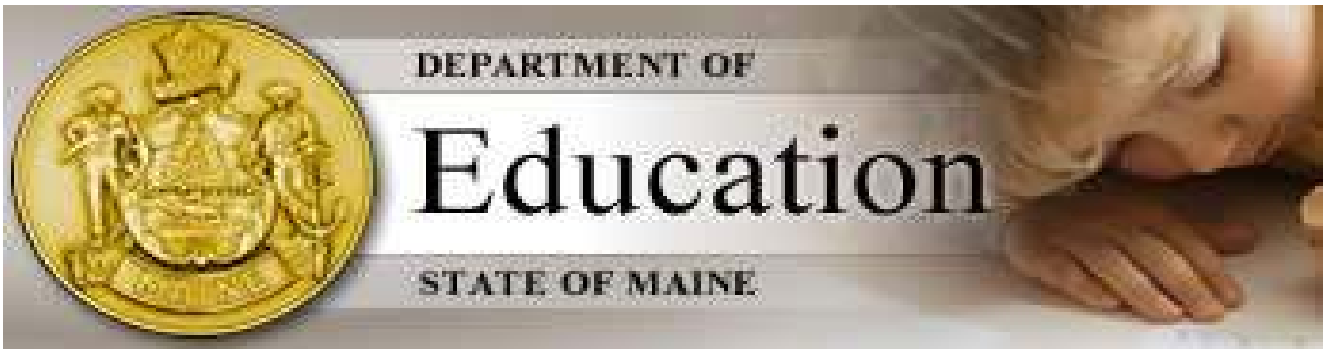

05-071 Chapter 101

Maine Unified Special Education Regulation
Birth to Age Twenty

Final Adoption
2010

05-071 DEPARTMENT OF EDUCATION

Chapter 101: MAINE UNIFIED SPECIAL EDUCATION REGULATION

SUMMARY: This rule governs the administration of the child find system for children age birth to twenty, the provision of early intervention services to eligible children birth to under age 3 (B-2) with disabilities and their families, and the provision of special education and related services to eligible children age three to twenty with disabilities and their families, implementing 20-A MRSA Chapters 301, and 303 and amendments thereto.

Italicized text signifies State requirements.

Non-italicized Times Roman text signifies federal statutory or regulatory requirements.

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I. POLICY AND PURPOSE

The purpose of this rule is to establish and maintain a statewide network that ensures the provisions of child find as set forth in federal law, for Maine families and children age birth to twenty. Additionally, this rule sets forth provisions governing the delivery of early intervention services to eligible children age birth to under age three (hereinafter, B-2) and their families. and of a free, appropriate public education to eligible children age three to twenty with disabilities.

The Department of Education is designated as the State Educational Agency responsible for carrying out the State's obligations under the federal Individuals with Disabilities Education Act (IDEA), 20 United States Code, Section 1400 et seq., as amended. The Department and every school administrative unit, intermediate educational unit, public school, or other public agency that receives federal or State funds to provide early intervention or free appropriate public education services to children age birth to twenty with disabilities must comply with the Individuals with Disabilities Education Act, as amended, and all federal regulations adopted thereunder. [20-A MRSA §7006]

Throughout this regulation the Department has reflected the federal statute and regulatory requirements in non-italicized text. The federal IDEA statute has been in effect since December, 2004 and the federal regulations implementing it have been in effect since October 13, 2006. State requirements are in italicized text and reflect additional procedures or timeframes to enhance the federal provisions.

If a term is completely defined in the text of the rule, it is not duplicated in Section II. of this rule.

Every school administrative unit, intermediate educational unit, public school, or other public agency that receives federal or State funds to provide early intervention or free appropriate public education services to children age birth to twenty with disabilities must utilize the Department's required forms. An administrative letter will be sent on a yearly basis which will include links to the required forms.

For purposes of this rule, all references to school administrative units (SAUs) include intermediate educational units (IEUs),where appropriate, except the term SAU never applies to the State IEU. In the same manner, references to SAU personnel includes CDS personnel.. Also, all references to the local educational agency (LEA) in any federal language included in this rule have been replaced by references to the school administrative unit (SAU) for ease of understanding and consistency with the term used in State law.

1. Introduction and Commitment

This rule is intended to implement the State's obligations under the federal Individuals with Disabilities Education Act (IDEA) 20 USC. §§1400 et seq. as amended, and its implementing federal regulations, 34 CFR Parts 300 and 303, and Maine law, 20-A MRSA Chapters 301, and 303, and amendments thereto.

