as found in *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual.*

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 shall provide an assurance to the LDE 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 an LEA of its responsibility to ensure that students with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 34 CFR 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner as described in *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual*.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2055 (October 2008).

§212. Information for SEA

A. The LEA shall provide the LDE with information necessary to enable the LDE to carry out its duties under Part B of the IDEA including, with respect to §157 and §160, information relating to the performance of students with disabilities participating in programs carried out under Part B of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2055 (October 2008).

§213. Public Information

A. The LEA shall make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2055 (October 2008).

§214. Records Regarding Migratory Students with Disabilities

A. The LEA shall cooperate in the secretary's efforts under Section 1308 of the ESEA to ensure the linkage of records pertaining to migratory students with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

§§215-219. Reserved.

§220. Exception for Prior Local Plans

A. General. If the LEA or a state agency described in §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 IDEA 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 IDEA.

B. Modification made by the LEA or State Agency. Subject to Subsection 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 IDEA or state law, if:

1. after December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended;

2. there is a new interpretation of an applicable provision of the Act by federal or state courts; or

3. there is an official finding of noncompliance with federal or state law or regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

§221. Notification of LEA or State Agency in Case of Ineligibility

A. If the LDE determines that the LEA or state agency is not eligible under Part B of the IDEA, then the LDE shall:

1. notify the LEA or state agency of that determination; and

2. provide the LEA or state agency with reasonable notice and an opportunity for a hearing.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

§222. LEA and State Agency Compliance

A. General. If the LDE, after reasonable notice and an opportunity for a hearing, finds that the LEA or state agency that has been determined to be eligible under this Chapter is failing to comply with any requirement described in §§202 through 214, the LDE shall reduce or shall not provide any further payments to the LEA or state agency until the LDE 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 Subsection A of this Section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

C. Consideration. In carrying out its responsibilities under this section, the LDE shall consider any decision resulting from a hearing held under §§511 through 533 that is adverse to the LEA or state agency involved in the decision.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

§223. Joint Establishment of Eligibility

A. General. The LDE may require the LEA to establish its eligibility jointly with another LEA if the LDE determines that the LEA will be ineligible under this Chapter because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of students with disabilities.

B. Charter School Exception. The LDE may not require a charter school that is an LEA to jointly establish its eligibility under Subsection 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 the LDE requires the joint establishment of eligibility under Subsection A of this Section, the total amount of funds made available to the affected LEAs shall be equal to the sum of the payments that each LEA would have received under §705 if the agencies were eligible for those payments.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

§224. Requirements for Establishing Eligibility

A. Requirements for LEAs in General. LEAs that establish joint eligibility under this Section shall:

1. adopt policies and procedures that are consistent with the state's policies and procedures under §§102 through 163 and §§165 through 174; and

2. be jointly responsible for implementing programs that receive assistance under Part B of the IDEA.

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 IDEA, the joint responsibilities given to LEAs under Part B of the IDEA:

1. do not apply to the administration and disbursement of any payments received by that educational service agency; and

2. shall be carried out only by that educational service agency.

C. Additional Requirement. Notwithstanding any other provision of §§223 through 224, an educational service agency shall provide for the education of students with disabilities in the least restrictive environment, as required by §113.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

§225. Reserved.

§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 IDEA for any fiscal year, less any amount reduced by the LEA pursuant to §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 CFR 300.1 et seq., for examples of how §206.D, regarding local maintenance of effort, and §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 IDEA or to delay appropriate evaluation of a student suspected of having a disability.

D. Reporting. Each LEA that develops and maintains coordinated, early intervening services under this Section shall annually report to the LDE on:

1. the number of students served under this Section who received early intervening services; and

2. the number of students served under this Section who received early intervening services and subsequently receive special education and related services under Part B of the IDEA 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2057 (October 2008).

§227. Direct Services by the LDE

A. General

1. The LDE 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 students with disabilities residing in the area served by that LEA, or for whom that state agency is responsible, if the LDE determines that the LEA or state agency:

a. 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 IDEA;

b. is unable to establish and maintain programs of FAPE that meet the requirements of these regulations;

c. is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

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

2. LDE Administrative Procedures

a. In meeting the requirements in Paragraph A.1 of this Section, the LDE may provide special education and related services directly, by contract, or through other arrangements.

b. The excess cost requirements of §203.B do not apply to the LDE.

B. Manner and Location of Education and Services. The LDE may provide special education and related services under Subsection A of this Section in the manner and at the locations (including regional or state centers) as the LDE considers appropriate. The education and services shall be provided in accordance with these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2057 (October 2008).

§228. State Agency Eligibility

A. Any state agency that desires to receive a subgrant for any fiscal year under §705 shall demonstrate to the satisfaction of the LDE that:

1. all students with disabilities who are participating in programs and projects funded under Part B of the IDEA receive FAPE, and that those students and their parents are provided all the rights and procedural safeguards described in these regulations; and

2. the agency meets the other conditions of this chapter that apply to LEAs.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2057 (October 2008).

§229. Disciplinary Information

A. The LEA shall include in the records of a student with a disability, the state required forms listing suspensions or expulsions in the current or previous school year that have been taken against the student, and transmit the forms to the same extent that the disciplinary information is included in and transmitted with the student records of non-disabled students.

B. If the student transfers from one school to another, the transmission of any of the student's records shall include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2057 (October 2008).

§230. LEA Jurisdiction

A. Each LEA shall identify, locate, and evaluate each student suspected of having a disability (regardless of the severity of the disability), 3 through 21 years of age, residing within its jurisdiction.

B. Each LEA is responsible for making available a free appropriate public education to each eligible student with a disability, 3 through 21 years of age, who resides within its jurisdiction except those students enrolled by their parents in a private school program. This responsibility includes the provision and cost of any program on the continuum of services a student requires, including residential placement.

C. Each LEA is responsible for making available a free appropriate public education to each eligible student with a disability, 3 through 21 years of age, who are non-residents of the LEA but located within its jurisdiction for any reason, except for those students enrolled by their parents in a private school program. Funding for services for these students is established in this Section.

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

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

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

3. For a state board special school, the geographic area is the boundary of the educational facility.

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

5. If an LEA places a student in another LEA or an approved private school, the student so placed remains within the jurisdiction of the placing LEA. The responsibility for a FAPE remains with the placing LEA.

a. All students sent to a board special school by another LEA are considered “placed” by the sending LEA.

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

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

2. A student with a disability shall remain eligible for services until reaching age 22 unless the student has graduated from high school with a regular high school diploma. A student with a disability whose twenty-second birthday occurs during the course of the regular school year (as defined by the LEA) may be allowed to remain in school for the remainder of the school year.

3. LEAs are required to make available a free appropriate public education to students expelled, suspended or otherwise removed from their current educational placements for more than 10 school days in a school year, in accordance with these regulations.

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

F. Funding for public school special education and related services as provided by an LEA shall be as follows.

1. Each LEA shall provide special education and related services to students with exceptionalities who are located within its geographical boundaries, including students who are placed in a private residential facility or an intermediate care facility for the developmentally disabled for any reason by any individual or agency; however, the LEA shall pay the cost of such services only for students who are residents within the geographical boundaries of the LEA. Each LEA shall provide child find and evaluation services to nonresident students who are parentally placed in a private elementary or secondary school in the LEA’s jurisdiction.

2. If an LEA provides special education and related services to a student with an exceptionality who is a resident of the state of Louisiana and is located within the geographical boundaries of an LEA but is not a resident thereof, including students who are placed in a private residential facility or an intermediate care facility for the developmentally disabled for any reason by any individual or agency, the responsibility for the student’s special education and related service is divided between the student’s LEA of residence and the LEA where the student is located as follows:

a. the LEA where the student is located is responsible for providing special education and related services to the student; and

b. the cost of special education and related services shall be reimbursed by the LEA within the boundaries in which the student resides or in which a student who attains majority resides.

3. If a student with an exceptionality is living in a private residential facility in this state but the student is not a

resident of this state, the LEA providing special education and related services to that student shall be reimbursed by the residential facility for the cost of providing those services.

4. The state shall be responsible for funding the costs of special education and related services for students enrolled in the special school district and special schools, with the exception of daily transportation costs for day students at board special schools if the students are not placed by parent option. Those transportation costs remain the responsibility of the sending LEA.

5. The Department of Education and LEAs may, under policies established by the State Board of Elementary and Secondary Education, enter into purchase of service agreements or contracts with other public or non-public agencies to provide special education and related services.

6. This Section is not applicable to students who are adjudicated delinquent, or are members of a family in need of services by a court or is in the custody of the Office of Juvenile Justice as a result of any such adjudication and is assigned by the Office of Juvenile Justice to a community-based program or facility, pursuant to R.S. 17:100.1.

G. If a student's LEA of residence is required to fund a student's special education and related services while the student is located in another LEA in the State of Louisiana, the billing must be implemented as follows.

1. The LEA providing the special education and related services will claim the student on its student count for purposes of the Minimum Foundation Program (MFP) and any other available state or federal funding for which the student is eligible.

2. The LEA providing the special education and related services will determine the cost of the student's special education and related services by prorating all services among all participating students in each setting. Those costs include, but are not limited to, the following.

a. School bus transportation costs shall be the student's prorated share of the LEA's actual cost of the school bus, driver, and bus aide(s).

b. Classroom costs shall be the student's prorated share of the cost of the teacher, paraprofessional(s), and aide(s).

c. Related services costs shall be the hourly rate or a portion thereof, of a related service provider's salary or fee for the number of hours or minutes the student actually received services.

d. If the student does not qualify for a free breakfast or lunch pursuant to the United States Department of Agriculture free or reduced nutrition programs, the cost of any meals and snacks shall be the cost of the meals and snacks charged to all students.

e. The actual cost of any assistive technology or other required equipment, supplies, and supports can be billed to the LEA of residence.

f. Indirect costs cannot be included in the billings sent to the LEA of residence.

3. The LEA will subtract the total costs for the student, as enumerated herein, from the total state and federal funding generated by the student's enrollment. The difference may be billed to the student's LEA of residence.

4. Each LEA which intends to bill a non-resident student's Louisiana LEA of residence must send a written notification to the LEA of residence no later than 90 school days prior to sending a bill.

H. "Resident" as it applies to a student with a exceptionality for purposes of this Section shall mean any one of the following.

1. The student is a resident within the geographical boundaries of the local education agency in which the student's parent or parents have their legal residence, unless the parent or parents have relinquished custody of the student. In such case, the student is a resident within the geographical boundaries of the LEA in which the student's legal custodian or custodians have their legal residence.

2. If a student's parents are divorced, the student is a resident of the LEA in which the student's domiciliary or custodial parent has his or her legal residence.

3. If a student is in foster care, the student is a resident of the LEA in which the parent or parents with whom the student lived immediately prior to being placed into foster care have their legal residence.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1500 (July 2010).

Chapter 3. Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Subchapter A. Parental Consent

§301. Parental Consent

A. Parental Consent for Initial Evaluation

1.a. The public agency proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability as defined in §905 shall, after providing notice consistent with §§503 and 504, obtain informed consent consistent with the definition of consent in §905, from the parent of the student before conducting the evaluation.

b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

c. The public agency shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability.

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

a. despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the student;

b. the rights of the parents of the student have been terminated in accordance with state law; or

c. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been

given by an individual appointed by the judge to represent the student.

3.a. If the parent of a student enrolled in a public school or seeking to be enrolled in a public school does not provide consent for initial evaluation under Paragraph A of this Section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards in Chapter 5 of these regulations (including the mediation procedures under §506 or the due process procedures under §§507 through 516), if appropriate.

b. The public agency does not violate its obligation under §111 and §§302 through 308 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 student with a disability shall obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

2. The public agency shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

3. If the parent of a student fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, the public agency:

a. may not use the procedures in Chapter 5 of these regulations (including the mediation procedures under §506 or the due process procedures under §§507 through 516) in order to obtain agreement or a ruling that the services may be provided to the student;

b. will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with special education and related services for which the parent refuses to or fails to provide consent; and

c. is not required to convene an IEP Team meeting or develop an IEP under §320 and §324 for the student.

4. If, at any time subsequent to the initial provision of special education and related services, the parent of the student revokes consent in writing for the continued provision of special education and related services, the public agency:

a. may not continue to provide special education and related services to the student, but must provide prior written notice in accordance with §504 before ceasing the provision of special education and related services;

b. may not use the procedures in Chapter 5 of these regulations (including the mediation procedures under §506 or the due process procedures under §§507 through 516), in order to obtain agreement or a ruling that the services may be provided to the student;

c. will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

d. is not required to convene an IEP Team meeting or develop an IEP under §320 and §324 for the student for further provision of special education and related services;

e. special education and related services may not be discontinued until prior written notice is sent;

f. if the parent revokes consent in writing for his/her student's receipt of special education services after the student is initially provided special education and related services, the public agency is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

C. Parental Consent for Reevaluations

1. Subject to Paragraph C.2 of this Section, each public agency:

a. shall obtain informed parental consent, in accordance with §301.A, prior to conducting any reevaluation of a student with a disability;

b. 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.4 of this Section;

c. the public agency does not violate its obligation under §111 and §§302 through 308 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:

a. it made reasonable efforts to obtain such consent; and

b. the student's parent has failed to respond.

D. Other Consent Requirements

1. Parental consent is not required before:

a. reviewing existing data as part of an evaluation or a reevaluation; or

b. administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

2. A public agency may not use a parent's refusal to consent to one service or activity under Paragraph A of this Section to deny the parent or student any other service, benefit, or activity of the public agency, except as required by these regulations.

3.a. If a parent of a student 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

b. the public agency is not required to consider the student as eligible for services under §§132 through 144.

4. To meet the reasonable efforts requirement in Paragraphs A.1.c, A.2.a, B.2, and C.2.a of this Section, the public agency shall document its attempts to obtain parental consent using the procedures in §322D.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2058 (October 2008), amended LR 36:1502 (July 2010).

Subchapter B. Evaluations and Reevaluations

§302. Initial Evaluations

A. General. Each public agency shall conduct a full and individual initial evaluation, in accordance with §§306 and 307, before the initial provision of special education and related services to a student with a disability under these regulations.

B. Request for Initial Evaluation. Consistent with the consent requirements in §301, either a parent of a student or a public agency may initiate a request for an initial evaluation to determine if the student is a student with a disability.

C. Procedures for Initial Evaluation. The initial evaluation:

1.a. shall be conducted within 60 business days of receiving parental consent for the evaluation with additional appropriate extensions as established in *Bulletin 1508—The Pupil Appraisal Handbook;* and

2. shall consist of procedures:

a. to determine if the student is a student with a disability as defined in §905; and

b. to determine the educational needs of the student.

D. Exception. The timeframe described in Paragraph C.1 of this Section does not apply to a public agency if:

1. the parent of a student repeatedly fails or refuses to produce the student for the evaluation; or

2. a student enrolls in a school of another public agency after the relevant timeframe in Paragraph C.1 of this Section has begun, and prior to a determination by the student's previous public agency as to whether the student is a student with a disability as defined in §905.

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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2059 (October 2008).

§303. Screening for Instructional Purposes is not Evaluation

A. 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2059 (October 2008).

§304. Reevaluations

A. General. A public agency shall ensure that a reevaluation of each student with a disability is conducted in accordance with §§305 through 308:

1. if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

2. if the student's parent or teacher requests a reevaluation.

B. Limitation. A reevaluation conducted under Subsection A of this Section:

1. may occur not more than once a year, unless the parent and the public agency agree otherwise; and

2. shall occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2059 (October 2008).

§305. Evaluation Procedures

A. Notice. The public agency shall provide notice to the parents of a student with a disability, in accordance with §504, that describes any evaluation procedures the agency proposes to conduct.

B. Conduct of Evaluation. In conducting the evaluation, the public agency shall:

1. use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

a. whether the student is a student with a disability as defined in §905; and

b. the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool student, to participate in appropriate activities);

2. not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; 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 shall ensure that:

1. assessments and other evaluation materials used to assess a student under these regulations:

a. are selected and administered so as not to be discriminatory on a racial or cultural basis;

b. are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

c. are used for the purposes for which the assessments or measures are valid and reliable;

d. are administered by trained and knowledgeable personnel; and

e. are administered in accordance with any instructions provided by the producer of the assessments;

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 student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

4. the student 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 students with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §302.D.2 and E, to ensure prompt completion of full evaluations;

6. in evaluating each student with a disability under §§305 through 307, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified;

7. assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2059 (October 2008).

§306. 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 these regulations, the IEP Team and other qualified professionals, as appropriate, shall:

1. review existing evaluation data on the student, including:

a. evaluations and information provided by the parents of the student;

b. current classroom-based, local, or state assessments and classroom-based observations; and

c. observations by teachers and related services providers; and

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

a.i. whether the student is a student with a disability, as defined in §905, and the educational needs of the student;

ii. in the case of a reevaluation of a student, whether the student continues to have such a disability, and the educational needs of the student;

b. the present levels of academic achievement and related developmental needs of the student;

c.i. whether the student needs special education and related services; or

ii. in the case of a reevaluation of a student, whether the student continues to need special education and related services; and

d. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum.

B. Conduct of Review. The group described in Subsection A of this Section may conduct its review without a meeting.

C. Source of Data. The public agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified under Subsection A of this Section.

D. Requirements if Additional 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 student continues to be a student with a disability, and to determine the student's educational needs, the public agency shall notify the parents of:

a. that determination and the reasons for the determination; and

b. the right of the parents to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.

2. The public agency is not required to conduct the assessment described in Subparagraph D.1.b of this Section unless requested to do so by the student's parents.

E. Evaluations before Change in Eligibility

1. Except as provided in Paragraph E.2 of this Section, a public agency shall evaluate a student with a disability in accordance with §§305 through 308 before determining that the student is no longer a student with a disability.

2. The evaluation described in Paragraph E.1 of this Section is not required before the termination of a student's eligibility under these regulations 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 student whose eligibility terminates under circumstances described in Paragraph E.2 of this Section, a public agency shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2060 (October 2008).

§307. 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 student shall determine whether the student is a student with a disability, as defined in §905, in accordance with

Subsection B of this Section and the educational needs of the student; and

2. the public agency shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

B. Special Rule for Eligibility Determination. A student shall not be determined to be a student with a disability under these regulations:

1. if the determinant factor for that eligibility determination is:

a. lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in Section 1208(3) of the ESEA);

b. lack of appropriate instruction in math; or

c. limited English proficiency; and

2. if the student does not otherwise meet the eligibility criteria as a student with a disability as defined under §905.

C. Procedures for Determining Eligibility and Educational Need

1. In interpreting evaluation data for the purpose of determining if a student is a student with a disability as defined in §905, and the educational needs of the student, each public agency shall:

a. draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

b. ensures that information obtained from all of these sources is documented and carefully considered.

2. If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with §§320 through 324.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2060 (October 2008).

Subchapter C. Additional Procedures for Identifying Students with Specific Learning Disabilities

§308. Specific Learning Disabilities

A. General. Consistent with 34 CFR 300.309, the LDE adopts the criteria for determining whether a student has a specific learning disability in *Bulletin 1508—the Pupil Appraisal Handbook.* In addition, the criteria adopted by the LDE:

1. shall not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a student has a specific learning disability, as defined in §905;

2. shall permit the use of a process based on the student's response to scientific, research-based intervention; and

3. may permit the use of other alternative research-based procedures for determining whether a student has a specific learning disability, as defined in §905.

B. Consistency with State Criteria. A public agency shall use the LDE criteria adopted in Subsection A of this Section consistent with 34 CFR 300.308-311 and detailed in *Bulletin 1508—Pupil Appraisal Handbook* in determining whether a student has a specific learning disability.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2061 (October 2008).

§§309-311. Reserved.

Subchapter D. Individualized Education Programs

§320. Definition of Individualized Education Program

A. General. As used in these regulations, the term *individualized education program or IEP*, a written statement for each student with a disability that is developed, reviewed, and revised in a meeting in accordance with §§320 through 324 and that shall include:

1. a statement of the student's present levels of academic achievement, and functional performance, including:

a. how the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled students); or

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

2.a. a statement of measurable annual goals, including academic and functional goals designed to:

i. meet the student's needs that result from the student’s disability to enable the student to be involved in and make progress in the general education curriculum; and

ii. meet each of the student's other educational needs that result from the student's disability;

b. for students with disabilities who take an alternate assessment, aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

3. a description of:

a. how the student's progress toward meeting the annual goals described in Paragraph A.2 of this Section will be measured; and

b. when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of the 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 student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

a. to advance appropriately toward attaining the annual goals;

b. to be involved in and make progress in the general education curriculum in accordance with Paragraph A.1 of this Section, and to participate in extracurricular and other nonacademic activities; and

c. to be educated and participate with other students with disabilities and nondisabled students in the activities described in this Section;

5. an explanation of the extent, if any, to which the student will not participate with students without disabilities

in the regular class and in the activities described in Paragraph A.4 of this Section;

6. a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments consistent with Section 612(a)(16) of the IDEA; and

a. if the IEP Team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

i. the student cannot participate in the regular assessment; and

ii. the particular alternate assessment selected is appropriate for the student; 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. Beginning not later than the first IEP to be in effect when the student with a disability turns 16 or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP shall 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 student in teaching those goals.

C. Transfer of Rights at Age of Majority. Beginning not later than one year before a student reaches the age of majority under state law, the student's IEP shall include a statement that the student has been informed of the student's rights under Part B of the IDEA, if any, that will transfer to the student on reaching the age of majority, under §520.

D. Construction. Nothing in this Section shall be construed to require:

1. that additional information be included in a student's IEP beyond what is explicitly required in Section 614 of the IDEA; or

2. the IEP Team to include information under one component of a student's IEP that is already contained under another component of the student’s IEP.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2061 (October 2008).

§321. IEP Team

A. The public agency shall ensure that the IEP Team for each student with a disability includes:

1. one or both of the parents of the student;

2. not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);

3. not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

4. an officially designated representative of the public agency who:

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

b. is knowledgeable about the general education curriculum; and

c. is knowledgeable about the availability of resources of the public agency;

5. an individual who can interpret the instructional implications of evaluation results, who may be a member of the team as 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 student, including related service personnel as appropriate; and

7. whenever appropriate, the student with a disability.

B. Transition Services Participants

1. In accordance with Paragraph A.7 of this Section, the public agency shall invite a student with a disability to attend the student's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals under §320.B.

2. If the student does not attend the IEP Team meeting, the public agency shall 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 the student who has reached the age of majority, in implementing the requirements of Paragraph B.1 of this Section, the public agency shall 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 shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

D. Designating a Public Agency Representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in 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 meeting, in whole or in part, if the parent of the student 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:

a. the parent, in writing, and the public agency consent to the excusal; and

b. 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 IDEA, an invitation to the initial IEP Team meeting shall, 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2062 (October 2008).

§322. Parent Participation

A. Public Agency Responsibility—General. Each public agency shall take steps to ensure that one or both of the parents of the student with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

1. notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

2. scheduling the meeting at a mutually agreed upon time and place.

B. Information Provided to Parents

1. The notice required under Paragraph A.1 of this Section shall:

a. indicate the purpose, time, and location of the meeting and who will be in attendance; and

b. inform the parents of the provisions in §321.A.6 and C (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the student), and §321F (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 student previously served under Part C of the IDEA).

2. For a student with a disability beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined to be appropriate by the IEP Team, the notice also shall:

a. indicate:

i. that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student, in accordance with §320.B; and

ii. that the agency will invite the student; and

b. 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 shall use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §328 (related to alternative means of meeting participation).

D. Conducting an IEP Team 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 shall keep a record of its attempts to arrange a mutually agreed upon 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 shall 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 Student's IEP. The public agency shall give the parent a copy of the student's IEP at no cost to the parent.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2062 (October 2008).

§323. When IEPs Shall Be in Effect

A. General. At the beginning of each school year, each public agency shall have in effect, for each student with a disability within its jurisdiction, an IEP, as defined in §320.

B. IEPs for Students Aged 3 through 5

1. In the case of student with a disability aged 3 through 5, the IEP Team shall consider an individualized family service plan (IFSP), if the student was served under Part C of the IDEA.

C. Initial IEPs; Provision of Services. Each public agency shall ensure that:

1. a meeting to develop an IEP for a student is conducted within 30 days of a determination that the student needs special education and related services; and

2. as soon as possible but no later than 10 school days following the development of the IEP, special education and related services are made available to the student in accordance with the student’s IEP.

D. Accessibility of Student's IEP to Teachers and Others. Each public agency shall ensure that:

1. the student'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;

2. each teacher and service provider described in Paragraph D.1 of this Section shall be informed of:

a. his or her specific responsibilities related to implementing the student's IEP; and

b. the specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.

E. IEPs for Students who Transfer Public Agencies in the Same State. If a student with a disability (who had an IEP that was in effect in a previous public agency within Louisiana) transfers to a new public agency within Louisiana, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) shall provide FAPE to the student (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency either:

1. adopts the student's IEP from the previous public agency; or

2. develops, adopts, and implements a new IEP that meets the applicable requirements in §§320 through 324.

F. IEPs for Students who Transfer from Another State. If a student 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 Louisiana, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) shall provide the student with FAPE (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency:

1. conducts an evaluation pursuant to §§305 through 307 (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 §§320 through 324.

G. Transmittal of Records. To facilitate the transition for a student described in Subsections E and F of this Section:

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

2. the previous public agency in which the student was enrolled shall take reasonable steps to promptly respond to the request from the new public agency.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2063 (October 2008).

Subchapter E. Development of IEP

§324. Development, Review, and Revision of IEP

A. Development of IEP

1. General. In developing each student's IEP, the IEP Team shall consider:

a. the student's strengths;

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

c. the results of the initial evaluation or most recent evaluation of the student; and

d. the academic, developmental, and functional needs of the student.

2. Consideration of Special Factors. The IEP Team shall:

a. in the case of a student whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

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

c. in the case of a student 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 student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille) that instruction in Braille or the use of Braille is not appropriate for the student;

d. consider the communication needs of the student, and in the case of a student who is deaf or hard-of-hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student’s language and communication mode; and

e. consider whether the student requires assistive technology devices and services based on assessment/evaluation results; and

f. consider health needs of students with disabilities to be met during the school day based on a health assessment.

3. Requirement with Respect to Regular Education Teacher. A regular education teacher of a student with a disability, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the student, including the determination of:

a. appropriate positive behavioral interventions and supports and other strategies for the student; and

b. supplementary aids and services, program modifications, and support for school personnel consistent with §320.A.4.

4. Agreement

a. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student 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 student's current IEP.

b. If changes are made to the student's IEP in accordance with Paragraph A.4.a of this Section, the public agency shall ensure that the student's IEP Team is informed of those changes.

5. Consolidation of IEP Team Meetings. To the extent possible, the public agency shall encourage the consolidation of reevaluation meetings for the student and other IEP Team meetings for the student.

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. A parent shall be provided with a revised copy of the IEP with the amendments incorporated.

B. Review and Revision of IEPs.

1. Each public agency shall ensure that, subject to Paragraphs B.2 and B.3 of this Section, the IEP Team:

a. reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

b. revises the IEP, as appropriate, to address:

i. any lack of expected progress toward the annual goals described in §320.A.2, and in the general education curriculum, if appropriate;

ii. the results of any reevaluation conducted under §304;

iii. information about the student provided to, or by, the parents, as described under §306.A.2;

iv. the student's anticipated needs; or

v. other matters.

2. Consideration of Special Factors. In conducting a review of the student's IEP, the IEP Team shall 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 student, as a member of the IEP Team, shall, consistent with Paragraph A.3 of this Section, participate in the review and revision of the IEP of the student.

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 §320.B, the public agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Construction. Nothing in these regulations relieves any participating agency, including Louisiana Rehabilitation Services, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

D. Students with Disabilities in Adult Prison

1. Requirements That Do Not Apply. The following requirements do not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

a. the requirements contained in Section 612(a)(16) of the IDEA and §320.A.6 (relating to participation of students with disabilities in general assessments;

b. the requirements in §320.B (relating to transition planning and transition services) do not apply with respect to the students whose eligibility under Part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

2. Modifications of IEP or Placement

a. Subject to Subparagraph D.2.b of this Section, the IEP Team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

b. The requirements of §320 (relating to IEPs), and §114 (relating to LRE), do not apply with respect to the modifications described in Subparagraph D.2.a of this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2064 (October 2008).

§325. Private School Placements by Public Agencies

A. Developing IEPs

1. Before a public agency places a student with a disability in, or refers a student to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the student in accordance with §§320 and 324.

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

B. Reviewing and Revising IEPs

1. After a student with a disability enters a private school or facility, any meetings to review and revise the student'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 shall ensure that the parents and an agency representative:

a. are involved in any decision about the student's IEP; and

b. agree to any proposed changes in the IEP before those changes are implemented.

C. Responsibility. Even if a private school or facility implements a student's IEP, responsibility for compliance with these regulations remains with the public agency and the LDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

§326. Reserved.

§327. Educational Placements

A. Consistent with §502.C, each public agency shall ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of their child.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

§328. Alternative Means of Meeting Participation

A. When conducting IEP Team meetings and placement meetings pursuant to Chapters 3 and 5 of these regulations, and carrying out administrative matters under Section 615 of the IDEA (such as scheduling, exchange of witness lists, and status conferences), the parent of a student with a disability and a public agency may agree to use alternative means of meeting participation, such as videoconferences and conference calls.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

Chapter 4. Special School District (SSD) and BESE Special Schools (BSS)

Subchapter A. Special School District

§401. Special School District (SSD)

A. The Special School District (SSD) Board of Directors is the governing authority of the SSD.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008), amended LR 48:35 (January 2022).

§402. Provision of Services

A. Special education services provided by SSD to students with disabilities shall be provided in compliance with these regulations. Provision of services to other

students (gifted or talented or regular education) is not governed by these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

§403. Facility

A. For the purpose of this Chapter, *facility* shall refer to the agency or site that houses an SSD program. Facility does not include SSD, which does not operate any facilities but provides educational services to residents or clients at facilities operated by other agencies.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

§404. Purpose and Jurisdiction

A. SSD shall be responsible for providing special education and related services to any student with disabilities who is enrolled in any state-operated facility as a resident of the facility and for providing appropriate educational services to any eligible student enrolled in any state-operated mental health facility as a resident of the facility, when the facility releases the student to SSD for educational purposes.

B. Individuals with disabilities over age 21 but not over age 24 shall be provided continued special education services when data indicate that the individual with a disability is able to continue to benefit from a program of instruction specifically designed to provide for different learning styles of individuals with disabilities.

C. SSD may enter into interagency agreements with other state agencies to provide appropriate educational services, including special education and related services, to any eligible student who is not a resident of a state-operated facility but who is in the care or custody of a public or private department, agency, or institution.

D. SSD may enter into interagency agreements with other State agencies to provide appropriate educational services to any eligible individual regardless of age who is enrolled in any state-operated facility as a resident of the facility.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

§405. Transition/Day Programs

A. SSD may enter into interagency agreements with other State agencies which operate transition programs or day programs to provide appropriate educational services to students. This includes private providers of alternative educational services, as described in R.S. 17:100.1, in both residential and transition/day programs.

1. Transition/day programs shall contain the following elements:

a. all transition/day programs shall be established by the facility in a detailed, written plan approved by the state director;

b. students in a transition/day program who attend school in their regular LEA may not be placed in the SSD educational program for brief periods of time such as holidays and other periods during which the student's regular LEA is closed; exceptions may be made for unique circumstances on a case-by-case basis with prior written consent of the SSD state director;

c. the facility shall provide the necessary supports, including crisis management and health-related services, to SSD students who are in the transition/day program; and

d. only students who are also receiving other services from the facility may enroll in an SSD program at the facility; educational services may not be the only service the student receives in the transition/day program.

B. The provision of educational services to students in a transition or day program is subject to adequate SSD funding availability. If funds are unavailable to SSD, the student's LEA of current residence assumes jurisdiction for the student and is responsible for providing FAPE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008).

§406. Emergency and Respite Care Program

A. The admission of a student by the state of Louisiana into a state-operated facility for a temporary program of respite care shall not automatically require enrollment in SSD for the purpose of these regulations. The admission of a student on an emergency basis shall not constitute enrollment in SSD; however, if such admission continues after a decision has been made by the legally constituted agency or by a court of the state of Louisiana to place the student in a state-operated residential facility on a non-emergency basis, the student shall be enrolled in SSD in accordance with these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008).

§407. Reserved.

§408. Financing

A. SSD shall retain full financial responsibility for all education programs administered by SSD.

B. The entity housing an SSD program is responsible for providing all transportation services, including those contained in a student's IEP, and daily living supplies such as basic cleaning supplies; personal hygiene supplies; meals and meal supplies, including but not limited to utensils, cups, and plates; and medical and health related supplies.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008).

§409. Reserved.

§410. Students with Disabilities in Adult Prisons

A. The following requirements shall not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. the requirements relating to participation of students with disabilities in general assessments; and

2. the requirements relating to transition planning and transition services, with respect to students whose eligibility will end, because of their age, before they will be released from prison.

B. If a student with a disability is convicted as an adult under state law and incarcerated in an adult prison, the student's IEP Team may modify the student's IEP or placement notwithstanding the requirements for least restrictive environment if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008).

§411.-449. Reserved.

Subchapter B. BESE Special Schools

§450. Louisiana Special Schools

A. In accordance with R.S. 17:1945, SSD Board of Directors will supervise and oversee the administration of the BESE special schools. The Louisiana special schools are Louisiana School for the Deaf (LSD) and Louisiana School for the Visually Impaired (LSVI), and are state-operated schools providing educational programs and services for residential and/or day students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008), amended LR 46:180 (February 2020), amended LR 48:35 (January 2022).

§451.-452. Reserved.

§460. Purpose and Jurisdiction

A. Louisiana special schools are designated to provide FAPE for students who have been evaluated and classified as having low-incidence impairments, including but not limited to deafness and/or hearing loss, visual impairments, or orthopedic impairments, that meet the criteria for admission for each such special school.

B.1. Each LSS, in recognition of its uniqueness and expertise in serving students with low incidence impairments, is designated as a specialized state-wide resource center and may assist LEAs in the provision of services as requested by LEAs.

2. Services may include, but are not limited to: student assessment; in-service training; curricular materials sharing; consultation; and program design, development, and evaluation.

C. Notwithstanding any other provision of these regulations, when a student with a disability is admitted to a LSS and receives the majority of educational services from the BSS, the student shall be under the jurisdiction of the LSS, even if the student receives some services from an LEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008), amended LR 43:2494 (December 2017), amended LR 48:36 (January 2022).

§461. Provision of Services

A. Special education services provided by LSS to students with disabilities shall be provided in compliance with these regulations. Provision of services to other (gifted, talented or regular education) students is not governed by these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2067 (October 2008), amended LR 48:36 (January 2022).

§462. LEA Request for Enrollment in a LSS

A. When an LEA requests that a student be enrolled in a LSS, the requesting LEA is to provide the LSS with documentation of the need for educating the student in the LSS, and

B. prior to and during the admission consideration, the requesting LEA will be responsible for providing:

1. documentation reflecting the student's educational/behavioral functioning in the LEA setting including the student’s mode of communication to assist in determining a LSS's ability to provide an appropriate program. This includes, but is not limited to student's records, the most recent evaluation, most recent IEP, all records and reports regarding grades and high stakes testing, behavior incidents, audiometric data, vision data, educational progress, immunizations, special health concerns and relevant information from private providers; and

2. an LEA representative at the IEP conference, as appropriate;

C. if a student is not admitted to a LSS, the requesting LEA is responsible for providing services or causing services to be provided to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1960

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2067 (October 2008), amended LR 48:36 (January 2022).

§463. Parent Request for Enrollment to LSD or LSVI

A. If an LEA does not request enrollment to a LSS, a parent may request admittance to LSD or LSVI. This request is referred to as parent option.

B. Prior to September 1 of each school year, LSD and LSVI shall determine starting enrollment/resource figures for:

1. the number of students enrolled to date through the referral process and previous parent option students who continue to meet enrollment standards;

2. the resources available to provide supplementary services beyond classroom instruction for those students (e.g., bus space availability; professional service contract limits for OT and PT, psychiatric and psychological services; residential staff/student ratio).

C. If the student is not admitted to LSD or LSVI, jurisdiction does not change.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1946 and R.S. 17:1960.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2067 (October 2008), amended LR 48:36 (January 2022).

§464. Admission and Release

A. Eligible students with disabilities, including those who can be served through regular education facilities, shall be admitted to and released from Louisiana Special Schools,

according to procedures approved by BESE, which include the components listed below.

B.1. Each LSS shall develop and maintain operational procedures concerning the admission of students which incorporate the following:

a. each LSS shall make an annual determination of the number of additional students by grade, bus space availability, professional service contract limits for OT and PT, psychiatric and psychological services, and residential staff/student who may be admitted;

b. students shall be between 3 and 21 years of age, inclusive;

c. as permitted by statute, appropriate services, which need not comply with these regulations, may be provided at extended ages;

d. students must be residents of Louisiana;

e. students must possess a current evaluation with a disability classification that is germane to the services of the school; and

f. students who are not otherwise eligible for admission to a LSS may be admitted for educational purposes, including providing interaction with non-disabled peers and educating students who, based on a medical diagnosis, will likely be eligible for admission in the future.

2. Each LSS shall develop and maintain operational procedures concerning the release of students which incorporate the following circumstances:

a. when a student has received a regular high school diploma;

b. when a student has reached his/her twenty-second birthday by the completion of the current school session or an age extension is granted by law; unless:

i. the admissions and release committee of the LSS determines that the needs of the student are appropriate to continued educational services, in accordance with eligibility requirements stated above for educational services; and

ii. the board special school director authorizes an additional period of service to the student which includes cooperative inter-agency or postgraduate services;

iii. services provided to students over the age of 22 need not be in accordance with these regulations;

c. when the student's IEP Team determines that the LSS is not appropriate for the student or when the LSS determines that the LSS residential setting is not appropriate for the student;

d. when parental approval for placement is withdrawn;

e. when a student is removed in accordance with applicable law.

3. A BSS may deny admission or continued enrollment to a student and release a student from a LSS if the LSS determines that the LSS program is inappropriate for the student's individual needs.

4. The LSS shall notify the appropriate LEA when a student who is still eligible for a free appropriate public education is released from LSS.

5. Students not admitted or denied continued admission under Paragraph 3 may apply for admission to the school in the future.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2067 (October 2008), amended LR 35:1232 (July 2009), amended LR 48:36 (January 2022).

§465. Reserved.

§466. Transportation

A. Home visit transportation for residential students will be provided within the school calendar, which is updated and approved in accordance with BESE procedures. Additional home visit transportation costs will be borne by the parent unless otherwise provided in the IEP or school policy.

B. Each LSS may establish a policy to provide for transportation or to reimburse parents for transportation, at the option of the LSS, when the LSS requires that the student be sent home.

C. Daily transportation for commuter/day students will be the responsibility of the requesting LEA, unless the student was admitted via Parent Option. Nothing in these regulations would prohibit LEAs from providing transportation for a Parent Option student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1946 and R.S. 17:1960.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008), amended LR 48:37 (January 2022).

§467-499. Reserved.

Chapter 5. Procedural Safeguards

Subchapter A. Due Process Procedures for Parents and Students

§501. Responsibility of State and Other Public Agencies

A. The LDE shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§501 through 536.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008).

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

A. Opportunity to Examine Records. The parents of a student with a disability shall be afforded, in accordance with procedures of §§613 through 621, an opportunity to inspect and review all education records with respect to:

1. the identification, evaluation, and educational placement of the student; and

2. the provision of a free appropriate public education to the student.

B. Parent Participation in Meetings

1. The parents of a student with a disability shall be afforded an opportunity to participate in meetings with respect to:

a. the identification, evaluation, and educational placement of the student; and

b. the provision of a free appropriate public education to the student.

2. Each public agency shall provide notice consistent with §322.A.1 and B.1 to ensure that parents of a student

with a disability have the opportunity to participate in meetings described in Paragraph B.1of 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 in which public agency personnel engage 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 shall ensure that a parent of each student 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.1 of this Section, the public agency shall use procedures consistent with the procedures described in §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 his or her child, the public agency shall 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 a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency shall have a record of its attempt to ensure parental involvement.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008).

§503. Independent Educational Evaluation (IEE)

A. General

1. The parents of a student with a disability have the right under these regulations to obtain an independent educational evaluation of the student, subject to Subsections B through E of this Section.

2. Each public agency shall provide to the parent, upon request for an IEE, information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluations as set forth in Subsection E of this Section.

3. For the purposes of this Chapter:

a. *Independent Educational Evaluation (IEE)*—an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question; and

b. *Public Expense*—that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §103.

B. Parent Right to Evaluation at Public Expense

1. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in Paragraphs B.2 through 4 of this Section.

2. If a parent requests an independent educational evaluation at public expense, the public agency shall, without unnecessary delay, either:

a. file a request for due process hearing to show that its evaluation is appropriate; or

b. ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§507 through 513 that the evaluation obtained by the parent did not meet agency criteria.

3. If the public agency files a request for due process hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

4. 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 request for 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. shall be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

2. may be presented by any party as evidence at a hearing on a due process request regarding that student under Chapter 5 of these regulations.

D. Requests for Evaluations by Hearing Officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a request for due process hearing, the cost of the evaluation shall 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, shall 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.1 of this Section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008).

§504. Prior Notice by the Public Agency; Content of Notice

A. Notice. Written notice that meets the requirements of Subsection B of this Section shall be given to the parents of

a student with a disability a reasonable time before the public agency:

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

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

B. Content of Notice. The notice under Subsection A of this Section shall 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 student with a disability have protection under the procedural safeguards of this chapter and, if this notice is not an initial referral for an 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 chapter;

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 shall be:

a. written in language understandable to the general public; and

b. provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

2. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that:

a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

b. the parent understands the content of the notice; and

c. there is written evidence that the requirements of Subparagraph C.2.a and b of this Section have been met.

D. If the notice relates to an action proposed by the agency that also requires parental consent under §301, the LEA may give notice at the same time it requests parental consent.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2069 (October 2008).

§505. Procedural Safeguards Notice

A. General. A copy of the procedural safeguards entitled *Louisiana's Educational Rights of Children with Disabilities* shall be given to the parents of a student with a disability only one time a school year, except that a copy also shall be given to the parents:

1. upon initial referral or parent request for evaluation;

2. upon receipt of the first state complaint under §§151 through 153 and upon receipt of the first request for due process hearing under §507 in a school year;

3. in accordance with the discipline procedures in §530.H; and

4. upon request by a parent.

B. Internet Website. A public agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists.

C. Contents. The procedural safeguards notice shall include a full explanation of all procedural safeguards available under §148, §§151 through 153, §301, §§503 through 518, §520, §§530 through 536 and §§611 through 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:

a. the time period in which to file a complaint;

b. the opportunity for the agency to resolve the complaint; and

c. 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 student'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 students in private schools at public expense;

10. hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;

11. civil actions, including the time period in which to file those actions; and

12. attorneys' fees.

D. Notice in Understandable Language. The notice required under Paragraph A of this Section shall meet the requirements of §504.C.

E. Electronic Mail. A parent of a student with a disability may elect to receive notices required by §§504, 505, and 508 by an electronic mail communication, if the public agency makes that option available.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2070 (October 2008).

§506. Mediation

A. General. Mediation shall be available to allow parties to disputes involving any matter under these regulations,

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

B. Procedures. The LDE adopts the following procedures to ensure:

1. that the mediation process:

a. is voluntary on the part of both parties;

b. is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under part B of the IDEA; and

c. 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:

a. 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 IDEA; and

b. who would explain the benefits of, and encourage the use of, the mediation process to the parents;

3.a. the LDE 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;

b. the LDE shall assign mediators on a rotational basis;

4. the LDE shall 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 shall be scheduled in a timely manner and shall 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 shall execute a legally binding agreement that sets forth that resolution and that:

a. 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

b. 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 shall be enforceable in any state court of competent jurisdiction or in a district court of the United States;

8. discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal court or state court.

C. Impartiality of Mediator

1. An individual who serves as a mediator under these regulations:

a. may not be an employee of the LDE or the LEA that is involved in the education or care of the student; and

b. shall not have a personal or professional interest that conflicts with the person's objectivity.

2. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under §228 solely because he or she is paid by the agency to serve as a mediator.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2070 (October 2008).

§507. Filing a Request for Impartial Due Process Hearing

A. General

1. A parent or public agency may file a Request for Due Process Hearing on any of the matters described in §504.A.1 and 2 (relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to the student).

2. Prescription. The due process hearing request shall allege a violation that occurred not more than one year before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request for due process hearing, except that the exceptions to the timeline described in §511.G apply to the timeline in this Section.

B. Information for Parents. The public agency shall 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 request for due process hearing under this Section;

3. a parent who is not literate in English or has a disability that limits his or her ability to communicate in writing shall be afforded the opportunity for assistance.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2071 (October 2008).

§508. Due Process Hearing Request

A. General

1. A party, or the attorney representing a party, files a request for due process hearing by sending a written request for a due process hearing to the LDE. Such request will remain confidential.

2. The party filing a request for due process hearing shall forward a copy to the LDE.

3. The time limits in this Section commence after LDE receives the request for a due process hearing. When the LDE receives a written request for a due process hearing, the LDE will provide a copy of the request to the other party. The date the LDE delivers or receives confirmation that the other party has received the request will be the presumptive date ~~of~~ verifying receipt.

4. Within two business days of receipt of a written request, the LDE will transmit the request for due process hearing to the Division of Administrative Law (DAL), who will docket the request and assign a hearing officer.

B. Content of Request for Due Process Hearing. The written request for due process hearing required in Paragraph A.1 of this Section shall include:

1. the student's name;

2. the address of the residence of the student;

3. the name of the school the student is attending;

4. in the case of a homeless student or youth (within the meaning of Section 725(2) of the McKinney-Vento

Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;

5. a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and

6. a proposed resolution of the problem to the extent known and available to the person requesting the hearing at the time.

C. Notice Required before a Hearing on a Request for Due Process Hearing. A party may not have a hearing on a request for due process hearing until the party, or the attorney representing the party, files a request for due process hearing that meets the requirements of Subsection B of this Section.

D. Sufficiency of Request for Due Process Hearing

1. The request for due process hearing required by this section shall be deemed sufficient unless the party receiving the request for due process hearing notifies the hearing officer and the other party in writing, within 15 days of receipt of the written request for due process hearing, that the receiving party believes the written request does not meet the requirements in Subsection B of this Section.

2. Within five days of receipt of notification under Paragraph D.1 of this Section, the hearing officer shall make a determination on the face of the written request for due process hearing, whether the due process hearing request meets the requirements of Subsection B of this Section, and shall immediately notify the parties and LDE in writing of that determination. If a determination of insufficiency is made, such determination shall include the nature of the insufficiency and may result in dismissal of the due process hearing.