Maine's Part C system implements a comprehensive, coordinated, multidisciplinary, interagency system providing early intervention services for infants and toddlers and their families.

2. *Non-Discrimination*

Children in Maine, birth to twenty who have disabilities, may not be excluded from the benefits of services to which they are entitled under IDEA. The Department of Education shall ensure the provision of appropriate services regardless of the nature and severity of the child's disability or developmental delay. A full range of services that are needed to meet the early intervention and free appropriate public education needs of eligible children and their families will be coordinated and delivered in a manner consistent with the practices set forth in this rule and applicable State and federal law and regulation. The State must ensure that each SAU takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to non-disabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. [34 CFR 300.110]

In accordance with Title VI of the Civil Rights Act of 1964 (42 USC §§2000d et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 USC §794), the Age Discrimination Act of 1975, as amended (42 USC §§6101 et seq.), Title IX of the Educational Amendments of 1972 (20 USC§1681 et seq. and the Americans with Disabilities Act of 1990 (42 USC. §§12101 et seq.), the Department of Education, regional intermediate educational units, and school administrative units will not discriminate on the basis of sex, race, color, national origin, sexual orientation, disability or age in determining eligibility for services or in their hiring practices.

3. *Approval of Early Intervention and Special Education Programs*

Early intervention, special education services and related services may be provided to children with disabilities only in schools and programs which have been approved by the Commissioner. For children B-5 early intervention (except special instruction) special education and related services are to be provided by certified or licensed personnel in natural settings or least restrictive environments determined by the IFSP or IEP Team.

The Commissioner of the Maine Department of Education reviews and approves all early intervention and special education services or proposed services provided by intermediate education units, public or private schools.

The approval of the early intervention or special education programs provided by a school administrative unit or approved private school shall include the Department's review and approval of the special education reports required

under 20-A MRSA §7204(4) and submitted in the form and manner required by the Commissioner and the program review and technical assistance process specified in Section XII of this rule.

II. DEFINITIONS

1. ***Abbreviated school day*** *– Abbreviated school day means a school day in which a decision by an IEP Team to abridge the school day of a child identified under Chapter 101 whose behavior, attention and/or medical fragility the team finds prohibit the child from participating in a full-day of school. NOTE: This provision applies only through June 30, 2011: the former language of the rule is restored on that date.*

2. ***Accommodations.*** *Accommodations mean changes in the manner in which instruction and assessment is delivered that does not alter the curriculum level expectation being measured or taught.*

3. **Assessment.** For children B-2, assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under Part C of IDEA to identify:

   A. The child's unique strengths and needs and the services appropriate to meet those needs; and

   B. The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability. [303.322(b)(2)]

   For children 3 to twenty, assessment under Part B means the ongoing procedures used by appropriately qualified personnel to measure the educational and functional achievement of students as related to their IFSP or IEP goals and on State and district-wide tests, which are aligned with Maine's Learning Results.

4. ***Case Manager.*** *Case manager means the person that* assists and enables a child eligible under Part C and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program. Each child eligible under this part and the child's family must be provided with one (service coordinator) *case manager* who is responsible for coordinating all services across agency lines; and serving as the single point of contact in helping parents to obtain the services and assistance they need. (Service coordination) *Case management* is an active, ongoing process that involves: assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan; coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided; facilitating the timely delivery of available services; and continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility. [34 CFR 303.23(a)(1)(2)(3)]

The case manager is equivalent to the service coordinator under Part C of IDEA et seq., as amended.

5. ***Composite Score****: Composite score means a standardized score which summarizes performance on 2 or more tests of cognitive ability. All scores used to compute a composite score must have been validated in scientific research to be measures of the general cognitive skills which the composite score purports to measure.*

6. **Consent.** Consent means that:

A. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication; and

B. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the parent's part and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive, (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child's receipt of special education and related services, the SAU is not required to amend the child's education records to remove any references to the receipt of special education and related services because of the revocation. [34 CFR 300.9]

7. **Day; Business Day; School Day.** Day means calendar day unless otherwise indicated as business day or school day. Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day). School day means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. [34 CFR 300.11]

8. ***Diagnostic Impression.*** *Diagnostic impression means an interpretive statement based upon previous and current evaluative data. A diagnostic impression may or may not make reference to DSM or ICD criteria.*

9. **Early Intervention Services.** "Early intervention services" means developmental services that are provided under public supervision; are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees; are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team in one or more of the following areas, physical

development, cognitive development, communication development, social or emotional development or adaptive development; meet the standards of the state in which the services are provided, including the requirements of Part C; including family training, counseling, and home visits; special instruction; speech-language pathology and audiology services, and sign language and cued speech services; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the infant or toddler to benefit from other early intervention services; social work services; vision services; assistive technology devices and assistive technology services; and transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph; are provided by qualified personnel, including special educators, speech-language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, registered dieticians, family therapists, vision specialists, including ophthalmologists and optometrists, orientation and mobility specialists, and pediatricians and other physicians. so the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and are provided in conformity with an individualized family service plan. [20 USC 1432(4)]

10. ***Educational Performance.*** *Educational performance means performance in those academic and functional areas that are being assessed through the local SAU's own curriculum, and for a child age 3-5, age appropriate developmental activities across five domains of development (communication, physical, cognitive, self-help/adaptive, and social/emotional) in an educational setting. Functional performance means how the child demonstrates his/her skills and behaviors in cognition, communication, motor, adaptive, social/emotional and sensory areas. . NOTE: This provision applies only through June 30, 2011;the former language of the rule is restored on that date.*

11. **Evaluation.** Evaluation means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of ``infants and toddlers with disabilities'' in Sec. 303.16, including determining the status of the child in each of the developmental areas. [34 CFR 303.322(b)(1)] Evaluation means procedures used in accordance with these rules to determine whether a child has a disability and the nature and extent of the special education and supportive services that the child needs. [34 CFR 300.15] 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. [34 CFR 300.302]

12. ***Formative Assessment.*** *For purposes of general education interventions, the term formative assessment means using standardized administration procedures*

with direct, on-going, individualized, assessments that have been shown to have predictive validity and which generate reliable rate based data about a student's actual performance on academic and/or behavioral tasks.

13. **Free Appropriate Public Education.** Free appropriate public education means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the *Department* and the requirements of this *rule*; include an appropriate preschool, elementary school or secondary school education in the state; and are provided in conformity with the individualized family service plan or individualized education program that meets the requirements of 300.320 through 300.324[20 USC 1401(9) and 34 CFR 300.17]

14 . ***Functional Behavioral Assessment.*** *Functional behavioral assessment means a school-based process used by the Individualized Education Program (IEP) Team, which includes the parent and, as appropriate, the child, to determine why a child engages in challenging behaviors and how the behavior relates to the child's environment. The term includes direct assessments, indirect assessments and data analysis designed to assist the IEP Team to identify and define the problem behavior in concrete terms, identify the contextual factors (including affective and cognitive factors) that contribute to the behavior, and formulate a hypothesis regarding the general conditions under which a behavior usually occurs and the probable consequences that maintain the behavior. Formal documentation of the assessment by appropriately qualified individuals becomes part of the child's educational record and is provided to the IEP Team.*

15. ***Functional Performance.*** *Functional performance means how the child demonstrates his/her skills and behaviors in cognition, communication, motor, adaptive, social/emotional and sensory areas.*

16. **Homeless child.** Homeless child means a person who:

a) lacks a fixed, regular and adequate nighttime residence;

b) is a child or a youth:

1) who is sharing the housing of other persons due to loss of housing or economic hardship or a similar reason; is living in a motel, hotel, trailer park or camping ground due to lack of alternative adequate accommodation; is living in an emergency or transitional shelter; is abandoned in a hospital; or is awaiting foster care placement;

2) who is living in a car, park, or public space or in an abandoned building, substandard housing, bus or train station or similar setting;

3) who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; and

4) who is a migratory child, as defined in secyion 1309 of the federal Elementary and Secondary Education Act of 1965, who qualifies as homeless for the purpose of this chapter because the child is living in circumstances described in this section.

The term homeless child does not include a person housed in a correctional facility, jail, or detention facility.