E. Amendments to Written Request

1. A party may amend its request for due process hearing only if:

a. the other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a meeting held pursuant to §510.A; or

b. the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than 5 days before the due process hearing begins.

2. If a party files an amended request for a due process hearing, the timelines for the resolution meeting in §510.A and the time period to resolve in §510.B begin again with the filing of the amended due process hearing request.

F. LEA's Response to Request for Due Process Hearing

1. If the LEA has not sent a prior written notice under §504 to the parent regarding the subject matter contained in the parent's request for due process hearing, the LEA shall, within 10 days of receiving the request for due process hearing, send to the parent a response that includes:

a. an explanation of why the agency proposed or refused to take the action raised in the request for due process hearing;

b. a description of other options that the IEP Team considered and the reasons why those options were rejected;

c. a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

d. 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 F1 of this Section shall not be construed to preclude the LEA from asserting that the parent's request for due process hearing was insufficient, where appropriate.

G. Other Party Response to a Request for Due Process Hearing. Except as provided in Subsection F of this Section, the party receiving a written request for due process hearing shall, within 10 days of receiving the written request, send to the other party a response that specifically addresses the issues raised in the request for due process hearing.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2071 (October 2008), amended LR 38:2367 (September 2012), LR 46:180 (February 2020).

§509. Model Forms

A. The LDE has developed model forms to assist parents and public agencies in filing a request for due process hearing in accordance with §§507.A and 508.A through C and to assist parents and other parties in filing a state complaint under §151 through 153. The forms may be found in the *Louisiana's Educational Rights of Children with Disabilities* and on the LDE website. The use of the model forms shall not be required.

B. Parents, public agencies, and other parties may use the appropriate model forms 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 §508.B for filing a request for due process hearing, or the requirements in §152.B for filing a state complaint.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2072 (October 2008).

§510. Resolution Process

A. Resolution Meeting

1. Within 15 days of receiving notice of the parent's request for due process hearing, and prior to the initiation of a due process hearing under §511, the LEA shall 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 request for due process hearing that:

a. includes a representative of the public agency who has decision-making authority on behalf of that agency; and

b. may not include an attorney of the LEA unless the parent is accompanied by an attorney.

2. The purpose of the meeting is for the parent of the student to discuss his or her request for due process hearing, and the facts that form the basis of the request for due process hearing, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process hearing request.

3. The meeting described in Paragraph A.1 and 2 of this Section need not be held if:

a. the parent and the LEA agree in writing to waive the meeting; or

b. the parent and the LEA agree to use the mediation process described in §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 issues contained in the request for due process hearing to the satisfaction of the parents within 30 days of the receipt of the written request for due process hearing, the due process hearing may occur.

2. Except as provided in Subsection C, the timeline for issuing a final decision under §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 a parent filing a due process request to participate in the resolution meeting shall 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 §322.D), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's request for due process hearing.

5. If the LEA fails to hold the resolution meeting specified in Subsection A of this Section within 15 days of receiving notice of a parent's request for due process hearing 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 §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 resolution 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 shall 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, or, by the LDE, through the state complaint procedures pursuant to §537.

E. Agreement Review Period. If the parties execute an agreement pursuant to Subsection C of this Section, a party may void the agreement within three business days of the agreement's execution.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2072 (October 2008).

§511. Impartial Due Process Hearing and Hearing Officer Appointments

A. General. Whenever a request for due process hearing is received under §507 or §532.C, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in §§507, 508, and 510.

B. Agency Responsible for Conducting the Due Process Hearing. The due process hearing described in Subsection A of this Section shall be conducted in accordance with the law.

C. Impartial Hearing Officer. The DAL shall designate hearing officers, who:

1. meet the minimum qualifications stipulated below:

a. shall have earned a *juris doctorate* degree;

b. shall possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts;

c. shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;

d. shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice; and

e. shall possess other qualifications established by the LDE;

2. shall not:

a. be an employee of a public agency that is involved in the education or care of the student;

b. have a personal or professional interest that would conflict with the person's objectivity in the hearing; or

c. have represented an LEA or a parent as an attorney in education litigation within the previous three years;

3. 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 the person is paid by the agency to serve as a hearing officer;

4. the DAL shall maintain a list of administrative law judges qualified to conduct impartial due process hearings. The list shall include a statement of the qualifications of each of the hearing officers; and

5. the LDE and DAL shall ensure that impartial due process hearing officers designated pursuant to this Section have successfully completed a training program approved by the LDE. Additional training shall be required by the LDE whenever warranted by changes in applicable legal standards or educational practices or as determined necessary by the LDE.

D. Challenge to Impartiality of Due Process Hearing

1. The parent or LEA shall submit written information to the LDE within three business days of receipt of the

notice of the assigned hearing officer, in order to challenge the impartiality of the hearing office.

2. The DAL shall review any written challenge to the impartiality of the hearing officer and provide a written decision and notice to the parent and LEA within three business days after receipt of the written challenge.

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

E. 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 request for due process hearing filed under §508.B, unless the other party agrees otherwise.

F. Timeline for Requesting a Hearing. A parent or agency shall request an impartial hearing on their request for due process hearing within one year of the date the parent or agency knew or should have known about the alleged action that forms the basis of the request for due process hearing.

G. Exceptions to the Timeline. The timeline described in Subsection F of this Section does not apply to a parent if the parent was prevented from filing a request for due process hearing due to:

1. specific misrepresentations by the LEA that it had resolved the problem forming the basis of the request for due process hearing; or

2. the LEA's withholding of information from the parent that was required under these regulations to be provided to the parent.

H. Procedures for conducting a hearing are stipulated below.

1. The hearing officer shall contact all parties to schedule the hearing and then shall notify in writing all parties and the LDE of the date, time and place of the hearing.

2. The hearing shall be conducted in accordance with these regulations as well as procedural guidelines developed by the LDE.

3. At the request of either party, the hearing officer shall have the authority to subpoena persons to appear at the hearing.

I. Prehearing Conference. The hearing officer shall hold a prehearing conference. The hearing officer must initiate the prehearing conference, which may be conducted in person at a location within the school district or by telephone. At the prehearing conference, the hearing officer shall:

1. identify the questions that must be answered to resolve the dispute and eliminate claims and complaints that are without merit;

2. provide the self-represented litigant with a detailed explanation of trial procedures, burden of proof, elements of the claim, and remedies;

3. set up a scheduling order for the hearing and additional prehearing activities;

4. determine if the hearing can be disposed of without an evidentiary hearing and, if so, establish the schedule and procedure for doing so; and

5. establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition. The determination of the location of the hearing should not impose additional costs on any party.

J. Burden of Proof. The burden of proof at a due process hearing is on the party seeking relief.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2072 (October 2008), amended LR 38:2367 (September 2012).

§512. Hearing Rights

A. General. Any party to a hearing conducted pursuant to §§507 through 513 or §§530 through 534 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 students 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 at no cost; and

5. obtain written, or, at the option of the parents, electronic findings of fact and decisions at no cost.

B. Additional Disclosure of Information

1. At least five business days prior to a hearing conducted pursuant to §511.A, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

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 recommendations at the hearing without the consent of the other party.

C. Parental Rights at Hearings. Parents involved in a hearing shall be given the right to:

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

2. have the hearing open 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2073 (October 2008), amended LR 36: 1502 (July 2010), LR 38:2368 (September 2012).

§513. 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 the student received FAPE shall be based on substantive grounds.

2. In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:

a. impeded the student's right to FAPE;

b. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

c. caused a deprivation of educational benefit.

3. Nothing in Subsection A of this Section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§501 through 536.

B. Separate Request for a Due Process Hearing. Nothing in §§501 through 536 shall be construed to preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

C. Findings and Decision to Advisory Panel and General Public. The LDE, after deleting any personally identifiable information, shall:

1. transmit the findings and decisions referred to in §512.A.5 to the state advisory panel established under §167; and

2. make those findings and decisions available to the public.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2073 (October 2008), amended LR 38:2368 (September 2012).

§514. Finality of Decision; Appeal; and Compliance with Hearing Decisions

A. Finality of Hearing Decision. A decision made in a hearing conducted pursuant to §§507-513 or §§530-534 is final, except that any party involved in the hearing may appeal the decision under the provisions of §516.

B. If a final hearing decision requires corrective action or other action, the LEA will be required to provide documentation periodically and at completion of the corrective action to the LDE.

1. The LDE will refer and recommend to BESE the denial or delay of funding or an offset of future funding for any LEA that after written due notice:

a. refuses or fails to submit requested documentation of corrective action; or

b. refuses or fails to take or complete required corrective action.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008), amended LR 38:2368 (September 2012).

§515. Timelines and Convenience of Hearings and Reviews

A. A final hearing decision shall be reached and a copy of the decision mailed to each of the parties not later than 45 days after the expiration of the 30-day period under §510.B or the adjusted time periods described in §510.C.

B.1. A hearing officer may grant specific extensions of time beyond the periods set out in Paragraph A of this Section at the request of either party.

2. When an extension is granted, the hearing officer shall, on the day the decision is made to grant the extension, notify all parties and the LDE in writing, stating the date, time, and location of the rescheduled hearing.

C. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and student involved.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008).

§516. Civil Action

A. General. Any party aggrieved by the findings and decision made under §§507-513 or §§530-534 has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §507 or §§530-532. 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 90 days from the date of the decision of the hearing officer to file a civil action.

C. Additional Requirements. In any action brought under Subsection 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 Section 615 of the IDEA without regard to the amount in controversy.

E. Rule of Construction. Nothing in these regulations 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 students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the IDEA, the procedures under §507 shall be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008), amended LR 38:2368 (September 2012).

§517. Attorneys' Fees/Costs

A. In General

1. In any action or proceeding brought under Section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

a. the prevailing party who is the parent of a student with a disability;

b. the prevailing party who is the LDE or an LEA against the attorney of a parent who files a request for hearing or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continues to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

c. a prevailing party who is the LDE or an LEA against the attorney of the 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 IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under Section 615 of the IDEA and Chapter 5 of these regulations.

2. Paragraph B.1 of this Section does not preclude the LDE from using funds under Part B of the IDEA for conducting an action or proceeding under Section 615 of the IDEA.

C. Award of Fees. A court awards reasonable attorneys' fees under Section 615(i)(3) of the IDEA consistent with the following.

1. Fees awarded under Section 615(i)(3) of the IDEA shall 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.a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

i. 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;

ii. the offer is not accepted within 10 days; and

iii. 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.

b. 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 §506.

c. A meeting conducted pursuant to §510 shall not be considered:

i. a meeting convened as a result of an administrative hearing or judicial action; or

ii. 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 Section 615 of the IDEA, if the court finds that:

a. the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. 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;

c. the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. the attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §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 Section 615 of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008).

§518. Student Status during Proceedings

A. Except as provided in §533, during the pendency of any administrative or judicial proceeding regarding a request for due process hearing under §507, unless the state or local agency and the parents of the student agree otherwise, the student involved in the complaint shall remain in his or her current educational placement.

B. If the request for due process hearing involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings.

C. If the request for due process hearing involves an application for initial services for a child who is transitioning from Part C of the IDEA 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 §301.B, then the public agency shall 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 pursuant to §§507-513 or §§530-534 agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the state and the parents for the purposes of Subsection A of this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2075 (October 2008), amended LR 38:2368 (September 2012).

§519. Surrogate Parents

A. General. Each public agency shall ensure that the rights of a student are protected when:

1. no parent (as defined in §905) can be identified;

2. the public agency, after reasonable efforts, cannot locate a parent;

3. the student is a ward of the state (including a ward of the court or of a State agency); or

4. the student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

B.1. Procedures for determining whether a student needs a surrogate parent are contained in the Surrogate Parent Handbook and as follows:

2. procedures for assigning a surrogate parent shall be developed and implemented by each LEA.

C. Duties of Public Agency. The duties of a public agency under Subsection A of this Section include the assignment of an individual to act as a surrogate for the parents. This shall include a method:

1. for determining whether a student needs a surrogate parent; and

2. for assigning a surrogate parent to the student.

D. Wards of the State. In the case of a student who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements in Subparagraph E.2.a and Subsection F of this Section.

E. 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 shall ensure that a person selected as a surrogate parent:

a. is not an employee of the LDE, the LEA, or any other agency that is involved in the education or care of the student;

b. has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

c. has knowledge and skills that ensure adequate representation of the student.

F. Non-Employee Requirement; Compensation. A person otherwise qualified to be a surrogate parent under Subsection E 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.

G. Unaccompanied Homeless Youth. In the case of a student 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 Subparagraph E.2.a of this Section, until a surrogate parent can be appointed who meets all of the requirements of Subsection E of this Section.

H. Surrogate Parent Responsibilities. The surrogate parent may represent the student in all matters relating to:

1. the identification, evaluation, and educational placement of the student; and

2. the provision of FAPE to the student.

I. LDE Responsibility. The LDE shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the student needs a surrogate parent.

J. Any person appointed as a surrogate parent shall be protected by the "limited liability" provisions set forth in L.R.S. 17:1958.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2075 (October 2008).

§520. Transfer of Parental Rights at the Age of Majority

A. General. When a student with a disability reaches the *age of majority* as defined in §905 that applies to all students (except for a student with a disability who has been determined to be incompetent under state law), he or she shall be afforded those rights guaranteed at such age.

1.a. The public agency shall provide any notice required by these regulations to both the student and the parent; and

b. All rights accorded to parents under part B of the IDEA shall transfer to the student.

2. All rights accorded to parents under part B of the IDEA shall transfer to students who are incarcerated in an adult or juvenile, State or local correctional institutions; and

3. Whenever rights transfer under these regulations, pursuant to Paragraph A.1 or A.2 of this Section, the agency shall notify the student and the parents of the transfer of rights.

B. When a student with a disability reaches the age of majority but has not been interdicted or the subject of a tutorship proceeding, the student's parent may allege to the LEA that the student lacks the ability to provide informed consent with respect to his or her educational program. In the event that the parent makes such an allegation, the student has the right to dispute the parent's allegation, either orally or in writing, or by any other method of communication.

1. Any protest or objection to the parent's allegation shall result in the student's educational rights being transferred fully to the student at the age of majority, unconditionally. If the student makes no such dispute or objection, the parent shall retain the student's educational rights.

2. The student's position is final and unappealable; however, at any time the student may revoke his assent to his parents' retention of rights. Upon such revocation, the student's rights immediately vest with the student.

3. LEAs are required to document in the student's IEP that the parents and the student have been informed of the rights herein and that they have accepted or declined these rights. If the student and/or parent is unable to sign the appropriate section of the IEP reflecting this information, the IEP team may complete that portion of the IEP on behalf of the student and/or parent, reflecting each party's position and acknowledging that the student and/or parent is unable to sign.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2076 (October 2008).

§§521-529. Reserved

Subchapter B. Discipline Procedures for Students with Disabilities

§530. Authority of School Personnel

A. Case-by-Case Determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent

with the requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.

B. General

1. School personnel under this section may remove a student 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 students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §536).

2. After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency shall provide services to the extent required under Subsection D of this Section.

3. No form of corporal punishment shall be administered to a student with an exceptionality, excluding students identified as gifted and talented, as defined in R.S. 17:1942 or to a student who has been determined to be eligible for services under section 504 of the Rehabilitation Act of 1973 and has an individual accommodation plan.

4. *Corporal Punishment*—using physical force to discipline a student, with or without an object, and includes hitting, paddling, striking, spanking, slapping, or any other physical force that causes pain or physical discomfort.

5. Corporal punishment does not include:

a. the use of reasonable and necessary physical restraint of a student to protect the student, or others, from bodily harm or to obtain possession of a weapon or other dangerous object from a student;

b. the use of seclusion and restraint as provided in R.S. 17:416.21.

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 student's disability pursuant to Subsection E of this Section, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in Subsection D of this Section.

D. Services

1. A student with a disability who is removed from his or her current placement pursuant to Subsection C or G of this Section shall:

a. continue to receive educational services, as provided in §101.A, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

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

2. The services required by Paragraphs 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 student 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 student without disabilities who is similarly removed.

4. After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §536, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed as provided in §101.A, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

5. If the removal is a change of placement under §536, the student'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 student with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the student's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

a. if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

b. if the conduct in question was the direct result of the LEA's failure to implement the IEP.

2. The conduct shall be determined to be a manifestation of the student's disability if the LEA, the parent, and relevant members of the student's IEP Team determine that a condition in either Subparagraph E.1.a or 1.b of this Section was met.

3. If the LEA, the parent, and relevant members of the student's IEP Team determine the condition described in Subparagraph E.1.b of this Section was met, the LEA shall 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 student's disability, the IEP Team shall:

1. either:

a. conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

b. if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

2. except as provided in Subsection G of this Section, return the student to the placement from which the student 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. School personnel 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 student's disability, if the student:

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 the LDE 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 the LDE 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 the state 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 student with a disability because of a violation of a code of student conduct, the LEA shall notify the parents of that decision, and provide the parents the procedural safeguards notice described in §505.

I. Definitions. For purposes of this section, the following definitions apply:

1. *Controlled Substance*—a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

2. *Illegal Drug*—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*—the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

4. *Weapon*—the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2076 (October 2008), amended LR 43:2494 (December 2017).

§531. Determination of Setting

A. The student's IEP Team determines the interim alternative educational setting for services under §530.C, D.5 and G.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008).

§532. Appeal

A. General. The parent of a student with a disability who disagrees with any decision regarding placement under §§530 and 531, or the manifestation determination under §530.E, or an LEA that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing pursuant to §§507 and 508.A and B.

B. Authority of Hearing Officer

1. A hearing officer under §511 hears and makes a determination regarding an appeal under Subsection A of this Section.

2. In making the determination under Paragraph B.1 of this Section, the hearing officer may:

a. return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of §530 or that the student's behavior was a manifestation of the student's disability; or

b. order a change of placement of the student 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 student is substantially likely to result in injury to the student or to others.

3. The procedures under Subsection A and Paragraphs B.1 and 2 of this Section may be repeated, if the LEA believes that returning the student to the original placement is substantially likely to result in injury to the student 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 shall have an opportunity for an impartial due process hearing consistent with the requirements of §§507, 508.A-C, and 510-514, except as provided in Paragraphs C.2 through 4 of this Section.

2. The LDE shall arrange for the expedited due process hearing, which shall occur within 20 school days of the date the request for due process hearing is filed. The hearing officer shall make a determination within 10 school days after the hearing.

3. Unless the parents and the LEA agree in writing to waive the resolution meeting described in Subparagraph C.3.a of this Section, or agree to use the mediation process described in §506:

a. a resolution meeting shall occur within seven days of receiving notice of the request for due process hearing; and

b. 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 request for due process hearing.

4. The LDE requires the exclusion of evidence not disclosed to the other party three business days before the hearing, unless the parties agree otherwise. Except for the timelines modified in Paragraph C.3 of this Section, the LDE shall ensure that the requirements in §510 through §514 are met.

5. The decisions on expedited due process hearings are appealable consistent with §514.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008), amended LR 38:2368 (September 2012).

§533. Placement during Appeal

A. When an expedited hearing under §532 has been requested by either the parent or the LEA, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §530.C or G, whichever occurs first, unless the parent and the LDE or LEA agree otherwise.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008).

§534. Protections for Student not Determined Eligible for Special Education and Related Services

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

B. Basis of Knowledge. A public agency shall be deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred:

1. the parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

2. the parent of the student requested an evaluation of the student pursuant to §§301 through 312; or

3. the teacher of the student, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the student 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 Subsection B of this Section if:

1. the parent of the student:

a. has not allowed an evaluation of the student pursuant to §§301 through 312; or

b. has refused services under the IDEA; or

2. the student has been evaluated in accordance with §§301 through 312 and determined to not be a student with a disability under the IDEA.

D. Conditions that Apply if no Basis of Knowledge

1. If a public agency does not have knowledge that a student is a student with a disability (in accordance with Subsections B and C of this Section) prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with Paragraph D.2 of this Section.

2.a. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under §530, the evaluation shall be conducted in an expedited manner.

b. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

c. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the IDEA, including the requirements of §§530 through 536 and section 612(a)(1)(A) of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008).

§535. Referral to and Action by Law Enforcement and Judicial Authorities

A. Rule of Construction. Nothing in these regulations prohibits an agency from reporting a crime committed by a student 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 student with a disability.

B. Transmittal of Records

1. An agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

2. An agency reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2079 (October 2008).

§536. Change of Placement because of Disciplinary Removals

A. For purposes of removals of a student with a disability from the student's current educational placement under §§530 through 535, a change of placement occurs if:

1. the removal is for more than 10 consecutive school days; or

2. the student has been subjected to a series of removals that constitute a pattern:

a. because the series of removals total more than 10 school days in a school year;

b. because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

c. because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

B.1. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

2. This determination is subject to review through due process and judicial proceedings.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2079 (October 2008).

§537. State Enforcement Mechanisms

A. Notwithstanding §§506.B.7 and 510.D.2, which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in these regulations that would prevent the LDE from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2079 (October 2008).

Subchapter C. Seclusion and Physical Restraint

§540. Definitions

A. As used in these Sections 541 through 543:

1. *Imminent Risk of Harm*—an immediate and impending threat of a person causing substantial injury to self or others;

2. *Mechanical Restraint*—

a. the application of any device or object used to limit a person's movement;

b. does not include:

i. a protective or stabilizing device used in strict accordance with the manufacturer's instructions for proper use and which is used in compliance with orders issued by an appropriately licensed health care provider;

ii. any device used by a duly licensed law enforcement officer in the execution of his official duties;

3. *Physical Restraint*—

a. bodily force used to limit a person's movement;

b. does not include:

i. consensual, solicited, or unintentional contact;

ii. momentary blocking of a student's action if said action is likely to result in harm to the student or any other person;

iii. holding of a student, by one school employee, for the purpose of calming or comforting the student, provided the student's freedom of movement or normal access to his or her body is not restricted;

iv. minimal physical contact for the purpose of safely escorting a student from one area to another; or

v. minimal physical contact for the purpose of assisting the student in completing a task or response;

4. *Positive Behavior Interventions and Support*—a systematic approach to embed evidence-based practices and data-driven decision making when addressing student behavior in order to improve school climate;

5. *Seclusion*—a procedure that isolates and confines a student in a separate room or area until he or she is no longer an immediate danger to self or others;

6. *Seclusion Room*—a room or other confined area, used on an individual basis, in which a student is removed from the regular classroom setting for a limited time to allow the student the opportunity to regain control in a private setting and from which the student is involuntarily prevented from leaving;

7. *School Employee*—a teacher, paraprofessional, administrator, support staff member, or a provider of related services;

8. *Written Guidelines and Procedures*—the written guidelines and procedures adopted by a school's governing authority regarding appropriate responses to student behavior that may require immediate intervention.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1006 (April 2012), amended LR 42:2177 (December 2016).

§541. Use of Seclusion

A. Seclusion shall be used only:

1. for behaviors that involve an imminent risk of harm;

2. as a last resort when de-escalation attempts have failed and the student continues to pose an imminent threat to self or others.

B. Seclusion shall not be used to address behaviors such as general noncompliance, self-stimulation, and academic refusal. Such behaviors shall be responded to with less stringent and less restrictive techniques.

C. A seclusion room shall be used only as a last resort and when less restrictive measures, such as positive behavioral supports, constructive and non-physical de-escalation, and restructuring of a student's environment, have failed to stop a student's actions that pose an imminent risk of harm.

D. A student shall be placed in a seclusion room only by a school employee who uses accepted methods of escorting a student to a seclusion room, placing a student in a seclusion room, and supervising a student while he or she is in the seclusion room.

E. Only one student may be placed in a seclusion room at any given time, and the school employee supervising the student must be able to see and hear the student the entire time the student is placed in the seclusion room.

F. A seclusion room shall:

1. be free of any object that poses a danger to the student placed in the room;

2. have an observation window and be of a size that is appropriate for the student's size, behavior, and chronological and developmental age; and

3. have a ceiling height and heating, cooling, ventilation, and lighting systems comparable to operating classrooms in the school.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1007 (April 2012).

§542. Physical Restraint

A. Physical restraint shall be used only:

1. when a student's behavior presents a threat of imminent risk of harm to self or others and only as a last resort to protect the safety of self and others;

2. to the degree necessary to stop dangerous behavior; and

3. in a manner that causes no physical injury to the student, results in the least possible discomfort, and does not interfere in any way with a student's breathing or ability to communicate with others.

B. No student shall be subjected to any form of mechanical restraint.

C. No student shall be physically restrained in a manner that places excessive pressure on the student's chest or back or that causes asphyxia.

D. A student shall be physically restrained only in a manner that is directly proportionate to the circumstances and to the student's size, age, and severity of behavior.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1007 (April 2012).

§543. Restrictions on the Use of Seclusion or Physical Restraint

A. Seclusion and physical restraint shall not be used as a form of discipline or punishment, as a threat to control, bully, or obtain behavioral compliance, or for the convenience of school personnel.

B. No student shall be subjected to unreasonable, unsafe, or unwarranted use of seclusion or physical restraint.

C. A student shall not be placed in seclusion or physically restrained if he or she is known to have any medical or psychological condition that precludes such action, as certified by a licensed health care provider in a written statement provided to the school in which the student is enrolled.

D. A student who has been placed in seclusion or has been physically restrained shall be monitored continuously. Such monitoring shall be documented at least every 15 minutes and adjustments made accordingly, based upon observations of the student's behavior.

E. A student shall be removed from seclusion or released from physical restraint as soon as the reasons for justifying such action have subsided.

F. The parent or other legal guardian of a student who has been placed in seclusion or physically restrained shall be notified as soon as possible. The school shall document all efforts, including conversations, phone calls, electronic communications, and home visits, to notify the parent of a student who has been placed in seclusion or physically restrained.

1. The student's parent or other legal guardian shall also be notified in writing, within 24 hours, of each incident of seclusion or physical restraint. Such notice shall include the reason for such seclusion or physical restraint, the procedures used, the length of time of the student's seclusion or physical restraint, and the names and titles of any school employee involved.

G. The director or supervisor of special education shall be notified any time a student is placed in seclusion or is physically restrained.

H. A school employee who has placed a student in seclusion or who has physically restrained a student shall document and report each incident in accordance with the policies adopted by the school's governing authority. Such report shall be submitted to the school principal not later than the school day immediately following the day on which the student was placed in seclusion or physically restrained and a copy shall be provided to the student's parent or legal guardian.

I. If a student is involved in five incidents in a single school year involving the use of physical restraint or seclusion, the student's individualized education plan team shall review and revise the student's behavior intervention plan to include any appropriate and necessary behavioral supports. Thereafter, if the student's challenging behavior continues or escalates requiring repeated use of seclusion or physical restraint practices, the special education director or his designee shall review the student's plans at least once every three weeks.

J. The governing authority of each public elementary and secondary school shall adopt written guidelines and procedures regarding:

1. reporting requirements and follow-up procedures;

2. notification requirements for school officials and a student's parent or other legal guardian; and

3. an explanation of the methods of physical restraint and the school employee training requirements relative to the use of restraint.

K. The guidelines and procedures shall be provided to the LDE, all school employees and every parent of a child with a disability. The guidelines and procedures shall also be posted at each school and on each school system's website.

L. The governing authority of each public elementary and secondary school shall report all instances where seclusion or physical restraint is used to address student behavior to the state Department of Education through the special education reporting (SER) system. At a minimum, all instances must be reported on a monthly basis.

M. The state Department of Education, using the data elements collected in SER, shall maintain a database of all reported incidents of seclusion and physical restraint of students with disabilities and shall disaggregated the data for analysis by school, student age, race, ethnicity, and gender, student disability, where applicable, and any involved school employees.

N. Based upon the data collected, the LDE shall annually compile a comprehensive report regarding the use of seclusion and physical restraint of students with exceptionalities, which shall at a minimum include the following:

1. The number of incidents of physical restraint disaggregated by school system; student age, race, ethnicity, gender, and student disability classification.

2. The number of incidents of seclusion disaggregated by school system; student age, race, ethnicity, gender, and student disability classification.

3. A list of the school systems and charter schools that have complied with the reporting requirements pursuant to Paragraph 2 of this Subsection.

O. The state Department of Education shall post the annual report pursuant to Subsection O of this Section on its website and submit a written copy to the Senate and House Committees on Education and the Advisory Council on Student Behavior and Discipline established pursuant to R.S. 17:253.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1007 (April 2012), repromulgated LR 38:1225 (May 2012), amended LR 38:1404 (June 2012), LR 39:3261 (December 2013), LR 42:2177 (December 2016).

Chapter 6. Monitoring, Enforcement, Confidentiality, and Program Information

Subchapter A. Monitoring, Technical Assistance, and Enforcement

§601. State Monitoring and Enforcement

A. The LDE shall monitor the implementation of these regulations, enforce these regulations in accordance with §605 and Bulletin 1922—*Compliance Monitoring Procedures*, and annually report on performance under these regulations. The LDE shall:

1. monitor the implementation of this part;

2. make determinations annually about the performance of each LEA using the categories in §604.B.1;

3. enforce this Section, consistent with §605, using appropriate enforcement mechanisms identified in §605.A.1 (technical assistance), §605.A.3 (conditions on funding of an LEA), § 605.B.2.a (a corrective action plan or improvement plan), §605.B.2.e (withholding funds, in whole or in part, by the LDE), and §605.C.2 (with holding funds, in whole or in part, by the LDE); and

4. report annually on the performance of the state and of each LEA under this section, as provided in §603.B.1.b and B.2.

B. The primary focus of the LDE's monitoring activities shall be on:

1. improving educational results and functional outcomes for all students with disabilities; and

2. ensuring that public agencies meet the program requirements under part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for students with disabilities.

C. As a part of its responsibilities under Subsection A of this Section, the LDE shall use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in Subsection D of this Section, and the indicators established by the secretary for the state performance plans.

D. The LDE shall 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 meetings, mediation, and a system of *transition services* as defined in §905 and in 20 U.S.C. 1437(a)(9); and

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 LDE 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 LDE's identification of the noncompliance.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2079 (October 2008), amended LR 36: 1502 (July 2010).

§602. State Performance Plans and Data Collection

A. General. The LDE has in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of part B of the IDEA, and describes how the state will improve such implementation.

1. The LDE has submitted the state's performance plan to the secretary for approval in accordance with the approval process described in section 616(c) of the IDEA.

2. The LDE shall review its state performance plan at least once every six years, and submit any amendments to the secretary.

3. As part of the state performance plan, the LDE shall establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §601.D.

B. Data Collection

1. The LDE shall collect valid and reliable information as needed to report annually to the secretary on the indicators established by the Secretary for the state performance plan.

2. If the secretary permits the LDE to collect data on specific indicators through the state monitoring or sampling, and the LDE collects the data through state monitoring or sampling, the LDE shall collect data on those indicators for each LEA at least once during the period of the state performance plan.

3. Nothing in part B of the IDEA shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under part B of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2080 (October 2008).

§603. State Use of Targets and Reporting

A. General. The LDE shall use the targets established in the state's performance plan under §602 and the priority areas described in §601.D to analyze the performance of each LEA.

B. Public Reporting and Privacy

1. Public Report

a. Subject to Subparagraph B.1.b of this Section, the LDE shall:

i. report annually to the public on the performance of each LEA located in the state on the targets in the state's performance plan as soon as practicable but no later than 120 days following the state's submission of its annual performance report to the secretary under Paragraph B.2 of this Section; and

ii. make each of the following items available through public means: the state's performance plan, under §602; annual performance reports, under Paragraph B.2 of this Section; and the state's annual reports on the performance of each LEA located in the state, under Paragraph B.1.a.i of this Section. In doing so, the LDE must, at a minimum, post the plan and reports on the LDE website, and distribute the plan and reports to the media and through public agencies.

b. If the LDE, in meeting the requirements of Subparagraph B.1.a.i of this Section, collects performance data through state monitoring or sampling, the state shall include in its report under Clause B.1.a.i of this Section the most recently available performance data on each LEA, and the date the data were obtained.

2. State Performance Report. The LDE shall report annually to the secretary on the performance of the state under the state's performance plan.

3. Privacy. The LDE shall not report to the public or the secretary any information on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2080 (October 2008), amended LR 36: 1503 (July 2010).

§604. LDE's Review, Determination, and Enforcement regarding LEA Performance

A. Review. The LDE shall annually review the performance of each LEA located in the state based on the targets in the state's performance plan.

B. Determination

1. General. Based on the information provided by the LEAs and reported in the state's annual performance report, information obtained through monitoring visits, and any other public information made available, the LDE shall determine if the LEA:

a. meets the requirements and purposes of part B of the IDEA;

b. needs assistance in implementing the requirements of part B of the IDEA;

c. needs intervention in implementing the requirements of part B of the IDEA; or

d. needs substantial intervention in implementing the requirements of part B of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2080 (October 2008).

§605. State Enforcement

A. Needs Assistance. If the LDE determines, for two consecutive years, that an LEA needs assistance under §604.B.1.b in implementing the requirements of part B of the IDEA, the LDE takes one or more of the following actions:

1. advises the LEA of available sources of technical assistance that may help the LEA address the areas in which the LEA needs assistance and requires the LEA to work with appropriate entities. Such technical assistance may include:

a. the provision of advice by experts to address the areas in which the LEA needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

b. assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

c. designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

d. devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D of the IDEA, and private providers of scientifically based technical assistance.

2. directs the use of LEA-level funds under section 611(e) of the IDEA on the area or areas in which the LEA needs assistance.

3. identifies the LEA as a high-risk grantee and imposes special conditions on the LEA's grant under part B of the IDEA.

B. Needs Intervention. If the LDE determines, for three or more consecutive years, that an LEA needs intervention under §604.B.1.c in implementing the requirements of part B of the IDEA, the following shall apply:

1. the LDE may take any of the actions described in paragraph A of this section; and

2. the LDE takes one or more of the following actions:

a. requires the LEA to prepare a corrective action plan or improvement plan if the LDE determines that the LEA should be able to correct the problem within one year;

b. requires the LEA to enter into a compliance agreement under section 457 of the General Education Provisions Act (GEPA), as amended, 20 U.S.C. 1221 et seq., if the LDE has reason to believe that the LEA cannot correct the problem within one year;

c. for each year of the determination, withholds not less than 20 percent and not more than 50 percent of the LEA's funds under section 611(e) of the IDEA, until the LDE determines the LEA has sufficiently addressed the areas in which the LEA needs intervention.

d. seeks to recover funds under section 452 of GEPA;

e. withholds, in whole or in part, any further payments to the LEA under part B of the IDEA.

f. Refers the matter for appropriate enforcement action, which may include referral to BESE.

C. Needs Substantial Intervention. Notwithstanding Subsection A or B of this Section, at any time that the LDE determines that an LEA needs substantial intervention in implementing the requirements of part B of the IDEA or that there is a substantial failure to comply with any condition of the state's or LEA's eligibility under part B of the IDEA, the LDE takes one or more of the following actions:

1. recovers funds under section 452 of GEPA;

2. withholds, in whole or in part, any further payments to the LEA under part B of the IDEA.

D. If the LDE determines that an LEA is not meeting the requirements of part B of the IDEA, including the targets in the state's performance plan, the LDE shall prohibit the LEA from reducing the LEA's maintenance of effort under §204 for any fiscal year.

E. Nothing in this section shall be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2080 (October 2008).

§606. Withholding Funds

A. Opportunity for Hearing. Prior to withholding any funds under these regulations and part B of the IDEA, the LDE shall provide reasonable notice and an opportunity for a hearing to the public agency involved, in accordance with §155 of these regulations and *Bulletin 1922—Compliance Monitoring Procedures*.

B. Suspension. Pending the outcome of any hearing to withhold payments under Subsection A of this Section, the LDE may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under part B of the IDEA, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under part B of the IDEA should not be suspended.

C. Nature of Withholding

1. If the LDE determines that it is appropriate to withhold further payments under §605.B.2 or C.2, the LDE may determine:

a. that the withholding will be limited to programs or projects, or portions of programs or projects, that affected the LDE's determination under §604.B.1; or

b. that the LDE will not make further payments to public agencies that caused or were involved in the LDE's determination under §604.B.1.

2. Until the LDE is satisfied that the condition that caused the initial withholding has been substantially rectified:

a. payments to the public agency under part B of the IDEA shall be withheld in whole or part; and

b. payments by the LDE under part B of the IDEA shall be limited to public agencies whose actions did not cause or were not involved in the LDE's determination under §604.B.1, as the case may be.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2081 (October 2008).

§607. Public Attention

A. If the LDE receives notice that the secretary is proposing to take or is taking an enforcement action pursuant to §603, the LDE must, by means of a public notice, take such actions as may be necessary to notify the public within the state of the pendency of an action pursuant to §603, including, at a minimum, by posting the notice on the LDE's website and distributing the notice to the media and through public agencies.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36: 1503 (July 2010).

§608. Secretary's Review, Determination, and Enforcement regarding State Performance

A. The secretary's review, determination, and enforcement regarding the state's performance shall be governed by 34 CFR 300.603 through 607 and 610.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2081 (October 2008).

§609. Reserved.

Subchapter B. Confidentiality of Information

§610. Reserved.

§611. Definitions as used in §§611-625

Destruction—physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education Records—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)).

Participating Agency—any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under part B of the IDEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2081 (October 2008).

§612. Notice to Parents

A. The LDE shall give notice that is adequate to fully inform parents about the requirements of §123, 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 students on whom personally identifiable information is maintained, the types of information sought, the methods the LDE intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

3. a summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

4. a description of all of the rights of parents and students 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 shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

§613. Access Rights

A. Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under these regulations. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §507 or §§530 through 532, or resolution session pursuant to §510, and in no case more than 45 days after the request has been made.

B. The right to inspect and review education records under this section includes:

1. the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

2. the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

3. the right to have a representative of the parent inspect and review the records.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

§614. Record of Access

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

§615. Records on More than one Student

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

§616. List of Types and Locations of Information

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

§617. Fees

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

B. A participating agency may not charge a fee to search for or to retrieve information under these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

§618. Amendment of Records at Parent's Request

A. A parent who believes that information in the education records collected, maintained, or used under these regulations is inaccurate or misleading or violates the privacy or other rights of the student may request the participating agency that maintains the information to amend the information.

B. The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

C. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under §619.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

§619. Opportunity for a Hearing

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

§620. 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 student, it shall amend the information accordingly and so inform the parent in writing.

B. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent of the parent's right to place in the records the agency maintains on the student 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 student under this section shall:

1. be maintained by the agency as part of the records of the student as long as the record or contested portion is maintained by the agency; and

2. if the records of the student or the contested portion are disclosed by the agency to any party, the explanation shall also be disclosed to the party.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

§621. Hearing Procedures

A. A hearing held under §619 shall be conducted according to the procedures in 34 CFR 99.22.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

§622. Consent

A. Parental consent shall 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 these regulations.

2. Parental consent, or the consent of an eligible student who has reached the age of majority under state law, shall be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §321.B.3.

3. If a student 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 shall be obtained before any personally identifiable information about the student is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

§623. Safeguards

A. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

B. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

C. All persons collecting or using personally identifiable information shall receive training or instruction regarding the state's policies and procedures under §123 and 34 CFR part 99.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

§624. Destruction of Information

A. The public agency shall inform parents when personally identifiable information collected, maintained, or used under these regulations is no longer needed to provide educational services to the student.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

§625. Student's Rights

A. The LDE shall have in effect policies and procedures regarding the extent to which students are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the student and type or severity of disability.

B. Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

C. If the rights accorded to parents under part B of the IDEA are transferred to a student who reaches the age of majority, consistent with §520, the rights regarding educational records in §§613 through 624 shall also be transferred to the student. However, the public agency shall provide any notice required under section 615 of the IDEA to the student and the parents.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

§626. Enforcement

A. The LDE shall have in effect the policies and procedures, including sanctions that the state uses, to ensure that its policies and procedures consistent with §§611 through 625 are followed and that the requirements of the IDEA and these regulations are met.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2084 (October 2008).

§§627-645. Reserved.

§646. Disproportionality

A. General. The LDE shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to:

1. the identification of students as students with disabilities, including the identification of students as students with disabilities in accordance with a particular impairment described in section 602(3) of the IDEA;

2. the placement in particular educational settings of these students; and

3. the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

B. Review and Revision of Policies, Practices, and Procedures. In the case of a determination of significant disproportionality with respect to the identification of students as students with disabilities, or the placement in particular educational settings of these students, in accordance with Subsection A of this Section, the LDE shall:

1. provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.

2. require any LEA identified under Subsection A of this Section to reserve the maximum amount of funds under section 613(f) of the IDEA to provide comprehensive coordinated early intervening services to serve students in the LEA, particularly, but not exclusively, students in those groups that were significantly overidentified under Subsection A of this Section; and

3. require the LEA to publicly report on the revision of policies, practices, and procedures described under Paragraph B.1 of this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2084 (October 2008).

§647-699. Reserved.

Chapter 7. Authorization, Allotment, Use of Funds, and Authorization of Appropriations

Subchapter A. Allotments, Grants, and Use of Funds

§701. Grants to the State

A. Purpose of Grants. The Secretary makes grants to the state to assist the state in providing special education and related services to students with disabilities in accordance with part B of the IDEA.

B. The secretary's allotments, grants, and use of funds to the state are governed by 34 CFR 300.700 through 703, 717 and 718.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2084 (October 2008).

§702.-703. Reserved.

§704. State-level Activities

A. State Administration. For the purpose of administering part B of the IDEA, including Subsection C of this Section, section 619 of the IDEA, and the coordination of activities under part B of the IDEA with, and providing technical assistance to, other programs that provide services to students with disabilities, the state's administrative authority and responsibility is governed by 34 CFR 300.704A.

B. Other State-Level Activities

1. The LDE may reserve a portion of its allocations for other state-level activities. The maximum amount that the state may reserve for other state-level activities is governed by 34 CFR 300.704(b)(1) and (2).

2. Some portion of the funds reserved under Paragraph B.1 of this Section shall be used to carry out the following activities:

a. for monitoring, enforcement, and complaint investigation; and

b. to establish and implement the mediation process required by section 615E of the IDEA, including providing for the costs of mediators and support personnel;

3. Funds reserved under Paragraph B.1of this Section also may be used to carry out the following activities:

a. for support and direct services, including technical assistance, personnel preparation, and professional development and training;

b. to support paperwork reduction activities, including expanding the use of technology in the IEP process;

c. to assist LEAs in providing positive behavioral interventions and supports and mental health services for students with disabilities;

d. to improve the use of technology in the classroom by students with disabilities to enhance learning;

e. to support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for students with disabilities;

f. development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

g. to assist LEAs in meeting personnel shortages;

h. to support capacity building activities and improve the delivery of services by LEAs to improve results for students with disabilities;

i. alternative programming for students with disabilities who have been expelled from school, and services for students with disabilities in correctional facilities, students enrolled in state-operated or state-supported schools, and students with disabilities in charter schools;

j. to support the development and provision of appropriate accommodations for students with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of students with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and

k. to provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to students with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of students with disabilities, including providing professional development to special and regular education teachers, who teach students with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the state under section 1111(b)(2)(G) of the ESEA.

C. Local Educational Agency High Cost Fund. For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need students with disabilities, the state has the option to reserve for each fiscal year 10 percent of the amount of funds the state reserves for other state-level activities under Paragraph B.1 of this Section in accordance with 34 CFR 300.704(c).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2084 (October 2008).

§705. Subgrants to LEAs

A. Subgrants Required. If the LDE receives a grant under §611 of the IDEA for any fiscal year, it shall distribute any funds the LDE does not reserve under §704 to LEAs (including public charter schools that operate as LEAs) in the state that have established their eligibility under §613 of the IDEA for use in accordance with Part B of the IDEA. Effective with funds that become available on July 1, 2009, the LDE must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any students with disabilities.

B. Allocations to LEAs. For each fiscal year for which funds are allocated to the LDE under §703, the LDE shall allocate funds as follows.

1. Base Payments. The LDE first shall award each LEA described in Subsection A of this Section the amount the LEA would have received under section 611 of the IDEA for fiscal year 1999, if the state had distributed 75 percent of its grant for that year under section 611(d) of the IDEA, as that section was then in effect.

2. Base Payment Adjustments. For any fiscal year after 1999:

a. if a new LEA is created, the LDE shall divide the base allocation determined under Paragraph B.1 of this Section for the LEAs that would have been responsible for serving students with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 21 currently provided special education by each of the LEAs;

b. if one or more LEAs are combined into a single new LEA, the LDE shall combine the base allocations of the merged LEAs; and

c. if, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to students with disabilities ages 3 through 21 change, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of students with disabilities ages 3 through 21 currently provided special education by each affected LEA;

d. if an LEA received a base payment of zero in its first year of operation, the LDE must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any students with disabilities. The LDE must divide the base allocation determined under Paragraph B.1 of this Section for the LEAs that would have been responsible for serving students with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

3. Allocation of Remaining Funds. After making allocations under Paragraph B.1 of this Section, as adjusted by Paragraph B.2 of this Section, the LDE shall:

a. allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of students enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

b. allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of students living in poverty, as determined by the LDE.

C. Reallocation of Funds. If the LDE determines that an LEA is adequately providing FAPE to all students with disabilities residing in the area served by that agency with state and local funds, the LDE may reallocate any portion of the funds under these regulations that are not needed by that LEA to provide FAPE, to other LEAs in the state that are not adequately providing special education and related services to all students with disabilities residing in the areas served by those other LEAs. The LDE may also retain those funds for use at the state level to the extent the LDE has not reserved the maximum amount of funds it is permitted to reserve for state-level activities pursuant to §704.

1. After the LDE distributes funds under this part to an eligible LEA that is not serving any students with disabilities, as provided in paragraph A. of this section, the LDE must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The LDE may reallocate any of those funds not obligated by the LEA to other LEAs in the state that are not adequately providing special education and related services to all students with disabilities residing in the areas served by those other LEAs. The LDE may also retain those funds for use at the state level to the extent the LDE has not reserved the maximum amount of funds it is permitted to reserve for state-level activities pursuant to §704.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2085 (October 2008), amended LR 36:1503 (July 2010).

§706-716. Reserved.

§717. Definitions Applicable to Allotments, Grants, and Use of Funds

A. As used in this chapter:

1. *State*—the state of Louisiana; and

2. *Average Per-Pupil Expenditure in Public Elementary Schools and Secondary Schools in the United States*—

a. without regard to the source of funds:

i. the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus

ii. any direct expenditures by the state for the operation of those agencies; divided by

iii. the aggregate number of students in average daily attendance to whom those agencies provided free public education during that preceding year.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2085 (October 2008).