17. ***Independent Educational Evaluation.*** *Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the SAU responsible for the education of the child in question. An independent educational evaluation at public expense means that the school either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent. See Section XVI.6.of this rule.*

18. ***Individualized Educational Program (IEP) Case Manager.*** *The IEP case manager may oversee a child's (age 3 to 20) needs to assure that due process requirements under the federal Individuals with Disabilities Education Act are met. The case manager communicates with SAU staff, parents, the child, and teachers to provide coordination and follow up for the IEP process.*

19. ***Informed Clinical Opinion.*** *Informed Clinical Opinion (ICO) means the consensus of an IFSP Team consisting of the parents(s) of the child and at least two early childhood professionals who are appropriately certified in their area of expertise who together, after a comprehensive assessment process utilizing qualitative and quantitative, formal and informal sources of information, reach an informed conclusion about a child's abilities and needs within his/her natural environment. Informed clinical opinion must be included in evaluation and assessment procedures for children B-2 to ensure that an eligibility determination is not based upon isolated information or test scores alone.*

20. **Intermediate Educational Unit (IEU).** Intermediate educational unit means an entity that meets the definition of intermediate educational unit in the federal Individuals with Disabilities Education Act (I.D.E.A.), 20 U.S.C., §1402, (23) as in effect prior to June 4, 1997, and that is a public authority, other than a local educational agency, under the general supervision of a State educational agency, that is established for the purpose of providing free public education on a regional basis and that provides special education and related services to children with disabilities within the State.[34 CFR 300.12(c)] *Intermediate educational units and school administrative units are both considered local educational agencies (LEAs) under IDEA. The Child Development Services (CDS) regional sites are organized as IEUs. For purposes of this chapter all references to SAUs in this rule include IEUs.*

21. ***Modifications.*** *Modifications mean changes in the regular education curriculum and or assessment that lowers the standards of the curriculum.*

22. **Parent.** Parent means:

A. A biological or adoptive parent of a child;
B. A foster parent;
C. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
D. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
E. A surrogate parent who has been appointed in accordance with Sec. 300.519 or section 639(a)(5) of the Act. Except as provided in *the* paragraph *below*, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraphs A-E of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
If a judicial decree or order identifies a specific person or persons under paragraphs A through D of this section to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this section. [34 CFR 300.30]

23. ***Parentally Placed Private School Child.*** *Parentally placed private school child means a child who has been placed in a private school approved for purposes of compulsory attendance pursuant to 20-A MRSA§5001-A(3)(A)(1)(a), or recognized by the Department as providing equivalent instruction pursuant to 20-A MRSA§5001-A(3)(A)(1)(b) by his/her parent and whose education is paid for with private funds. A child who attends a private school pursuant to a contract with a school administrative unit or at public expense in situations where a school administrative unit does not operate public schools, or contract for school privileges, is not a parentally placed private school student for purposes of this rule, even in cases where the parent is allowed to select the school the child attends. In addition, children who are unilaterally placed in private schools by their parents when FAPE is at issue are not parentally placed private school students for purposes of this rule, so long as the parent has provided notice pursuant to IV.G(3)(d) of this rule. In cases when parents unilaterally placed their child in a private school when FAPE is at issue, the district of residence remains responsible for offering an IEP for the child and the district where the private school is located is obligated to offer an individual service plan.*

24. ***Positive Reinforcement Interventions and Supports.*** *Positive reinforcement interventions and supports means the use of positive techniques designed to assist a child to acquire educationally and socially appropriate behaviors and to reduce patterns of dangerous, destructive, disruptive or defiant behaviors. Positive reinforcement strategies and interventions may be determined by the*

IEP Team and may be based upon the results of functional behavior assessments as defined in definition 12 above.

25. ***Post Secondary Goals.*** *Post secondary goals mean statements of intention related to post-school training, education, employment, and, where appropriate, independent living skills based on the child's strengths, preferences, and interests and shaped by age appropriate transition assessments.*

26. ***Pre-referral Procedures*** *Pre-Referral Procedures are general education procedures involving regular benchmark assessment of all children, using Curriculum Based Measurements (CBM), to monitor child progress and identify those children who are at risk of failing. Children who are at risk receive responsive interventions in the general education program that attempt to resolve the presenting problems of concern. General educators are encouraged to confer with specialists and teaching professionals, but general education personnel are responsible for the implementation of the intervention.*

27. ***Probes.*** *Probes mean brief assessments of student skills.*

28. **Public Agency.** Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivision of the State that are responsible for providing education to children with disabilities.