§718. Acquisition of Equipment and Construction or Alteration of Facilities

A. General. If the secretary determines that a program authorized under part B of the IDEA will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the secretary may allow the use of those funds for those purposes.

B. Compliance with Certain Regulations. Any construction of new facilities or alteration of existing facilities under Subsection A of this Section shall comply with the requirements of:

1. Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the Americans with Disabilities Accessibility Standards for Buildings and Facilities); or

2. Appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2085 (October 2008).

§719-799. Reserved.

Chapter 8. Preschool Grants for Students with Disabilities and the Responsibilities of DHH and the LDE

§801. In General

A. Preschool grants for students with disabilities are governed by 34 CFR 300.801-818.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2086 (October 2008).

§802. State Administration

A. For the purpose of administering §619 of IDEA (including the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities, the LDE may use not more than 20 percent of the maximum amount the LDE may reserve under §300.812 of the IDEA for any fiscal year.

B. Other State Level Activities

1. The LDE may reserve a portion of its allocation for other state level activities. The maximum amount that the state may reserve for other state level activities is governed by 34 CFR 300.812(b)(1) and (2).

2. Some portion of the funds reserved under Paragraph B.1 of this Section shall be used to carry out the following activities:

a. for support services (including establishing and implementing the mediation process required by §615(e) of IDEA);

b. for direct services for children eligible for services under §619 of IDEA;

c. to supplement other funds used to develop and implement a state-wide coordinated services system designed to improve results for children and families;

d. to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until such children enter, or are eligible under state law to enter kindergarten.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1504 (July 2010).

§803. Subgrants to LEAs

A. Subgrants Required. If the LDE receives a grant under §619 of the IDEA for any fiscal year, it shall distribute any funds the LDE does not reserve under §802 to LEAs (including public charter schools that operate as LEAs) in the state that have established their eligibility under §613 of the IDEA. Effective with funds that become available on the July 1, 2009, the LDE must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

B. Allocations to LEAs. For each fiscal year for which funds are allocated to the LDE under §703, the LDE shall allocate funds as follows.

1. Base Payments. The LDE first shall award each LEA described in Paragraph A of this Section the amount the LEA would have received under §619 of the IDEA for fiscal year 1999, if the state had distributed 75 percent of its grant for that year under §619(c)(3) of the IDEA, as that section was then in effect.

2. Base Payment Adjustments. For any fiscal year after 1999:

a. if a new LEA is created, the LDE shall divide the base allocation determined under Paragraph B.1 of this Section for the LEAs that would have been responsible for serving students with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 5 currently provided special education by each of the LEAs;

b. if one or more LEAs are combined into a single new LEA, the LDE shall combine the base allocations of the merged LEAs;

c. if, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to students with disabilities ages 3 through 5 change, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of students with disabilities ages 3 through 5 currently provided special education by each affected LEA; and

d. if an LEA received a base payment of zero in its first year of operation, the LDE must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any students with disabilities. The LDE must divide the base allocation determined under Paragraph B.1 of this Section for the LEAs that would have been responsible for serving students with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 21, or ages 3 through 5 currently provided special education by each of

the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

C. Reallocation of Funds. If the LDE determines that an LEA is adequately providing FAPE to all students with disabilities ages 3 through 5 years residing in the area served by the LEA with state and local funds, the LDE may reallocate any portion of the funds under these regulations that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to students with disabilities ages 3 through 5 residing in the areas served by those other LEAs. The LDE may also retain those funds for use at the state level to the extent the LDE has not reserved the maximum amount of funds it is permitted to reserve for state-level activities pursuant to §802.

1. After the LDE distributes funds to an eligible LEA that is not serving any students with disabilities ages 3 through 5 , as provided in paragraph A. of this section, the LDE must determine, within a reasonable period of time prior to the end of the carry-over period in 34 CFR 76.709, whether the LEA has obligated the funds. The LDE may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all students with disabilities ages 3 through 5 residing in the areas served by those other LEAs. The LDE may also retain those funds for use at the State level to the extent the LDE has not reserved the maximum amount of funds it is permitted to reserve for state-level activities pursuant to §802.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1504 (July 2010).

§802.-818. Reserved.

§819. DHH and the LDE's Responsibilities under IDEA and the Louisiana Education of Children with Exceptionalities Act

A. The legal relationship between the Louisiana Department of Health and Hospitals (DHH) and the Louisiana Department of Education (LDE), shall be governed by this section and §154, for the interagency coordination of the IDEA and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941, et seq., and encompasses all offices, divisions, bureaus, units, and programs at the state, regional, and local levels within each department.

B. These regulations are promulgated to comply with the obligations imposed upon the state of Louisiana and its agencies at 20 USC §1412 and 34 CFR 300.154.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2086 (October 2008).

§820. Definitions

A. For the purposes of this Chapter, the following definitions apply.

1. *Educational Services*—all other services, including but not limited to academic services, extracurricular activities, transportation, related services for which DHH is not legally responsible, and any other service included on a student's IEP but not provided by DHH, through Medicaid or any other program operated by DHH, under any existing state or federal law.

2. *Eligibility Criteria for DHH Health and Medical Services*—the criteria for individuals receiving a specific health or medical service provided by DHH.

3 *Family*—the child's parents or legal guardians as well as surrogate parents and persons acting as parents as defined by these regulations.

4. *IEP*—Individualized Education Program, as defined in §905.

5. *LEA*—a local educational agency, as defined in §905.

6. *Related Services*—in addition to the definition of these terms in IDEA and as defined in §905, in the context of these regulations, the term means those services which DHH, through Medicaid or any other program operated by DHH, is required by any existing state or federal law to provide to a qualified recipient in the state of Louisiana.

7. *Services*—any special education and/or related services as defined in IDEA and in §905.

8. *Student*—any individual between the ages of 3 and 22 years and who is enrolled in a Louisiana Local Education Agency ("LEA") or is the responsibility of the LDE and/or the LEAs.

9. *Student with a Disability*—as defined in §905.

10. *Transition Services*—transition services, as defined in §905.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2086 (October 2008).

§821. Responsibility for Services

A. In order to ensure that all services described in §822 that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute, the following requirements are imposed on LDE and DHH.

1. Agency Financial Responsibility. All relevant federal and State mandates apply. LDE and DHH, as obligated under federal or State law, shall use allocated federal, state and local funds to provide, pay, or otherwise arrange for services on the IEP that are necessary to ensure each eligible student receives a free appropriate public education (FAPE) as written on the IEP. The financial responsibility for these services shall be governed by all pertinent federal and State laws, including but not limited to 20 U.S.C. §1400, et seq., 34 CFR Parts 300, 42 U.S.C. §1396, 42 CFR Part 430, LSA-R.S. 17:1941, et seq., and these regulations.

a. If DHH is otherwise obligated under federal or state law, or assigned responsibility under DHH policy or pursuant to 34 CFR §300.142 and 154 to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR §300.6 relating to assistive technology devices, 34 CFR §300.34 relating to related services, 34 CFR §300.42 relating to supplementary aids and services, and 34 CFR §300.43 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or

responsibility, either directly or through contract or other arrangement.

b. DHH may not disqualify an eligible service for Medicaid reimbursement because it is on an IEP or because that service is provided in a school context or any other setting that is a most integrated setting or least restrictive environment in order to provide a free appropriate public education. DHH is required to provide all eligible services to the same extent the individual would receive these services under federal and state law and regulation without eligibility for IDEA.

c. The financial responsibility of DHH shall precede the financial responsibility of the LEA or the state agency responsible for developing the student's IEP.

2. Conditions and Terms of Reimbursement. DHH will fund or provide services that are included on an IEP to the extent that such services are services that are funded or provided to individuals eligible under any federal or state program provided by DHH. If any program under the auspices of DHH fails to provide or pay for these special education and related services, the LEA and/or the LDE shall be responsible for providing or paying for these services. The LDE or the LEA will then claim reimbursement from DHH, having failed to provide or pay for these services. DHH is then required to reimburse the LEA or the LDE for the services that DHH is otherwise obligated to provide. DHH is required to fund or provide services that are included on an IEP to the extent that such services are services for which the individual is eligible under any federal or state program administered by DHH.

3. Interagency Disputes. Disputes relating to the provision of services pursuant to 20 U.S.C. §1400, et seq., and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941, et seq., shall be addressed in the following manner:

a. if a family disputes the actions of an LEA, that family may either file a complaint with the LDE under the procedures described in §151 through 153 or a request due process hearing under the procedures described §§507 through 520;

b. if a family disputes the actions of DHH and that family or student is a client of or eligible for DHH services, that dispute may be addressed through the DHH appeals process, as authorized in R.S. 46:107 or any other relevant State or federal statute or regulation;

c. if an LEA disputes the actions of the LDE, that LEA may file suit against the LDE only in the United States District Court for the Middle District of Louisiana or the Nineteenth Judicial District Court for the Parish of East Baton Rouge;

d. if an LEA disputes the actions of DHH, as a Medicaid provider, that LEA may appeal through the DHH appeal process, as authorized in R.S. 46:107 or any other relevant State or federal statute or regulation;

e. an interagency dispute between DHH and the LDE, which involves either program or financial responsibility, will be referred to the Superintendent of Education and the Secretary of the Department of Health and Hospitals for mediation. If the dispute cannot be resolved in mediation, it will be referred to the Office of the Governor for resolution. If a dispute continues beyond these interventions, either DHH or the LDE may seek resolution from a court of competent authority.

f. during the pendency of any dispute, a student's LEA bears full responsibility for program and/or financial obligations, to ensure that the student's IEP is implemented fully and that the student is receiving FAPE. If the LEA is unable or unwilling to provide FAPE, the LDE is responsible for those program and/or financial obligations.

4. Coordination of Services Procedures. The LDE and DHH shall coordinate services to students with disabilities by complying with procedures that are specific to each agency, including, but not limited to, the following procedures.

a. The LDE bears the following responsibilities:

i. maintain the Child Find system under part B of IDEA, specifically, the identification, location, and evaluation of students from 3 through 21 years of age who are suspected of having a disability;

ii. provide DHH with a listing of its primary contacts and service description for the Child Find system on a school district basis for DHH to make available to its regional and local offices;

iii. ensure that each eligible student will receive a timely, appropriate multidisciplinary evaluation. In order to reduce the duplication of effort, services, and paperwork; the LEAs will implement a policy to ensure evaluations conducted by programs in DHH are utilized in the multidisciplinary evaluation of students suspected of being a student with a disability and in the reevaluation of students;

iv. ensure that each eligible student with a disability receives a free appropriate public education (FAPE) in accordance with an IEP. FAPE includes special education and related services;

v. ensure that each eligible student has an IEP developed and implemented in accordance with IDEA;

vi. monitor the provision of services on IEPs through assurances with LEAs; and

vii. monitor the implementation of the IEP and assure that resources necessary for the implementation of services on the IEP will be made available through federal or State funds.

b. DHH bears the following responsibilities:

i. provide access to medical services offered by DHH through application for such services at DHH office locations in all regions of the state where the student currently reside. The student shall meet the eligibility criteria for the medical services for which the student is applying. Establishing eligibility and need for services is the responsibility of DHH;

ii. DHH shall not reduce the medical services which it would be required to provide to a student with a disability solely because those services are included in the IEP;

iii. refer students to the LEA upon suspicion of a disability. DHH personnel will share available information on students receiving joint services from the LDE and DHH with the proper written consent;

iv. provide information at the consent and request of a parent; and

v. ensure that a student with a disability can access Medicaid services for which the student is eligible. DHH policy and procedures shall not preclude an LEA from enrolling as a provider in the Medicaid program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2086 (October 2008).

§822. Obligations of DHH

A. If DHH is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to §§819 through 823, 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 §905 relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

B. DHH may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

C. If DHH fails to provide or pay for the special education and related services described in paragraph A of this section, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or State agency may then claim reimbursement for the services from DHH, having failed to provide or pay for these services, and DHH shall reimburse the LEA or State agency in accordance with these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2087 (October 2008).

§823. General Provisions Governing DHH and LDE's Responsibilities

A. Confidentiality of Information. In accordance with federal and state law, information on a student's disability is confidential. For the purposes of identification, location, evaluation, development, and implementation of the IEP; information and records on mutually served students may be exchanged between the LDE and DHH with the written, informed consent of the parent(s) of each student. The method of exchanging information may be electronic or written. When a specific student or family is identified, the exchange shall be written with proper consent obtained.

B. Ancillary Agreements. Regional and/or local agreements may be developed and implemented between the respective programs within the LDE and DHH for the purposes of determining and identifying interagency coordination to promote the coordination of services and the timely and appropriate delivery of services to each eligible student and family. The services may be provided either directly or through a contract or other arrangement. These agreements are considered binding for the programs under the auspices of the LDE and DHH only after written approval of such regional or local agreements by the Secretary of DHH and the state Director of Special Education in the LDE, respectively.

C. Joint Coordination and Monitoring. DHH and LDE are required to develop jointly state level annual goals that are based on needs/data. DHH and LDE are required to evaluate jointly the overall effectiveness of these goals. Each department is required to designate a liaison at the state level to coordinate the activities and monitor the compliance of these regulations. Each agency is required to appoint an interagency committee to review and evaluate the effectiveness of these regulations, facilitate their implementation, and make recommendations for revisions as deemed appropriate.

D. Modifications to these Requirements. As the lead agency for implementation of the Louisiana Education of Children with Exceptionalities Act and the Individuals with Disabilities Education Act in Louisiana, the LDE is the sole agency with authority to promulgate regulations pursuant to those statutes and no modification to these requirements shall be made by any other agency by regulation, policy, or otherwise, without the express written consent of the LDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2088 (October 2008).

§824.-899. Reserved.

Chapter 9. General

Subchapter A. Purposes and Applicability

§901. Purposes

A. The purposes of these regulations are the following:

1. to ensure that all students 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;

2. to ensure that the rights of students with disabilities and their parents are protected;

3. to assist localities and educational service agencies to provide for the education of all students with disabilities; and

4. to assess and ensure the effectiveness of efforts to educate students with disabilities.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2088 (October 2008).

§902. Applicability

A. 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 students with disabilities, including:

a. the Louisiana Department of Education, referenced in these regulations as the "LDE";

b. local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA;

c. other State agencies and schools (such as Department of Health and Hospitals, Department of Social Services, Special School District, and Board Special Schools);

d. 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 students with disabilities, regardless of whether that agency is receiving funds under part B of the IDEA.

B. 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 are given to students 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 §148.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2088 (October 2008).

Subchapter B. Definitions used in these Regulations

§903. Definitions/Terms

A. The terms defined in §§904 and 905 of this chapter are used throughout these regulations. Unless expressly provided to the contrary, each definition/term used in these regulations shall have the meaning established by this Chapter.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2088 (October 2008).

§904. Abbreviations/Acronyms

ALJ—administrative law judge.

BSS—BESE special schools.

DAL—Division of Administrative Law.

DHH—state Department of Health and Hospitals.

DPS and C—state Department of Public Safety and Corrections.

DSS—state Department of Social Services.

FAPE—free appropriate public education.

FERPA—Family Educational Records and Privacy Act of 1974.

IDEA—part B of the Individuals with Disabilities Education Act which amends the Education for All Handicapped Children Act of 1975, formerly known as EHA (P.L. 94-142).

IEP—the individualized education program required by §320 of these regulations.

LDE – Louisiana State Department of Education.

LEA—local education agency.

LRE—least restrictive environment.

LSD—Louisiana School for the Deaf.

LSEC—Louisiana Special Education Center.

LSVI—Louisiana School for the Visually Impaired.

NCLB—No Child Left Behind.

NIMAC—National Instructional Materials Access Center.

NIMAS—National Instructional Materials Accessibility Standard.

ODR—officially designated representative.

OYD—Office of Youth Development.

SBESE—state Board of Elementary and Secondary Education.

Section 504—Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

SSD—special school district.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2089 (October 2008), amended LR 38:2368 (September 2012), LR 46:181 (February 2020).

Subpart 2. Gifted/Talented Students

Editor's Note: This Subpart has been realigned and amended to coincide with recent Subpart 1 changes and to align with Louisiana Revised Statute 17:1941 et seq. The Rule was published in the September 2010 *Louisiana Register*, pages 2011-2029.

§905. Definitions

Adapted Physical Education—specially designed physical education for eligible students with disabilities.

Administrative Law Judge—an employee of the Division of Administrative Law that has the qualifications and authority as listed in R.S. 49:994.

Age of Majority—as defined in Louisiana, means 18 years of age.

Alternate Assessment—see *Bulletin 111—The Louisiana School, District, and State Accountability System.*

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

Assistive Technology Service—any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;

3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitation plans and programs;

5. training or technical assistance for a student with a disability, or, if appropriate, that student's family; and

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

At No Cost—see *Special Education*.

Audiology—see *Related Services*.

Autism—see *Student with a Disability*.

Business Day—see *Day*.

Certificate of Achievement—

1. An exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below. The receipt of a certificate of achievement shall not limit a student's continuous eligibility for services under these regulations unless the student has reached the age of 22.

a. The student has a disability under the mandated criteria.

b. The student has participated in LEAP Alternate Assessment (LAA).

c. The student has completed at least 12 years of school or has reached the age of 22 (not to include students younger than 16).

d. The student has met attendance requirements.

e. The student has addressed the general education curriculum as reflected on the student's IEP.

f. Transition planning for the student has been completed and documented.

Change of Placement—see §116 and §536 of these regulations.

Charter School—the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.*

Child Find—see §111 of these regulations.

Child with a Disability—see *Student with a Disability*.

Consent—that:

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;

2. the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and

3.a. the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

b. If a parent revokes consent, that revocation is not retroactive (i.e., does not negate an action that has occurred after the consent had been given and before the consent was revoked).

c. if the parent revokes consent in writing for his/her child's receipt of special education and related services, the public agency is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation.

Controlled Substance—refer to §530.I.1 of these regulations.

Core Academic Subjects—English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Counseling Services—see *Related Services*.

Day; Business Day; School Day—

1. *Day*—calendar day unless otherwise indicated as business day or school day.

2. *Business day*—Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §148D1b.

3.a. *School Day*—any day, including a partial day that students are in attendance at school for instructional purposes.

b. School day has the same meaning for all students in school, including students with and without disabilities.

Deaf-Blindness—see *Student with a Disability*.

Deafness—see *Student with a Disability*.

Developmental Delay—see *Student with a Disability*.

Disability—see *Student with a Disability*.

Division of Administrative Law—the independent state agency that conducts administrative hearings and renders decisions regarding state and federal law.

Due Process—see Chapter 5 of these regulations.

Early Identification and Assessment of Disabilities in Students—see *Related Services*.

Early Intervening Services—see §226.

Early Resolution Process (ERP)—a systematic informal process for dispute resolution available prior to or in connection with State Administrative Complaints in accordance with §§151-153.

Educational Service Agency—

1. A regional public multiservice agency:

a. authorized by State law to develop, manage, and provide services or programs to LEAs;

b. recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state.

2. This definition includes any other public institution or agency having administrative control and direction over a public elementary schools or secondary school; and

3. includes entities that meet the definition of an intermediate educational unit in section 602(23) of the IDEA as in effect prior to June 4, 1997.

Elementary School—a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

Emotional Disturbance—see Student with a Disability.

*Equip*ment—

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

2. all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

Evaluation—procedures used in accordance with §§305 through 308 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.

Extended School Year (ESY) Services—see §106 of these regulations.

Excess Costs—those costs that are in excess of the average annual per student expenditure in a LEA during the preceding school year for an elementary or secondary school

student, as may be appropriate, and that shall be computed after deducting:

1. amounts received:

a. under part B of the IDEA;

b. under part A of Title I of the ESEA; and

c. under parts A and B of Title III of the ESEA; and

2. any state or local funds expended for programs that would qualify for assistance under any of the parts described in Paragraph 1. This definition, but excluding any amounts for capital outlay or debt service. (See Appendix A to the IDEA for an example of how excess costs shall be calculated.)

Free Appropriate Public Education or *FAPE*—special education and related services that:

1. are provided at public expense, under public supervision and direction, and without charge;

2. meet the standards of the LDE; including the requirements of these regulations;

3. include an appropriate preschool, elementary school, or secondary school education in the state; and

4. are provided in conformity with an Individualized Education Program (IEP) that meets the requirement of §§320 through 324.

Foster Parent—see *Parent.*

Highly Qualified Special Education Teachers—

1. 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 section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also:

a. include the requirements described in Paragraph 2 of this definition; and

b. include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of Paragraphs 3 and 4 of this definition.

2. Requirements for Special Education Teachers in General

a. When used with respect to any public elementary school or secondary school special education teacher teaching in the state, 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.

b. A teacher will be considered to meet the standard in Clause 2.a.i.of this definition 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 Clause 2.b.i of this definition are met.

c. Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in Subparagraph 2.a or the requirements in Clause 2.a.iii and Subparagraph 2.b of this definition.

3. 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 students 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:

a. meet the applicable requirements of section 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

b. meet the requirements of paragraph (B) or (C) of section 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 section 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.

4. Requirements for Special Education Teachers Teaching Multiple Subjects. Subject to Paragraph 5 of this Subsection, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to students with disabilities, highly qualified means that the teacher may either:

a. meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

b. 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

c. 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.

5. Separate HOUSSE standards for special education teachers. The State has developed a HOUSSE, which is found in *Bulletin 111—The Louisiana School, District, and State Accountability System*, which does 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:

a. the state may develop a separate HOUSSE for special education teachers; and

b. the standards described in Paragraph E.1 of this definition may include single HOUSSE evaluations that cover multiple subjects.

6. Rule of Construction. Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations 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 state or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§151-153 about staff qualifications with the state as provided for under these regulations.

7. Applicability of Definition to ESEA; and Clarification of New Special Education Teacher

a. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

b. For purposes of Paragraph D.3 of this definition, 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.

8. 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 students with disabilities under §138.

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

Illegal Drug—see §530.I of these regulations.

Include—that the items named are not all of the possible items that are covered, whether like or unlike the one named.

Indian and Indian Tribe—

1. *Indian*—an individual who is a member of an Indian tribe.

2. *Indian Tribe*—any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.).

3. Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

Independent Educational Evaluation (IEE)—see §503 of these regulations.

Individual Education Plan Facilitation—an alternative dispute resolution method developed by the LDE. This option is available to parents and school districts when both agree that it would be valuable to have a neutral person (IEP Facilitator) present at an IEP meeting to assist them in discussing issues regarding an IEP. The role of the IEP Facilitator is to assist in creating an atmosphere for fair communication and the successful drafting of an IEP for the student. Either parent or district can request IEP Facilitation; however, since the process is voluntary, both sides shall agree to participate in the IEP facilitation process. Like mediation, the IEP facilitation is initiated by request to the LDE, and is at no cost to the parents or districts.

Individualized Education Program or IEP—a written statement for a student with a disability that is developed, reviewed, and revised in accordance with §§320 through 324.

Individualized education program team or *IEP Team*—a group of individuals described in §321 of these regulations that is responsible for developing, reviewing, or revising an IEP for a student with a disability.

Individualized Family Service Plan (IFSP)—a written plan for providing early intervention services for infants and toddlers and their families who are eligible under part C of IDEA.

Infant or Toddler with a Disability—

1. an individual under three years of age who needs early intervention services because the individual:

a. 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

b. has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

2. may also include, at the state's discretion:

a. at-risk infants and toddlers; and

b. students with disabilities who are eligible for services under section 619 and who previously received services under part C of the IDEA until such students enter or are eligible under State law to enter kindergarten or elementary school, as appropriate, provided that any programs under part C of the IDEA serving such students 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 IDEA or participate in preschool programs under section 619.

Institution of Higher Education—has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq.* (HEA).

Intellectual Disability—see *student with a disability*.

Interagency Agreement—an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed. The statement shall be consistent with the mandatory provision of §154.

Interim Alternative Educational Setting—see §§530 through 534 of these regulations.

Interpreting Services—see *Related Services*.

Least Restrictive Environment—the educational placement of a student with a disability in a manner consistent with the Least Restrictive Environment Requirements in §115 and116 of these regulations.

Limited English Proficient—the meaning given the term in section 9101(25) of the ESEA.

Local Education Agency or LEA—

1. General. Local Education Agency or LEA—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 schools or secondary schools in a city, parish, school district, or other political subdivision of the state or for a combination of school districts or parishes as are recognized in the state as an administrative agency for its public elementary or secondary schools.

2. Educational Service Agencies and Other Public Institutions or Agencies. The term includes:

a. an educational service agency, as defined this section; and

b. any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

3. BIA Funded Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the IDEA with the smallest student population.

Maintenance of Effort—see §204 of these regulations.

Manifestation Determination Review—see §530.E of these regulations.

Medical Services—see *Related Services*.

Mental Disability—see *Student with a Disability*.

Multiple Disabilities—see *Student with a Disability*.

Native Language—

1. When used with respect to an individual who is limited English proficient, has the following meaning:

a. the language normally used by that individual, or in the case of a student, the language normally used by parents of the student, except as provided in Paragraph A.2 of this definition.

b. In all direct contact with the student, (including the evaluation of the student), the language is the one normally used by the student in the home or learning environment.

2. 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).

Occupational Therapy—see *Related Services*.

Orientation and Mobility Training—see *Related Services*.

Orthopedic Impairment—see *Student with a Disability*.

Other Health Impairment—see *Student with a Disability*.

Paraprofessional—is a person who assists in the delivery of special educational services under the supervision of a special education teacher or other professional who has the responsibility for the delivery of special education services to students with disabilities and who meets all state and federal requirements to serve as a paraprofessional.

Parent—

1.a. a biological, or adoptive parent of a child;

b. a foster parent;

c. a guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student, but not the state if the student is a ward of the state;

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

e. a surrogate parent who has been appointed in accordance with §519.

2.a. Except as provided in Subparagraph 2.b of this definition, the biological or adoptive parent, when attempting to act as the parent under these regulations and when more than one party is qualified under Paragraphs 1 through 5 of this definition to act as a parent, shall be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the student.

b. If a judicial decree or order identifies a specific person or persons under Paragraphs A.1 through 4 of this definition to act as the "parent" of a student or to make educational decisions on behalf of a student, then such person or persons shall be determined to be the parent for purposes of this definition, except that an employee of a public agency that provides education or care for a student may not act as the parent pursuant to §519.

Parent Counseling and Training—see *Related Services*.

Parent Training and Information Center or Community Parent Resource Center or Organization—a private nonprofit organization (other than an institution of higher education) that has a board of directors the majority of whom are parents of students with disabilities ages birth through 26, that includes individuals working in the fields of special education, related services, and early intervention; and individuals with disabilities; and the parent and professional members of which are broadly representative of the population to be served, including low-income parents

and parents of limited English proficient students; and has as its mission serving families of students with disabilities who are ages birth through 26; and have the full range of disabilities described in section 602(3) of the IDEA.

Personally Identifiable—means information that contains:

1. the name of the student, the student's parent, or other family member;

2. the address of the student;

3. a personal identifier, such as the student's social security number or student number; or

4. a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Physical Education—see *Special Education*, Subparagraph 2.b and §108.

Physical Therapy—see *Related Services*.

Prior Notice—see §504 of these regulations.

Psychological Services—see *Related Services*.

Public Agency—includes the state, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the state that are responsible for providing education to students with disabilities.

Recreation—see *Related Services*.

Rehabilitation Counseling—see *Related Services*.

Related Services—

1. General. *Related Services*—transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, 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 students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

2. Exception; Services that Apply to Students with Surgically Implanted Devices, Including Cochlear Implants

a. 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.

b. Nothing in Subparagraph 2.a of this definition:

i. limits the right of a student 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 student 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 student, including breathing, nutrition, or operation of other bodily functions, while the student 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 §113.B.

3. Individual Related Services Terms Defined. The terms used in this definition are defined as follows:

a. *Audiology*—includes:

i. identification of students 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 (lipreading), hearing evaluation, and speech conservation;

iv. creation and administration of programs for prevention of hearing loss;

v. counseling and guidance of students, parents, and teachers regarding hearing loss; and

vi. determination of student's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

b. *Counseling Services*—services provided by qualified social workers, psychologists, school counselors, or other qualified personnel.

c. *Early Identification and Assessment of Disabilities in Students*—the implementation of a formal plan for identifying a disability as early as possible in a student's life.

d. *Interpreting Services*—include:

i. the following, when used with respect to students who are deaf or hard of hearing:

(a). oral transliteration services,

(b). cued language transliteration services,

(c). 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 students who are deaf-blind.

e. *Medical Services*—services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

f. *Occupational Therapy*—services provided by a qualified occupational therapist; and

i. 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.

g. *Orientation and Mobility Services*—services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

i. includes teaching students 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 or a service animal 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.

h. *Parent Counseling and Training*—

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.

i. *Physical Therapy*—services provided by a qualified physical therapist.

j. *Psychological Services*—include:

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 students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

v. planning and managing a program of psychological services, including psychological counseling for students and parents; and

vi. assisting in developing positive behavioral intervention strategies.

k. *Recreation*—includes:

i. assessment of leisure function;

ii. therapeutic recreation services;

iii. recreation programs in schools and community agencies; and

iv. leisure education.

l. *Rehabilitation Counseling Services*—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.

m. *School Health Services and School Nurse Services*—health services that are designed to enable a student with a disability to receive FAPE as described in the student'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.

n. *Social Work Services in Schools*—include:

i. preparing a social or developmental history on a student with a disability;

ii. group and individual counseling with the student and family;

iii. working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

iv. mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

v. assisting in developing positive behavioral intervention strategies.

o. Speech-language pathology services include:

i. identification of students 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, students, and teachers regarding speech and language impairments.

p. Transportation—includes:

i. travel to and from school and between schools;

ii. travel in and around school buildings; and

iii. specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

Recreation—see *Related Services*.

Response to Intervention—see §308.

School Building Level Committee—see *Bulletin 741—The School Administrator's Handbook*.

School Day—see *Day.*

School Health Services—see *Related Services*.

Scientifically Based Research—research that involves the *application* of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that:

1. employs systematic, empirical methods that draw on observation or experiment;

2. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

3. relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

4. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that

those designs contain within-condition or across-condition controls;

5. ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Secondary School—a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

Secretary—the U. S. Secretary of Education.

Serious Bodily Injury—see §530.I of these regulations.

Services Plan—a written statement that describes the special education and related services the LEA will provide to a parentally-placed student with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with §132, and is developed and implemented in accordance with §§137 through 139.

Social Work Services *in Schools*—see *Related Services*.

Specially Designed *Instruction*—see *Special Education*.

Special Education—

1. General

a. *Special Education*—specially designed instruction, at no cost to the parent, to meet the unique needs of the student 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.

b. Special education includes each of the following, if the services otherwise meet the requirements of Paragraph 1 of this Subsection:

i. speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

ii. travel training; and

iii. vocational education

2. Individual Special Education Terms Defined. The terms in this definition are defined as follows.

a. *At No Cost*—that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to non-disabled students or their parents as a part of the regular education program.

b. *Physical Education*—

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.

c. *Specially Designed Instruction*—adapting, as appropriate to the needs of an eligible student under these regulations, the content, methodology, or delivery of instruction:

i. to address the unique needs of the student that result from the student's disability; and

ii. to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

d. *Travel Training*—providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students 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).

e. Vocational education-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.

Specific Learning Disability—see *Student with a Disability.*

Speech or Language Impairment—see *Student with a Disability.*

Speech or Language Pathology—see *Related Services*.

State—the state of Louisiana.

State Educational Agency or the *SEA*—the Louisiana Department of Education (LDE), governed by the State Board of Elementary and Secondary Education, both of which are responsible for the state supervision of public elementary and secondary schools.

Student with a Disability—

1. General:

a. *student with a disability*—a student evaluated in accordance with §§305 through 312 of these regulations and determined as having an intellectual disability, a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in these regulations as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, hearing disabilities, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services;

b.i. Subject to Clause 1.b.ii of this definition, if it is determined, through an appropriate evaluation under §§305 through 308, that a student has one of the disabilities identified in Subparagraph 1.a of this definition, but only needs a related service and not special education, the student is not a student with a disability under these regulations.

(a). If, consistent with Subparagraph 1.b in the definition of *special education* in this section, the related service required by the student is considered special education rather than a related service under state standards, the student would be determined to be a student with a disability under Subparagraph 1.a of this definition.

2. Students aged three through eight experiencing developmental delays. Student with a disability for students

aged three through eight, may, subject to the conditions described in §111.B, include a student:

a. who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

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

3. Definitions of *Disability Terms*. The terms used in this definition of a student with a disability are defined as follows:

a.i. *Autism*—a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

ii. Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance, as defined in Subparagraph 3.d of this definition.

iii. A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in Clause 3.a.i of this definition are satisfied.

b. *Deaf-Blindness*—concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

c. *Deafness*—a hearing loss that is so severe that the student is disabled in processing linguistic information through hearing, with or without amplification that adversely affects a student's educational performance;

d.i. *Emotional Disturbance*—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 student'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; and/or

(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 students who are socially maladjusted, unless it is determined that they have an emotional disturbance under Clause 3.d.i of this definition.

e. *Hard of Hearing*—a loss of hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of *deafness* in Subparagraph 3.c above;

f. *Intellectual Disability*—significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

g. *Multiple Disabilities*—concomitant impairments (such as intellectual disability-blindness or intellectual disability-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 *multiple disabilities* does not include deaf-blindness.

h. *Orthopedic Impairment*—a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a 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).

i. *Other Health Impairment*—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, sickle cell anemia, and Tourette Syndrome; and

ii. adversely affects a student's educational performance.

j. *Specific Learning Disability*—

i. General. *Specific Learning Disability*—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 the 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 intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

k. *Speech or Language Impairment*—a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

l. *Traumatic Brain Injury*—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 student'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.

m. *Visual Impairment Including Blindness*—an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

Supplementary Aids and Services—aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with non-disabled students to the maximum extent appropriate in accordance with §§114 through 116.

Surrogate Parent—see *Parent* and §519 of these regulations.

Transition Services—

1. a coordinated set of activities for a student with a disability that:

a. is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including post secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

b. is based upon the individual student's needs, taking into account the student's strengths, preferences and interests and includes:

i. instruction;

ii. related services;

iii. community experiences;

iv. the development of employment and other post-school adult living objectives; and

v. if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

2. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

Transportation—see *Related Services*.

Traumatic Brain Injury—see *Student with a Disability*.

Travel Training—see *Special Education*.

Universal Design—the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

Visual Impairment Including Blindness—see *Student with a Disability*.

Vocational Education—see *Special Education*.

Ward of the State—

1. General. Subject to Paragraph 1 of this Subsection, *Ward of the State* means a student who is:

a. a foster child;

b. a ward of the state; or

c. in the custody of a public child welfare agency.

2. Exception. *Ward of the state* does not include a foster child who has a foster parent who meets the definition of *parent* in this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2089 (October 2008), amended LR 36:1505 (July 2010), LR 38:2368 (September 2012), LR 42:235 (February 2016), LR 43:2494 (December 2017), amended LR 48:37 (January 2022).

Chapter 10. State Program Rules for Special Education

§1001. Pupil/Teacher, Pupil/Speech/Language Pathologist, and Pupil Appraisal Ratios for Public Education

A. In providing services to all identified students with disabilities, the number of students in each instructional setting shall not exceed the following numbers.

1. Self-Contained Classrooms

Self-Contained Classrooms	Preschool	Elementary	Secondary
Autism	4	4	4
Blindness	7	9	9
Deafness	7	9	9
Deaf-blindness	4	4	4
Emotional Disturbance		8	8
Hard of Hearing	11	15	17
Mental Disability			
Mild		16	16
Moderate		11	17
Severe		9	9
Profound		9	9
Mild/Moderate (Generic)		16	16
Multiple Disabilities	7	9	9
Noncategorical Preschool			
Mild/Moderate Functioning			
Full Day	11		
Half Day	16		
Severe/Profound Functioning			
Full Day	7		
Half Day	14		
Other Health Impairment		17	17
Orthopedic Impairment	7	11	13
Partial Seeing	11	15	17
Speech or Language Impairment	7	9	9
Severe/Profound (Generic)		9	9
Specific Learning Disability		13	13
Traumatic Brain Injury	7	9	9

2. Paraeducator Training Units

a. Preschool-Aged Students: One teacher and two paraeducators shall be appointed for the initial six preschool students. For students functioning within the severe/profound range, there shall be one additional paraeducator for any additional group of three, not to exceed two additional groups of such students. For students functioning within the mild/moderate range, the additional paraeducators shall be added for each additional group of four. The maximum number of students shall not exceed twelve per unit.

b. School-Aged Students: One teacher and two paraeducators shall be appointed for the initial six students with severe/profound or low incidence disabilities. There

shall be one additional paraeducator for any additional group of three, not to exceed four additional groups of such students. The maximum number of students shall not exceed eighteen per unit.

3.a. Resource Rooms (Generic or Categorical) and Itinerant Instruction Programs (per teacher)

i. Students with severe or low incidence impairments/disabilities—10

ii. All other students with disabilities—27

b. Because of the travel requirements of the program, this number may be reduced by the LEA to 10-19 when instruction is provided to "all other students with disabilities" in at least two different schools.

4. Combination Self-contained and Resource Classrooms

a. Students with severe/low incidence impairments/disabilities—12

b. All other students with disabilities—20

5. Hospital/Homebound Instruction (per teacher)

a. Itinerant—10

b. One Site—17

6. Preschool Intervention Settings (Parent/Child Training)

a. Intervention in the Home—15

b. Intervention in a School or Center—19

7. Reserved.

8. Adapted Physical Education Instruction (per teacher)—60

a. In caseloads exceeding thirty-five students, the total number of students identified as having a severe motor deficit shall not exceed seventeen.

b. Itinerant Instruction (Two or more schools)—40

9. Instruction in Regular Classes. This ratio refers to the caseload of special education teachers who provide instruction to students with disabilities in general education settings.

a. Students with severe or low incidence impairments/disabilities—9

b. All other students with disabilities—16

10. Self-contained or Resource Departmentalized Settings

Self-Contained or Resource Departmentalized Settings	Elementary	Secondary
Autism	15	15
Blindness	33	33
Deafness	33	33
Deaf-blind	15	15
Emotional Disturbance	30	30
Hard of Hearing	58	63
Mental Disability		
Mild	63	63
Moderate	43	63
Severe	33	33
Profound	33	33
Mild/Moderate Generic	58	58
Multiple Disabilities	33	33
Other Health Impairment	63	63
Orthopedic Impairment	43	45
Partial Seeing	58	63
Severe/Profound Generic	33	33
Specific Learning Disability	50	58
Traumatic Brain Injury	33	33

11. Paraeducators may be hired to meet the unique needs of students with disabilities.

12. Speech/language pathologists in LEAs shall be employed at the rate of one for each thirty (or major fraction thereof) students receiving speech therapy. In determining the number of pupils, the following criteria shall be used.

a. Each student shall receive speech therapy.

b. Each speech/language pathologist shall be assigned a minimum of one student in speech therapy and shall not be assigned more than 79 points.

c. Each hour per week of pupil appraisal assessment services, supervision of speech/language pathologists who hold restricted license, or supervision of speech pathology assistants shall equal one point for the purpose of determining the caseload. Assignment of these activities shall be made by the LEA supervisor.

d. The caseload shall be determined according to the following guidelines.

Service Type	Number of Points Determining Caseload
Each hour of assessment	1
Each hour of supervision	1
Each hour of consultation	1
Each student receiving speech therapy	1

13. Pupil appraisal members shall be employed by LEAs at the rate listed below. LEAs may substitute one pupil appraisal for another provided that all pupil appraisal services are provided in accordance with these regulations.

	Public School Ratios Based on Membership	Private School Ratios Based on Membership
Educational Diagnosticians	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
School Psychologists	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
Social Workers	1:3,200 or major function thereof	1:4,500 or major function thereof

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2097 (October 2008).

Title 28
EDUCATION
Part XLIII. Bulletin 1706-Regulations for Implementation of the Children with Exceptionalities Act
Subpart 2. Regulations for Gifted/Talented Students

Editor's Note: This Subpart has been realigned and amended to coincide with recent Subpart 1 changes and to align with Louisiana Revised Statute 17:1941 et seq. The Rule was published in the September 2010 *Louisiana Register*, pages 2011-2029.

Chapter 11. State Eligibility

§1101. Free Appropriate Public Education

A. The Louisiana State Board of Elementary and Secondary Education (the state board) shall be responsible for the assurance of a free appropriate public education to all gifted and talented students ages three through twenty-one years unless the student exits with a high school diploma; and shall exercise supervision and control of public elementary and secondary education.

B. The state board will be directly responsible for the provision of a free appropriate public education (FAPE) to gifted and talented students, ages 3 through 21 years, who are within the jurisdiction of either the Special School District or in a Louisiana special school (Louisiana School for the Visually Impaired or Louisiana School for the Deaf) unless the student exits with a high school diploma.

C. The state ensures the use of whatever state, local, federal, and private sources of support are available in the state to meet the requirements of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1576 (August 2000), amended LR 36:2011 (September 2010), LR 46:181 (February 2020), amended LR 48:37 (January 2022).

§1102. Issuance of Regulations

A. The state board shall adopt, amend, or repeal rules, regulations, standards, and policies necessary or proper for the provision of a free appropriate public education developed pursuant to R.S. 17:1941

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1576 (August 2000), amended LR 36:2011 (September 2010).

§1103. Compliance with Federal Rules

A. The state board has the responsibility of complying with rules and regulations governing grants for educational purposes from the federal government or from any other person or agency, which are not in contravention to the Constitution and laws, and the authority to take all action necessary to achieve compliance.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1576 (August 2000), amended LR 36:2011 (September 2010).

§1104. Reserved.

§1105. Program Options

A. The department shall ensure that each LEA take steps to ensure that its gifted and talented students residing in the area served by the LEA have available to them the variety of educational programs and services available to all students in the area served by the agency.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2011 (September 2010).

§1106. Reserved.

§1107. Child Find Activities

A. Each LEA, in accordance with the requirements of this subpart, shall document that the effort of ongoing identification activities is conducted to identify and locate each student who is under its jurisdiction, who is suspected of being gifted or talented in visual arts, music or theatre and in need of special education and related services, and who is one of the following:

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

B. Ongoing identification activities apply to highly mobile gifted and talented students (such as migrant and homeless students) and students who are suspected of being gifted or talented in visual arts, music or theatre and in need of special education.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2011 (September 2010).

§§1108-1116. Reserved.

§1117. Facility Comparability

A. Facilities identified as being for gifted and talented students and the services and activities provided therein shall

meet the same standards and level of quality as do the facilities, services, and activities provided to other students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§1118. General Responsibility

A. Each local educational agency (LEA) shall establish and implement procedural safeguards that meet the requirements of these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§§1119-1128. Reserved.

§1129. Gifted and Talented Students Enrolled by their Parents in Private Schools

A. Definitions

Private School Students—students enrolled by their parents in private schools or facilities.

B. Private school gifted and talented students shall be identified, located, and evaluated through prescribed procedures.

1. Each LEA shall locate, identify, and evaluate all private school gifted and talented students, including religious-school students residing in the jurisdiction of the LEA.

2. The activities undertaken to carry out this responsibility for private school gifted and talented students shall be comparable to activities undertaken for gifted and talented students in public schools.

C. The provision of services to gifted and talented students shall follow basic requirements.

1. No LEA is required to provide services for gifted and talented students enrolled in private schools or in home school programs.

D. Complaints are limited to the conditions listed below.

1. The due process procedures in §1507 of these regulations apply to complaints that an LEA has failed to meet the child find requirements, including the procedures for evaluation and determination of eligibility found in these regulations.

2. Complaints that an LEA has failed to meet the requirements of §1129 of these regulations may be filed under the procedure established in §1151 of Bulletin 1706, Subpart 2.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§1130. General LDE Responsibilities and Authorities

A. The state Superintendent of Public Elementary and Secondary Education (the superintendent) and the state Department of Education (the LDE) shall administer those programs and policies necessary to implement R.S. 17:1941 et seq. Responsibilities of the state superintendent and the department are listed below.

1. The department shall approve, in accordance with standards approved by the state board, each public school program that delivers special education.

2. The department shall recommend to the state board, in accordance with standards approved by the state board, each participating private school program that delivers special education.

3. The department shall receive, administer, and direct the distribution of federal funds for the education of students with exceptionalities in gifted or talented in visual arts, music or theatre, except those received directly by LEAs.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§1131. Reserved.

§1132. Personnel Qualifications

A. General. The LDE shall establish and maintain qualifications of personnel through Bulletin 746—*Louisiana Standards for State Certification of School Personnel*, to ensure that personnel necessary to carry out the purposes of these regulations are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students identified as gifted or talented.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§1133. Improvement Strategies

A. The department will describe the strategies the state will use to address the needs identified. The strategies will include how the state will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with gifted and talented students (including professional personnel who provide special education, general education and related services), have the skills and knowledge necessary to meet the needs of gifted and talented students. The plan will include a description of how the department will accomplish the following.

1. The department shall prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of gifted and talented students including how the state will work with other states on common certification criteria.

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

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

4. The department shall work in collaboration with other states, particularly the departments of education of

neighboring states, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel.

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§§1134-1148. Reserved.

§1149. General Supervision

A. The Division of Special Populations is established within the department to provide general supervision of all education programs for gifted and talented students within the state. *General supervision* is defined as the responsibility to perform functions prescribed by the state board.

1. The Division of Special Populations shall ensure that any state standards affecting other state agencies and established under the general supervision requirement shall be developed in cooperation with such agencies.

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

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

4. The Division of Special Populations shall monitor according to written procedures the implementation of state standards in each public agency. Such monitoring shall include child identification and programmatic, administrative, and fiscal issues.

5. The Division of Special Populations shall institute a system for complaint management regarding the implementation of state standards.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2013 (September 2010).

§1150. Reserved.

§1151. Adoption of State Complaint Procedures and Early Resolution Program

A. General. The LDE adopts written procedures herein and in Bulletin 1573—*Complaint Management Procedures*, for:

1. the purpose of resolving any complaint alleging that a public agency has violated the *Louisiana Children with Exceptionalities Act*, R.S. 17:1941, including a complaint filed by an organization or individual from another state, that meets the requirements of §§1151 through 1153 by providing:

a. for the implementation of an Early Resolution Process (ERP); and/or

b. the filing of a formal written complaint with the LDE.

B. The LDE shall widely disseminate to parents and other interested individuals and other appropriate entities:

1. the state procedures under §§1151 through 1153 and Bulletin 1573—*Complaint Management Procedures*; and

2. the appropriate contact information for LEAs and other public agencies serving students.

C. Informal Complaints. It is the policy of the LDE to encourage and support prompt and effective resolution of any complaint described in §1151.A.1 in the least adversarial manner possible. The LDE shall effect such policy to promote dispute prevention and the swift resolution of disputes by implementing an Early Resolution Process.