29. ***Scientifically-based Interventions.*** *Scientifically-based interventions means interventions that include teaching practices that have been tested in experimentally sound research studies and have been shown to significantly improve the academic or behavioral achievement of the children who present characteristics similar to the child involved in the pre-referral process.* Scientifically based research has the same meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act (ESEA). [34 CFR 300.35] "The term scientifically based research' —

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that —

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) 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;

(iv) 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;

(v) 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 (vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review."

30. ***School Year/Program Year.*** *School year/program year means the total number of school days in a year as established by the school administrative unit or program year established by an IEU.*

31. ***Screening.*** *Screening means a brief procedure, done periodically, designed to identify children who should receive more intensive diagnosis or evaluation. It is a systematic process conducted by individuals appropriately trained in the screening procedure.*

32. **Special Education.** Special education means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Special education includes each of the following if the services otherwise meet the requirements of the first paragraph: speech-language pathology services, travel training, and vocational education. [34 CFR 300.39(a)] *Special education does not include general education procedures that are a part of formal general education intervention as elsewhere referenced in these rules.*

33. **Special Instruction.** Special instruction for children B-2 means instruction that includes:

A. The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
B. Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;
C. Providing families with information, skills, and support related to enhancing the skill development of the child; and
D. Working with the child to enhance the child's development. [34 CFR 303.12(a)(13)]

34. ***Special Purpose Service.*** *Special purpose service means a public or private program which is established specifically to serve children with disabilities and/or developmental delays.*

35. ***State Agency Client.*** *State agency client means a child of eligible school age who is:*

A. In the care or custody, or both, of the Department of Health and Human Services;

B. Placed by a caseworker from the Department of Health and Human Services or an authorized agent of Children's Behavioral Health Services, Department of Health and Human Services, for reasons other than educational reasons, with a person who is not the child's parent, legal guardian or relative;

C. Attending a public or private school while still a resident of a state-operated institution; or

D. In the custody or under the supervision of the Department of Corrections, including, but not limited to, a juvenile on conditional release, an informally adjusted juvenile, a probationer or a juvenile on community reintegration status from the Long Creek Youth Development Center or the Mountain View Youth Development Center and who is placed, for reasons other than educational reasons, pursuant to a court order or with the agreement of an authorized agent of the Department of Corrections, outside the juvenile's home. [20-A MRSA §1(34-A)]

A state agency client is a child who has been identified as a child with a disability in accordance with this rule. State agency client also means a child who is under 6 years of age who meets one of the criteria in A-D above.

36. ***State Ward.*** *State ward means a person under the age of 18, or an older person of eligible school age, for whom the State of Maine is legal guardian by court order. The term does not include residents of Maine's correctional facilities.*

37. ***B-2 (Birth to under age three).*** *Birth through two is the age of a child from birth to under age 3.*

38. ***3-5 (Three to under age six)*** *Three through five is the age of a child from the child's third birthday to under age 6, until the first day of the receiving public school's program year.*

III. GENERAL EDUCATION INTERVENTION

1. General

By the school year that begins in the fall of 2012 all school administrative units shall develop and implement general education interventions kindergarten to grade 12 that provide each child who is not progressing toward meeting the content standards of the parameters for essential instruction and graduation requirements with different learning experiences or assistance to achieve the standard. The interventions must be specific, timely and based upon ongoing formative assessments that continuously monitor student progress.

The Department recognizes that statewide implementation of general education interventions is supported by a phase in period during which time professional development and technical assistance would be provided by the Department. Therefore, the Department has determined that the general education interventions will be fully implemented by July 1, 2012. In addition, regional CDS staff will work with SAUs located in their jurisdiction to develop general education interventions in the early childhood programs in the public schools.

2. Procedure

While variations in how school administrative units develop and implement general education interventions are expected, all general education interventions must include:

a. Documentation that every child, prior to entering the general education intervention process, was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C.A. §6368(3)), appropriate mastery based instruction in math, appropriate instruction in the writing process, and positive behavioral supports;

b. A team-based decision-making process;

c. Screening at reasonable intervals to determine whether all children are progressing toward meeting the content standards of the parameters for essential instruction and graduation requirements;

d. Data Analysis of screening results focusing on determining to what extent all children are progressing toward meeting the content standards of the parameters for essential instruction and graduation requirements and identifying which children are not making adequate progress towards these goals and are in need of targeted general education interventions;

e. A determination as to whether a child's assessed difficulties are likely the result of linguistic or cultural differences;

f. Provision of research-based general education interventions targeted at the child's presenting academic and/or behavioral concerns as determined by screening results;