1. Early Resolution Process (ERP). An ongoing and systematic, informal dispute resolution process.

a. ERP shall include a systematic, local level process for the prompt and orderly resolution of complaints by each public educational agency;

b. Each LEA in the state shall establish an internal ERP in accordance with standards outlined in Bulletin 1573—*Complaint Management Procedures*, which shall include:

i. the designation of a local ERP representative and notice of the name, address, telephone number; and

ii. other contact information for the LEA's designated ERP representative.

c. The implementation of the ERP by each LEA draws on the traditional model of parents and schools working cooperatively in the educational interest of the student to achieve their shared goal of meeting the educational needs of students with an exceptionality.

d. To promote the cooperative resolution of complaints at the local level, the LDE shall not be involved in the informal resolution process (ERP) implemented at the local level, but shall route to the public agency's ERP representative, verbal and other informal complaints or allegations received by the LDE.

2. Requesting ERP. A parent, adult student, individual, or organization shall initiate a request for ERP on one or more issues described in §1151.A.1 by contacting the local level ERP representative or the LDE's ERP Intake Coordinator(s).

a. Informal complaints to the LDE shall only be made through the LDE's Intake Coordinator(s) who shall

refer the complaint to the ERP representative of the LEA immediately, if possible, but not later than two calendar days after receiving the complaint.

b. The LDE's intake coordinator(s) shall:

i. be the LDE's only designated individual(s) to perform complaint intake duties and responsibilities;

ii. not have a *juris doctorate* degree;

iii. have completed specific training in accepted methods and practices for recording information in a neutral and confidential manner; and

iv. perform duties consisting of receipt of informal complaints and request for ERP; providing local agency ERP contact information to the complainant(s); and referral of such informal complaint or ERP request to the local agency's ERP Representative in accordance with Subsection C of this Section.

3. Early Resolution Period. If a resolution of the informal complaint cannot be achieved within 15 calendar days of the public agency's receipt of the complaint, or an extended period agreed upon by the parties in writing, the LEA's ERP representative shall advise the complainant of the availability of other dispute resolution processes available through the LDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2013 (September 2010).

§1152. Formal Written Complaints Filing and Content Requirements

A. An organization or individual, including those from another state, may file a signed written complaint under the procedures described in §§1151 through 1153.

B. The complaint shall include:

1. a statement that a public agency has violated a requirement of these regulations;

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 student:

a. the name and address of the residence of the student;

b. the name of the school the student is attending;

c. in the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;

i. a description of the nature of the problem of the student, including facts relating to the problem; and

ii. 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 shall allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §§1151 through 1153.

D. The party filing the complaint shall forward a copy of the complaint to the LEA or public agency serving the student, at the same time the party files the complaint with the LDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2014 (September 2010).

§1153. Formal Written Complaint Procedures

A. Time Limit; Minimum Procedures. The time limits in this Section begin after the LDE receives a signed written complaint filed under §1152. The LDE will refer the complaint to the LEA superintendent, special education director/supervisor, or ERP representative in accordance with §1151.

1. The LDE will:

a. not commence investigation of a formal written complaint until after expiration of the 15-day early resolution period described in §1151; but

b. shall complete its investigation of unresolved allegations and issue a decision within 45 days after the expiration of the early resolution period in accordance with the procedures contained in this Section.

2. Upon expiration of the resolution period, the LDE shall review the allegations contained in the complaint and shall provide written notice to the LEA or public agency serving the student, including the following:

a. a request for specific information needed by the LDE to carry out its independent investigation of the complaint;

b. reasonable timelines established for providing such information to the LDE;

c. a statement of the opportunity to respond to the complaint, including at a minimum:

i. the opportunity to provide a proposal to resolve the complaint, at their discretion; and

ii. the opportunity to offer to the parent who has filed a complaint, mediation consistent with §1504 or neutral IEP facilitation as available through the LDE.

B. The LDE shall provide written notice to the complainant including a statement of the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

C. All information relevant to the complaint shall be reviewed by the LDE, and a decision shall be made as to whether an independent on-site investigation is needed.

D. The LDE shall review all relevant information and make an independent determination as to whether the public agency is violating a requirement of R.S. 17:1941 et seq. or these regulations.

E. Decision. Within 45 days of expiration of the early resolution process, the LDE shall issue a written decision to the complainant and the public agency that addresses each remaining allegation of the complaint and contains:

1. findings of fact and conclusions; and

2. the reasons for the LDE's final decision.

F. Time Extension; Final Decision; Implementation. The LDE shall permit an extension of the time limit under Subsection A of this Section only if:

1. exceptional circumstances exist with respect to a particular complaint; or

2. the parent (or individual or organization) and the public agency involved agree to extend the time to engage in mediation, IEP facilitation, or other alternative means of dispute resolution.

G. Complaints Filed under this Section and Due Process Hearings Under §1507

1. If a written complaint received is also the subject of a due process hearing under §1507 or, if it contains multiple issues, of which one or more is part of that hearing, the LDE shall 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 of the complaint that is not a part of the due process action shall be resolved, using the time limit and procedures described in Subsections A and B of this Section.

2. If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:

a. the due process hearing decision shall be binding on that issue; and

b. the LDE shall inform the complainant to that effect.

3. A complaint alleging an agency's failure to implement a due process hearing decision shall be resolved by the LDE.

H. Remedies for Denial of Appropriate Services. In resolving a complaint in which it has found a failure to provide appropriate services, the LDE, pursuant to its general supervisory authority under these regulations, shall address:

1. the failure to provide appropriate services including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement); and

2. appropriate future provision of services for all students with exceptionalities.

I. Reconsideration Requests. If either the public agency or the complainant believes that the LDE has made an error in one or more findings of fact and/or law, a reconsideration of the investigative findings and decision may be requested, in writing, to the LDE's legal division in accordance with the following procedures:

1. the request shall be simultaneously submitted to the LDE and the other party subject to the complaint; and

2. for each error submitted for reconsideration, the requestor shall provide the reference number assigned by the LDE to the complaint at issue; the page number of the written decision where such alleged error can be found; highlighted sections of data submitted for investigation that would assert a fact contrary to what is reflected in the written decision; and citations to applicable law, regulations, or jurisprudence, where applicable, to support the alleged error of law; and

3. the requestor shall provide a written explanation that indicates how originally-submitted documentation changes the respective finding(s) of fact or law and/or how the alleged error impacts the conclusion of the LDE with respect to the allegation(s) at issue;

4. documents and other information not originally submitted regarding the allegation(s) shall not be accepted for review; and

5. reconsideration requests, including all documentation relevant to the reconsideration request, shall be received by the LDE no later than 10 calendar days after the date of receipt of the investigative report. Should the other party to the complaint wish to respond to the reconsideration request, the response shall be received by the LDE no later than 10 calendar days after the LDE received the original reconsideration request; and

6. reconsideration requests received by the LDE after the 10 calendar day deadline shall not be reviewed;

7. reconsideration requests received timely and that meet criteria established by this subsection shall be reviewed by a panel of individuals appointed by the division director and the LDE shall inform the complainant and the public agency of its determinations, in writing, within 30 calendar days from the date the LDE receives the written reconsideration request;

8. reconsideration requests by third parties shall not be accepted;

9. reconsideration requests shall not be used to delay or deny implementation of FAPE for a student with an exceptionality.

10. implementation of any corrective actions required in the state's initial (pre-reconsideration) decision shall not be delayed pending the reconsideration process.

J. The LDE shall ensure effective implementation of the final decision, if needed, including:

1. technical assistance activities;

2. negotiations; and

3. corrective actions to achieve compliance.

K. Correction of Non-Compliance. If a complaint results in a finding of non-compliance, the public agency shall be required to document that it has taken corrective action as required by the complaint decision.

1. The LDE shall refer and recommend to BESE the delay or denial of funding or an offset of future funding for any LEA that, after due notice:

a. refuses or fails to submit requested documentation of corrective action; or

b. refuses or fails to take or complete required corrective action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2014 (September 2010), amended LR 46:181 (February 2020).

§§1154-1155. Reserved.

§1156. Adequate Supply of Qualified Personnel

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1579 (August 2000).

§§1157-1166. Reserved.

§1167. Appointment of a Gifted/ Talented Program Contact Person

A. Each LEA shall designate a contact person for the gifted and talented programs.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2015 (September 2010).

§§1168-1172. Reserved.

§1173. Nondiscrimination

A. The department shall comply with all statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability and age.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2015 (September 2010).

§1174. Disproportionality

A. Consistent with the purposes of these regulations, the LDE establishes the following policies and procedures to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of students as students with exceptionalities.

1. The LDE shall annually collect and analyze data described in Subsection A above.

2. When data described in Subsection A. above indicate over-identification or disproportionate identification, the LDE shall review the policies, procedures, and practices of the LDE or the affected LEA.

3. When the review indicates an inappropriate identification process, the LDE shall require the revision of the LDE's or the affected LEAs policies, procedures, and practices to ensure compliance with these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2016 (September 2010).

§§1175-1199. Reserved.

Chapter 12 Local Educational Agency Eligibility

§§1201-1229. Reserved.

§1230. LEA Jurisdiction

A. Each LEA shall identify, locate, and evaluate each student suspected of having an exceptionality as gifted or talented in visual arts, music or theatre 3 through 21 years of age, residing within its jurisdiction.

B. Each LEA is responsible for making available a free appropriate public education to each eligible student with an exceptionality, 3 through 21 years of age, who resides within its jurisdiction except those students enrolled by their parents in a private school program.

1. LEAs are not required to provide services to students whose parents choose not to enroll them in a program operated by the LEA.

2. Services do not have to be provided to gifted or talented students who have been suspended or expelled.

C. Students who are eligible to receive a free appropriate public education are described as follows.

1. LEAs shall make available a free appropriate public education to all gifted and talented students located in their jurisdictions from the age of three years, regardless of when the birthday occurs during the school year.

2. A student with an exceptionality shall remain eligible for services until reaching age 22 unless the student has graduated from high school with a regular high school diploma. A student with an exceptionality whose twenty-second birthday occurs during the course of the regular school year (as defined by the LEA) may be allowed to remain in school for the remainder of the school year.

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

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

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

3. For a state board special school, the geographic area is the boundary of the educational facility.

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

5. If an LEA places a student in another LEA or an approved private school, the student so placed remains within the jurisdiction of the placing LEA. The responsibility for a FAPE remains with the placing LEA.

a. All students sent to a board special school by another LEA are considered "placed" by the sending LEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2016 (September 2010).

§§1231-1299. Reserved.

Chapter 13 Evaluation, Eligibility, Determinations, Individual IEPs and Educational Placements

§1301. Parental Consent

A. Parental Consent for Initial Evaluation

1. a. The public agency proposing to conduct an initial evaluation to determine if a student qualifies as a gifted or talented student as defined in §1904 shall, after providing notice consistent with §1503, obtain written informed consent consistent with the definition of consent in §1904, from the parent of the student before conducting the evaluation.

b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

c. The public agency shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with an exceptionality.

2. For initial evaluations only, if the student is a ward of the state and is not residing with the student's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with an exceptionality, if:

a. despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the student;

b. the rights of the parents of the student have been terminated in accordance with state law; or

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

3. If the parent of a student fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, the public agency;

a. may not use the procedures in Chapter 15 of these regulations (including the mediation procedures under §1504 or the due process procedures under §§1507 through 1516) in order to obtain agreement or a ruling that the services may be provided to the student;

b. will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with special education and related services for which the parent refuses to or fails to provide consent; and

c. is not required to convene an IEP Team meeting or develop an IEP under §1320 and §1324 for the student.

B. Parental Consent for Services

1. A public agency that is responsible for making FAPE available to a student with an exceptionality shall obtain informed written consent from the parent of the student before the initial provision of special education and related services to the student.

2. The public agency shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

3. If the parent of a student fails to respond or refuses to consent to services under Subsection B of this Section, the public agency may not use the procedures in Chapter 15 of these regulations (including the mediation procedures under §1504 or the due process procedures under §§1507 through 1516) in order to obtain agreement or a ruling that the services may be provided to the student.

4. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency:

a. will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with the special education and related services for which the public agency requests consent; and

b. is not required to convene an IEP Team meeting or develop an IEP under §1320 and §1324 for the student for the special education and related services for which the public agency requests such consent.

C. Parental Consent for Reevaluations

1. Subject to Paragraph C.2 of this Section, each public agency:

a. shall obtain informed written parental consent, in accordance with §1301, prior to conducting any reevaluation of a student with an exceptionality;

b. 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.4 of this Section;

c. the public agency does not violate its obligation under §1107 and §1305 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:

a. it made reasonable efforts to obtain such consent; and

b. the student's parent has failed to respond.

D. Other Consent Requirements

1. If the parent's decision is to withhold consent for the initial evaluation, a reevaluation or initial placement of the student in gifted and talented services, the LEA may not request a due process hearing following the procedures outlined in §1507 of these regulations.

2. The parent may refuse special education services and subsequent reevaluations.

3. Parental consent is not required before:

a. reviewing existing data as part of an evaluation or a reevaluation; or

b. administering a test or other evaluation that is administered to all students, unless, before administration of that test or evaluation, consent is required of parents of all students.

4. A public agency may not use a parent's refusal to consent to one service or activity under Paragraph A of this Section to deny the parent or student any other service, benefit, or activity of the public agency, except as required by these regulations.

5. If a parent of a student who is home schooled or placed in a private school by the parent at his or her 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

6. To meet the reasonable efforts requirement in Paragraphs A.1.c, A.2.a, B.2, and C.2.a of this Section, the public agency shall document its attempts to obtain parental consent using the procedures in §1322.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2016 (September 2010).

§1302. Reserved.

§1303. Nonbias of Testing and Evaluation Materials

A. The department shall, with the approval of the SBESE, establish procedures as found in §1305 to ensure that testing and evaluation materials used for evaluation and placement are free of racial, cultural, and/or gender bias.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2017 (September 2010).

§1304. Reserved.

§1305. Evaluation and Re-evaluation Procedures

A. Refer to Bulletin 1508—*The Pupil Appraisal Handbook*.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2017 (September 2010).

§§1306-1319. Reserved.

§1320. Definition of Individualized Education Program

A. General. As used in these regulations, the term *individualized education program* or IEP, is a written statement for each student with an exceptionality that is developed, reviewed, and revised in a meeting in accordance with §§1320 through 1325 and that shall include the following provisions.

1. Each LEA is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of gifted and talented students in accordance with all the requirements in Bulletin 1530—*Louisiana's IEP Handbook for Students with Exceptionalities.*

2. An IEP that is consistent with FAPE shall be developed and implemented for eligible students.

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

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

5. At the beginning of each school year, each LEA shall have in effect an IEP for every gifted and talented student receiving special education and related services in that LEA.

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

a. Each teacher shall be informed of his or her specific responsibilities.

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

1. A meeting to develop an IEP for a student is conducted within 30 days of a determination that the student needs special education and related services.

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

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

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

2. each LEA shall revise the IEP, as appropriate, to address concerns in any areas noted in §1324;

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

4. Agreement

a. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student with an exceptionality 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 student's current IEP.

b. If changes are made to the student's IEP in accordance with Paragraph C.4 of this Section, the public agency shall ensure that the student's IEP Team is informed of those changes.

5. Consolidation of IEP Team Meetings. To the extent possible, the public agency shall encourage the consolidation of reevaluation meetings for the student and other IEP Team meetings for the student.

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 C.4 of this Section, by amending the IEP rather than by redrafting the entire IEP. A parent shall be provided with a revised copy of the IEP with the amendments incorporated.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2017 (September 2010).

§1321. IEP Team Participants

A. Each LEA shall ensure that the IEP team for each student with an exceptionality includes all of the required participants, as listed below:

1. one or both of the parents of the student;

2. input from at least one regular education teacher of the student to the extent appropriate, in the development, review and revision of the student's IEP;

3. at least one special education teacher of the student;

4. an officially designated representative of the LEA;

5. an individual who can interpret the instructional implications of evaluation as designated by the district;

6. at the discretion of the parent or LEA, other individuals who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The determination of the knowledge or special expertise of any individual shall be made by either the parent or the LEA, whoever invited the individual to be a member of the IEP team;

7. whenever appropriate, the student identified as gifted or talented.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2018 (September 2010).

§1322. Parent Participation

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

1. This notice shall indicate the purpose, time, and location of the meeting, as well as who shall be in attendance.

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

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

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

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

2. the LEA has documented attempts to arrange a mutually agreed on time and place, such as:

a. detailed records of telephone calls made or attempted and the results of those calls;

b. copies of correspondence sent to the parents and any responses received;

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

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2018 (September 2010).

§1323. Reserved.

§1324. Gifted and Talented IEP Content and Format

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

1. the student's strengths and interests;

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

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

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

5. the student's present levels of educational performance;

6. pertinent social/emotional information;

7. Input from a regular education teacher (if enrolled in general education).

B. The IEP team shall also consider the language needs of the student as those needs relate to the student's IEP, in the case of a student with limited English proficiency.

C. The IEP shall contain a statement of measurable annual goals that relates to meeting the student's needs that result from the student's exceptionality and progress in an accelerated and enriched curriculum.

D. The IEP shall contain a statement of the special education and related services to advance appropriately toward attaining the annual goals.

E. The projected date for the beginning of the services and the anticipated frequency, location, and duration of those services shall be specified in the IEP.

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

G. The IEP shall contain a statement of how the student's parents will be regularly informed with at least 1 progress report each grading period. The progress report will show:

1. their child's progress toward the annual goals; and

2. the extent to which the progress is sufficient to enable the student to achieve the goals by the end of the year.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2019 (September 2010).

§1325. IEP Accountability

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

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

C. No state agency, teacher, or other person shall be held accountable if a student does not achieve the growth projected in the annual goals.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2019 (September 2010).

§1326. Students in an Educational Program Operated by the LEA

A. LEA shall identify a student as suspected of being gifted and talented by the School Building Level Committee (SBLC) according to Bulletin 741—*The School Administrator's Handbook*. This committee shall coordinate and document the results, as appropriate, of educational screening, intellectual screening, talent screening, or other types of screening as needed, as defined in Bulletin 1508—*the Pupil Appraisal Handbook.*

B. Within 10 LEA business days after receipt of the referral by the pupil appraisal office for an individual evaluation, pre-referral activities as listed in the Bulletin 1508—*Pupil Appraisal Handbook* under "Initial Responsibilities" of the evaluation coordinator shall be conducted.

C. For an initial evaluation and the re-evaluation, the LEA shall obtain informed parental consent according to §1301 of Bulletin 1706, Subpart 2. Receipt of parental consent for an individual evaluation by pupil appraisal personnel begins the 60 business days timeline.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2019 (September 2010).

§1327. Gifted/Talented Students Transferring from one LEA to another LEA within Louisiana

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

B. Transmittal of Records. To facilitate the transition for a student transferring from one LEA to another LEA within the state:

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

2. the previous public agency in which the student was enrolled shall take reasonable steps to promptly respond to the request from the new public agency.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2019 (September 2010).

§1328. Students Out of School and/or Gifted and Talented Students Residing in the State

A. Students out of school, including students ages 3 through 22 years who are suspected of being gifted or talented who have left a public school without completing their public education by obtaining a state diploma, shall be referred to Child Find, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Gifted or talented students may be enrolled with the development of an interim IEP based on their individual need, following the enrollment process according to Bulletin 1530.

B. If the Louisiana evaluation is current, students may be enrolled with the development of a review IEP within five school days.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2020 (September 2010).

§§1329-1399. Reserved.

Chapter 15 Procedural Safeguards

§1501. Discipline Procedures for Gifted and Talented Students

A. Discipline procedures for students identified as gifted or talented are the same as for regular education students.

B. Discipline information remains with the regular education records.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2020 (September 2010).

§1502. Opportunity to Examine Records and Parental Participation in Meetings

A. Parents of gifted and talented students shall be afforded an opportunity to inspect and review all educational records with respect to the identification, evaluation and educational placement of the student and with respect to the provision of a FAPE to the student.

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

1. Each LEA shall provide notice consistent with §1503 of these regulations to ensure that parents of Gifted and Talented students have the opportunity to participate in meetings described in paragraph §1502.B.

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

3. Each LEA shall ensure that the parents of each gifted and talented student are members of any group that makes decisions on the educational placement of their child (see §1322 of these regulations).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2020 (September 2010), amended LR 36:2020 (September 2010).

§1503. Prior Notice and Procedural Safeguard Notice

A. Written notice shall be given to the parents of gifted and talented students a reasonable time before the LEA:

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

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

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

1. a description of the action proposed (or refused) by the school, an explanation of why the LEA proposes or refuses to take the action, and a description of any other options the LEA considered with the reasons why those options were rejected;

2. a description of each evaluation procedure, test, record or report the LEA used as a basis for the proposed or refused action;

3. a description of any other factors that are relevant to the LEA's proposal or refusal;

4. a statement assuring that the parents of gifted and talented students have protections under the procedural safeguards; and

5. sources for parents to contact to obtain assistance in understanding the provisions of the procedural safeguards.

C. The notice shall be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so; and

1. if the native language or other mode of communication of the parents is not a written language, the department and the LEA shall take steps to ensure that:

a. the notice is translated orally or by other means to the parents in their native language or other mode of communication;

b. the parents understand the content of the notice;

c. the LEA shall maintain written evidence that the requirements of Paragraph C of this Section have been met.

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

E. If the notice relates to an action proposed by the LEA and requires parental consent under these regulations, the LEA may give notice at the same time it requests parental consent.

F. Requirements for procedural safeguards notice are noted below:

1. A copy of the procedural safeguards shall be given to the parents of gifted and talented students, at a minimum:

a. upon the initial referral of the student for evaluation;

b. upon each notification of an IEP meeting;

c. upon re-evaluation of the student; and

d. upon receipt of a request for a due process hearing.

2. The procedural safeguards notice shall include a full explanation of all procedural safeguards available including the state's complaint procedures available in Chapter 11 of these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2020 (September 2010).

§1504. Mediation

A. General. Mediation shall be available to allow parties to disputes involving any matter under these regulations. At a minimum, mediation shall be offered whenever a due process hearing is requested. However, mediation is available at any time, whether or not a request for due process has been made.

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

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

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

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

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

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

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

a. 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;

b. is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

c. shall be enforceable in any court of competent jurisdiction.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2021 (September 2010).

§§1505-1506. Reserved.

§1507. Filing a Request for Impartial Due Process Hearing

A. General

1. A parent or public agency may file a request for due process hearing on any of the matters under these regulations (relating to the identification, evaluation, or educational placement of a student with an exceptionality, or the provision of FAPE to the student).

2. Prescription. The due process hearing request shall allege a violation that occurred not more than one year before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request for due process hearing, except that the exceptions to the timeline described in §1511.G apply to the timeline in this Section.

B. Information for Parents. The public agency shall 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 request for due process hearing under this Section; or

3. a parent who is not literate in English or has an exceptionality that limits his or her ability to communicate in writing shall be afforded the opportunity for assistance.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2021 (September 2010).

§1508. Due Process Hearing Request

A. General

1. A party, or the attorney representing a party, files a request for due process hearing by sending a written request for due process hearing to the LDE. Such request will remain confidential.

2. The party filing a request for due process hearing will forward a copy of the request for due process hearing to the other party.

3. The time limits in this Section begin after the LDE receives a written request for a due process hearing.

a. The LDE will provide a copy of the request to the other party.

b. The date the LDE delivers or receives confirmation that the other party has received the request will be the presumptive date verifying receipt.

4. Within three business days of receipt of a written request, the LDE will transmit the request for due process hearing to the Division of Administrative Law (DAL), who will docket the request and assign a hearing officer.

B. Content of Request for Due Process Hearing. The written request for due process hearing required in Paragraph A.1 of this Section shall include:

1. the student's name;

2. the address of the residence of the student;

3. the name of the school the student is attending;

4. in the case of a homeless student or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;

5. a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and

6. a proposed resolution of the problem to the extent known and available to the person requesting the hearing at the time.

C. Notice Required before a Hearing on a Request for Due Process Hearing. A party may not have a hearing on a request for due process hearing until the party, or the attorney representing the party, files a request for due process hearing that meets the requirements of Subsection B of this Section.

D. Sufficiency of Request for Due Process Hearing

1. The request for due process hearing required by this section shall be deemed sufficient unless the party receiving the request for due process hearing notifies the hearing officer and the other party in writing, within 15 days of receipt of the written request for due process hearing, that the receiving party believes the written request does not meet the requirements in Subsection B of this Section.

2. Within five days of receipt of notification under Paragraph D.1of this Section, the hearing officer shall make a determination on the face of the written request for due process hearing, whether the due process hearing request meets the requirements of Subsection B of this Section, and shall immediately notify the parties in writing of that determination.

E. Amendments to Written Request

1. A party may amend its request for due process hearing only if:

a. the other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a meeting held pursuant to §1510.A; or

b. the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than 5 days before the due process hearing begins.

2. If a party files an amended request for a due process hearing, the timelines for the resolution meeting in §1510.A and the time period to resolve in §1510.B begin again with the filing of the amended due process hearing request.

F. LEA's Response to Request for Due Process Hearing

1. If the LEA has not sent a prior written notice under §1504 to the parent regarding the subject matter contained in the parent's request for due process hearing, the LEA shall, within 10 days of receiving the request for due process hearing, send to the parent a response that includes:

a. an explanation of why the agency proposed or refused to take the action raised in the request for due process hearing;

b. a description of other options that the IEP Team considered and the reasons why those options were rejected;

c. a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

d. 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 F.1 of this Section shall not be construed to preclude the LEA from asserting that the parent's request for due process hearing was insufficient, where appropriate.

G. Other Party Response to a Request for Due Process Hearing. Except as provided in Subsection F of this Section, the party receiving a written request for due process hearing shall, within 10 days of receiving the written request, send to the other party a response that specifically addresses the issues raised in the request for due process hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2021 (September 2010), amended LR 46:181 (February 2020).

§1509. Model Forms

A. The LDE will develop model forms to assist parents and public agencies in filing a request for due process hearing in accordance with these regulations and to assist parents and other parties in filing a state complaint under

these regulations. The forms may be found on the LDE website. The use of the model forms shall not be required.

B. Parents, public agencies, and other parties may use the appropriate model forms 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 these regulations for filing a request for due process hearing, or the requirements in these regulations for filing a state complaint.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2022 (September 2010).

§1510. Resolution Process

A. Resolution Meeting

1. Within 15 days of receiving notice of the parent's request for due process hearing, and prior to the initiation of a due process hearing, the LEA shall 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 request for due process hearing that:

a. includes a representative of the public agency who has decision-making authority on behalf of that agency; and

b. may not include an attorney of the LEA unless the parent is accompanied by an attorney.

2. The purpose of the meeting is for the parent of the student to discuss his or her request for due process hearing, and the facts that form the basis of the request for due process hearing, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process hearing request.

3. The meeting described in Paragraph A.1 and 2 of this Section need not be held if:

a. the parent and the LEA agree in writing to waive the meeting; or

b. the parent and the LEA agree to use the mediation process described in §1504.

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 issues contained in the request for due process hearing to the satisfaction of the parents within 30 days of the receipt of the written request for due process hearing, the due process hearing may occur.

2. Except as provided in Subsection C, the timeline for issuing a final decision under §1515 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 a parent filing a due process request to participate in the resolution meeting shall 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, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's request for due process hearing.

5. If the LEA fails to hold the resolution meeting specified in Subsection A of this Section within 15 days of receiving notice of a parent's request for due process hearing 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 §1515. 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 resolution 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 shall 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 court of competent jurisdiction or, by the LDE, through the state complaint procedures.

E. Agreement Review Period. If the parties execute an agreement pursuant to Subsection C of this Section, a party may void the agreement within three business days of the agreement's execution.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2022 (September 2010).

§1511. Impartial Due Process Hearing and Hearing Officer Appointments

A. General. Whenever a request for due process hearing is received, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in these regulations.

B. Agency Responsible for Conducting the Due Process Hearing. The due process hearing described in Paragraph A of this Section will be conducted in accordance with the law and LDE regulations.

C. Impartial Hearing Officer. The DAL will designate hearing officers, who:

1. meet the minimum qualifications stipulated below:

a. shall have earned a *juris doctorate* degree;

b. shall possess knowledge of, and the ability to understand, the provisions of the state law pertaining to the provision of services to gifted and talented students and legal interpretations of those laws;

c. shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;

d. shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice; and

e. shall possess other qualifications established by the LDE;

2. shall not:

a. be an employee of a public agency that is involved in the education or care of the student;

b. have a personal or professional interest that would conflict with the person's objectivity in the hearing; or

c. have represented an LEA or a parent as an attorney in education litigation within a three year period prior to appointment by the LDE;

3. 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 the person is paid by the agency to serve as a hearing officer;

4. the LDE shall keep the LDE generated list of qualified hearing officers. The list shall include a statement of the qualifications of each of the hearing officers;

5. the LDE shall ensure that impartial due process hearing officers appointed pursuant to this Section have successfully completed a training program approved by the LDE. Additional training shall be provided by the LDE whenever warranted by changes in applicable legal standards or educational practices or as determined necessary by the LDE;

6. appointments are renewed at the discretion of the LDE;

7. the LDE shall assign the hearing officer on a rotational basis from the LDE's list of qualified hearing officers.

D. Challenge to Impartiality of Due Process Hearing

1. The parent or LEA shall submit written information to the LDE within three business days of receipt of the notice of the assigned hearing officer, in order to challenge the impartiality of the hearing officer.

2. The LDE shall review any written challenge to the impartiality of the hearing officer and provide a written decision and notice to the parent and LEA within three business days after receipt of the written challenge.

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

E. 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 request for due process hearing, unless the other party agrees otherwise.

F. Timeline for Requesting a Hearing. A parent or agency shall request an impartial hearing on their request for due process hearing within one year of the date the parent or agency knew or should have known about the alleged action that forms the basis of the request for due process hearing.

G. Exceptions to the Timeline. The timeline described in Subsection F of this Section does not apply to a parent if the parent was prevented from filing a request for due process hearing due to:

1. specific misrepresentations by the LEA that it had resolved the problem forming the basis of the request for due process hearing; or

2. the LEA's withholding of information from the parent that was required under these regulations to be provided to the parent.

H. Procedures for conducting a hearing are stipulated below.

1. The hearing officer shall contact all parties to schedule the hearing and then shall notify in writing all parties and the LDE of the date, time and place of the hearing.

2. The hearing shall be conducted in accordance with these regulations as well as procedural guidelines developed by the LDE.

3. At the request of either party, the hearing officer shall have the authority to subpoena persons to appear at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2023 (September 2010), amended LR 46:181 (February 2020).

§1512. Hearing Rights

A. General. Any party to a hearing conducted pursuant to these regulations 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 students with exceptionalities;

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 at no cost; and

5. obtain written, or, at the option of the parents, electronic findings of fact and decisions at no cost.

B. Additional Disclosure of Information

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

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 recommendations at the hearing without the consent of the other party.

C. Parental Rights at Hearings. Parents involved in a hearing shall be given the right to:

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

2. have the hearing open 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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1513. 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 the student received FAPE shall be based on substantive grounds.

2. In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:

a. impeded the student's right to FAPE;

b. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

c. caused a deprivation of educational benefit.

3. Nothing in Subsection A of this Section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements in these regulations.

B. Separate Request for a Due Process Hearing. Nothing in these regulations shall be construed to preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1514. Reserved.

§1515. Timelines and Convenience of Hearings and Reviews

A. A final hearing decision shall be reached and a copy of the decision mailed to each of the parties not later than 45 days after the expiration of the 30-day period under §1510.B or the adjusted time periods described in §1510.C.

B.1. A hearing officer may grant specific extensions of time beyond the periods set out in Paragraph A of this Section at the request of either party.

2. When an extension is granted, the hearing officer shall, on the day the decision is made to grant the extension, notify all parties and the LDE in writing, stating the date, time, and location of the rescheduled hearing.

C. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and student involved.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1516. Civil Action

A. General. Any party aggrieved by the decision of the hearing officer has the right to bring a civil action in a court of competent jurisdiction.

B. Time Limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1517. Costs

A. The department shall bear the cost of the hearing officer and the court reporter. Each party shall bear its own costs, including witness costs, unless otherwise agreed or ordered by the hearing officer.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1518. Student Status During Proceedings

A. During the pendency of any administrative or judicial proceeding regarding a request for due process hearing under §1507, unless the state or local agency and the parents of the student agree otherwise, the student involved in the complaint shall remain in his or her current educational placement.

B. If the request for due process hearing involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings.

C. If the hearing officer in a due process hearing conducted by the LDE agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the state and the parents for the purposes of Subsection A of this Section.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2025 (September 2010).

§1519. Surrogate Parents

A. General. Each public agency shall ensure that the rights of a student are protected when:

1. no parent (as defined in §1904) can be identified;

2. the public agency, after reasonable efforts, cannot locate a parent;

3. the student is a ward of the state (including a ward of the court or of a state agency); or

4. the student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance-Act [42 U.S.C. 11434a(6)].

B. Procedures

1. Procedures for determining whether a student needs a surrogate parent are contained in the *Surrogate Parent Handbook*.

2. Procedures for assigning a surrogate parent shall be developed and implemented by each LEA.

C. Duties of Public Agency. The duties of a public agency under Subsection A of this Section include the assignment of an individual to act as a surrogate for the parents. This shall include a method:

1. for determining whether a student needs a surrogate parent; and

2. for assigning a surrogate parent to the student.

D. Wards of the State. In the case of a student who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements in Subparagraph E.2.a and Subsection F of this Section.

E. 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 shall ensure that a person selected as a surrogate parent:

a. is not an employee of the LDE, the LEA, or any other agency that is involved in the education or care of the student;

b. has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

c. has knowledge and skills that ensure adequate representation of the student.

F. Non-Employee Requirement; Compensation. A person otherwise qualified to be a surrogate parent under Subsection E 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.

G. Unaccompanied Homeless Youth. In the case of a student 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 Subparagraph E.2.a of this Section, until a surrogate parent can be appointed who meets all of the requirements of Subsection E of this Section.

H. Surrogate Parent Responsibilities. The surrogate parent may represent the student in all matters relating to:

1. the identification, evaluation, and educational placement of the student; and

2. the provision of FAPE to the student.

I. LDE Responsibility. The LDE shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the student needs a surrogate parent.

J. Any person appointed as a surrogate parent shall be protected by the "limited liability" provisions set forth in R.S. 17:1958.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2025 (September 2010).

§1520. Transfer of Parental Rights at the Age of Majority

A. When gifted or talented students reach the age of majority (18 years of age), which applies to all students, they shall be afforded those rights guaranteed at such age.

1. The LEA shall provide any notice required by these regulations to both the individual and the parent; and all rights accorded to parents under these regulations transfer to the student.

2. All rights accorded to parents under these regulations shall transfer to students who are incarcerated in adult or juvenile, state or local correctional institutions.

3. Whenever rights transfer under these regulations pursuant to Paragraphs A.1 and 2 of this Section, the LEA shall notify the individual and the parent of the transfer of rights.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2025 (September 2010).

§§1521-1599. Reserved.

Chapter 16. Monitoring, Enforcement, Confidentiality, and Program Information

§1601 Reserved.

§1602. Monitoring, Complaint Management and Investigation

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

B. The Division of Special Populations shall monitor in accordance with the procedures established through a self-study conducted by the LEAs, resulting in goals adopted by the local school systems to improve their gifted and talented services.

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

1. The Division of Special Populations shall address allegations of failure to comply with any provision of these regulations and other applicable state or federal laws, regulations or state standards.

2. The Division of Special Populations, in carrying out its responsibilities, may require LEAs to keep certain records and to submit to the Division of Special Populations complete and accurate reports at such time and in such form and containing such information as are determined necessary to enable the Division of Special Populations to fulfill its responsibilities for ensuring compliance.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2025 (September 2010).

§1603. Review of Enforcement Recommendations

A. If outstanding deficiencies occur and remain, the LDE will refer and recommend corrective action to BESE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1577 (August 2000)., amended LR 36:2026 (September 2010).

§1604. Confidentiality of Information

Refer to The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR part 99).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§§1605-1699. Reserved.

Chapter 17. Allotment of Funds

§1701. Administration of Funds

A. The division, in concert with other divisions within the department, shall ensure the proper receipt and disbursement of all state and federal funds administered by the department specifically for the provision of special

education and related services for gifted and talented students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§1702. Preparation of Annual Budget

A. The department shall prepare and submit to the state board for review and approval for the next fiscal year a comprehensive budget that at a minimum proposes the appropriations by the Louisiana Legislature of whatever state funds are needed by the department, special school districts, and city/parish LEAs to comply fully with all of the requirements established by R.S. 17:1941 et seq.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§1703. Procedure for Determination of Eligibility for State or Federal Funds

A. Each LEA requesting state or federal funds administered by the department shall do so according to the procedures established by the department.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§§1704-1799. Reserved.

Chapter 19. General

§1901. Terms

A. The terms defined in §§1902-1999 of this Chapter are used throughout these regulations. Unless expressly provided to the contrary, each term used in these regulations shall have the meaning established by this Chapter.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1596 (August 2000), amended LR 36:2026 (September 2010).

§1902. Abbreviations/Acronyms Used in These Regulations

A. DSS—state Department of Social Services.

B. DHH—state Department of Health and Hospitals.

C. DPS and C—state Department of Public Safety and Corrections.

D. FAPE—free appropriate public education.

E. FERPA—Family Educational Records and Privacy Act of 1974.

F. G/T—gifted and/or talented in visual arts, music, and/or theatre arts.

G. IEP—the individualized education program required by §1320 of these regulations.

H. LEA—local education agency.

I. LRE—least restrictive environment.

J. ODR—officially designated representative.

K. SBESE—state Board of Elementary and Secondary Education.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1596 (August 2000), amended LR 36:2026 (September 2010).

§1903. Abbreviated Terms

A. *The Act*—Sections 1941 through 1958 of Chapter 8 of Title 17 of Louisiana Statutes of 1950, as amended.

B. *The Department*—the State Department of Education (LDE).

C. *The Division*—the Division of Special Populations of the Louisiana Department of Education.

D. *The State*—the state of Louisiana.

E. *The State Board*—the state Board of Elementary and Secondary Education

F. *The Superintendent*—the state Superintendent of Public Elementary and Secondary Education

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1596 (August 2000), amended LR 36:2026 (September 2010).

§1904. Definitions

Age of Majority—eighteen years of age.

At No Cost—all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to regular education students or their parents as a part of the regular educational program.

Business Day—see *Day*.

Child Find—see §1107 of these regulations.

Combination Self-Contained and Resource Classroom—an alternative education placement in which the same teacher provides special education instruction for students who receive instruction in various special education alternative placements. These placements may include self-contained, resource, and regular class.

Confidentiality of Information—involves the storage, disclosure to third parties, retention and destruction of personally identifiable information.

Consent—the parent:

1. has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

2. understands and agrees in writing to the carrying out of activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. understands that the granting of consent is voluntary.

Counseling Services—services provided by qualified social workers, psychologists, guidance counselors, or otherwise qualified personnel.

Day; *Business Day*; *School Day*—

1. *Day*—calendar day unless otherwise indicated as business day or school day.

2. *Business Day*—Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day).

3. *School Day*—any day, including a partial day that students are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without exceptionalities.

Destruction—physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Due Process—see Chapter 15 of these regulations.

Early Resolution Process (ERP)—a systematic informal process for dispute resolution available prior to or in connection with state administrative complaints in accordance with §1151 of these regulations.

Education Records—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).

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

Evaluation—procedures used in accordance with Bulletin 1508 to determine whether a student has an exceptionality and the nature and extent of the special education and related services that the student needs.

Free Appropriate Public Education (FAPE)—special education and related services that:

1. are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the LDE;
3. include preschool, elementary school, or secondary school education in the state; and
4. are provided in conformity with an Individualized Education Program (IEP) that meet the requirements of these regulations.

Foster Parent—see *Parent.*

Gifted—children or youth who demonstrate abilities that give evidence of high performance in academic and intellectual aptitude according to Bulletin 1508.

Highly Qualified Special Education Teachers—refer to Bulletin 746.

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

Individual Education Plan Facilitation—an alternative dispute resolution method developed by the LDE. This option is available to parents and school districts when both agree that it would be valuable to have a neutral person (IEP facilitator) present at an IEP team meeting to assist them in discussing issues regarding an IEP. The role of the IEP facilitator is to assist in creating an atmosphere for fair communication and the successful drafting of an IEP for the student. Either parent or district can request IEP facilitation; however, since the process is voluntary, both sides shall agree to participate in the IEP facilitation process. Like mediation, the IEP facilitation is initiated by request to the LDE, and is at no cost to the parents or districts.

Individualized Education Program or *IEP*—a written document for each gifted or talented student developed, reviewed, and revised in a meeting in accordance with §§1320-1325.

Individualized Education Program Team or *IEP Team*—a group of individuals described in §1321 of these regulations that is responsible for developing, reviewing, or revising an IEP for a student with an exceptionality.

Instruction in Regular Class—an alternative education placement for eligible gifted and talented students who receive special education and related services less than 21 percent of the school day outside the regular classroom.

Least Restrictive Environment—an environment that allows for depth and breadth of curricula appropriate for the gifted or talented student as determined by the IEP team.

Local Education Agency or *LEA*—

1. General. *Local Education Agency* or *LEA*—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 schools or secondary schools in a city, parish, school district, or other political subdivision of the state or for a combination of school districts or parishes as are recognized in the state as an administrative agency for its public elementary or secondary schools.

2. Educational Service Agencies and Other Public Institutions or Agencies. The term includes:

a. an *educational service agency*, as defined in this Section; and

b. any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

Native Language—

1. when used with respect to an individual who is limited English proficient, has the following meaning:

a. the language normally used by that individual, or in the case of a student, the language normally used by parents of the student, except as provided in Paragraph A.2 of this definition;

b. in all direct contact with the student, (including the evaluation of the student), the language is the one normally used by the student in the home or learning environment.

2. 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).

Parent—

1.a. a biological, or adoptive parent of a child;

b. a foster parent;

c. a guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student, but not the state if the student is a ward of the state;

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

e. a surrogate parent who has been appointed in accordance with §1519.

2.a. Except as provided in Subparagraph 2.b of this definition, the biological or adoptive parent, when attempting to act as the parent under these regulations and when more than one party is qualified under this definition to act as a parent, shall be presumed to be the parent for

purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the student.

b. If a judicial decree or order identifies a specific person or persons under this definition to act as the "parent" of a student or to make educational decisions on behalf of a student, then such person or persons shall be determined to be the parent for purposes of this definition, except that an employee of a public agency that provides education or care for a student may not act as the parent pursuant to §1519.

Personally Identifiable—information includes:

1. the name of the student, the student's parent, or other family member;
2. the address of the student;
3. a personal identifier, such as the student's social security number or student number; or
4. a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Prior Notice—see §1503 of these regulations.

Pupil Appraisal Personnel—personnel who meet the certification requirements for school personnel for such positions and who are responsible for the delivery of pupil appraisal services included in Bulletin 1508.

Qualified Personnel—personnel who have met state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education and related services.

Related Services—transportation and counseling needed to assist gifted and talented students to benefit from special education:

1. transportation-services provided to and from school and /or from one school to another during the school day for the provision of gifted or talented services;
2. counseling-services provided by qualified personnel.

Resource Center—an instructional setting in which Gifted and Talented students from two or more schools receive services. The pupil/ teacher ratio shall be consistent with those listed in Chapter 20 of these regulations.

Resource Departmentalized—is an instructional setting in which students receive instruction from more than one special education teacher and each teacher teaches only a single content or subject matter area. The pupil/teacher ratio shall be consistent with those listed in Chapter 20 of these regulations. Instruction is provided for not more than the maximum allowed for that exceptionality in a self-contained class at any given period.

Resource Room—a type of alternative education placement for special education and related services designed or adapted as a location where gifted and or talented students may receive all or a part of the special education required by their IEPs, and in which all of the following exist:

1. the pupil/teacher ratios established in Chapter 20 are used;
2. only gifted and talented students are enrolled;
3. instruction is provided for not more than 12 students per period;
4. special education is provided by a teacher certified generically or in the area of exceptionality for which special education is provided;
5. students receive special education instruction for at least 21 percent, but no more than 60 percent, of the school day outside the regular classroom.

School Building Level Committee—refer to Bulletin 741.

School Day—see *Day*.

Secondary School—a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

Self-Contained Departmentalized—an instructional setting in which students receive instruction more than 60 percent of the school day from more than one gifted or talented teacher and in which each teacher teaches only one content area or subject matter. Pupil/teacher ratios shall be consistent with those listed in Chapter 20 of these regulations. Instruction is provided for not more than the maximum number allowed for that exceptionality in a self-contained class at any given period.

Self-Contained Special Education Class—a type of alternative education placement in which special education instruction and related services is provided inside the regular classroom less than 40 percent of the school day.

Special Education—specially designed instruction, at no cost to the parent, to meet the unique needs of the student with an exceptionality through an IEP.

Specially Designed Instruction—adapting, as appropriate, to the needs of an eligible student under these regulations, the content, methodology or delivery of instruction to address the unique needs of the student.

Student with an Exceptionality—a student who, when evaluated according to Bulletin 1508—*Pupil Appraisal Handbook* is found to have an exceptionality that significantly affects educational performance to the extent that special education is needed.

Surrogate Parent—refer to §1519 of these regulations.

Talented—has possession of measurable abilities that give evidence of unique talent in visual arts, music, or theatre

Transportation—see *related services*.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1599 (August 2000), amended LR 36:2027 (September 2010).

§§1905-1999. Reserved.

Chapter 20. State Program Rules for Special Education

§2001. Pupil/Teacher, and Pupil Appraisal Ratios for Public Education

A. In providing services to all identified exceptional students, the number of students in each instructional setting shall not exceed the following numbers.

Setting	Preschool	Elementary	Secondary
Self-Contained		25	27
Resource Center		55	55

Resource Departmentalized or Self-Contained Departmentalized		93	98
Instruction in Regular Class		25	27
Resource		30	30
Pre-school			
A. Full Day	19		
B. Half Day	23		
Combination			

B. Pupil appraisal members shall be employed by LEAs at the following rate:

1. public school ratios based on membership educational diagnosticians 1:2,400 or major fraction thereof;

2. school psychologists 1:2,400 or major fraction thereof;

3. social workers 1:3,200 or major function thereof;

4. LEAs may substitute one pupil appraisal professional for another provided that all pupil appraisal services are provided in accordance with these regulations and the *Pupil Appraisal Handbook*.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1599 (August 2000), amended LR 27:35 (January 2001), LR 36:2029 (September 2010).

§§2002-2099. Reserved.