g. Repeated formative assessments of student response to targeted interventions, conducted at reasonable intervals, that generate rate based measurable data for both specifying academic and behavioral concerns and monitoring child progress during general education interventions;

h. Documentation that parents were notified about the process, given the opportunity to participate in instructional decision-making, and kept informed of their child's progress during targeted general education interventions;

i. A team shall review the child's progress no later than 60 school days after the start of formal general education interventions and approximately every 30 school days thereafter. At each meeting the team shall review data on the child's progress to determine if modifications to the general education interventions are needed and/or if a referral to special education is indicated: and

j. Provisions for targeted general education interventions to continue during any subsequent special education referral.

3. Procedural Guidelines

a. The parent of a child receiving general education interventions may request that the agency conduct a full and individual evaluation for possible special education eligibility determination at any time during a school administrative unit's established general education intervention process.

b. Special education due process procedures may not be used to address parental concerns regarding the successful implementation of these general education interventions, and the failure to use general education interventions may not be used in special education due process proceedings to establish that a school has failed to meet its child find or referral obligations.

IV. RESPONSIBILITY FOR CHILD FIND, EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES

1. Comprehensive Child Find For Children Birth -2

Child find is the identification, location and evaluation of children B-2. Regional CDS site Boards are responsible for overseeing the completion of all child find activities. The Boards are responsible for ensuring that child find is available to all infants and toddlers in the State, including Indian infants and toddlers with disabilities and their families residing on reservations geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State.

A. Referral for B-2. *The Boards of the regional Child Development Services sites* are responsible for providing notice of child find activities and for providing annual written notification to all primary referral sources of their obligation to refer all identified children, B-2, for evaluation and assessment to the regional site within two (2) working days after a child has been identified. Primary referral sources include:

(1) Hospitals, including prenatal and postnatal facilities;
(2) Physicians;
(3) Parents;
(4) Day care programs;
(5) Local educational agencies;
(6) Public health facilities;
(7) Other social service agencies; and
(8) Other health care providers. [34 CFR 303.321(d)]

The Boards of the regional Child Development Services sites are responsible for implementing the state policies and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse and neglect, or who is identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure to the regional site.

B. *Case Manager During Child Find. The case manager assists the family in securing the necessary screenings, evaluations and assessments needed to determine the child's eligibility under the federal Individuals with Disabilities Education Act (IDEA). The case manager oversees the development of the initial IFSP. The regional site Board is responsible for assigning a case manager to a child upon referral to the regional site. The regional site Board is responsible for ensuring that all activities conducted by the assigned case manager are performed in accordance with the federal IDEA and related Department of Education rules.*

C. Identification by Evaluation and Assessment**.** *If any components of an evaluation or assessment have been performed within the prior six months, the results and findings are to be utilized with no unnecessary repetition. The case manager is responsible for collecting and integrating that information.* Within 45 days after it receives a referral *the regional site Board* shall complete the evaluation and assessment activities in 34 CFR 303.322 and hold an IFSP meeting. [34 CFR 303.321(e)(2)]

(1) Evaluation and assessment of each child age B-2 referred must include:

(a) Health: A review of pertinent records related to the child's current health status and medical history. [34 CFR 303.322(c)(3)(i)]

(b) Multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs**.** [20 USC 1436 (a)(1)] *The evaluation and assessment team must administer one of the Department-approved instruments for determining eligibility.*

Evaluation and assessment of the child. The evaluation and assessment of each child must--

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on informed clinical opinion; and

(iii) Include the following:

(I) A review of pertinent records related to the child's current health status and medical history.

(II) An evaluation of the child's level of functioning in each of the following developmental areas:

(aa) Cognitive development.

(bb) Physical development, including vision and hearing.

(cc) Communication development.

(dd) Social or emotional development.

(ee) Adaptive development.

(III) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (II) of this section, including the identification of services appropriate to meet those needs. [34CFR 303.322(c)]

(c) Family assessment.

(i) Family assessments under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

(ii) Any assessment that is conducted must be voluntary on the part of the family.

(iii) If an assessment of the family is carried out, the assessment must--

(I) Be conducted by personnel trained to utilize appropriate methods and procedures;

(II) Be based on information provided by the family through a personal interview; and

(III) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development. [34 CFR 303.322(d)]

(2) Timelines.

(i) Except as provided in paragraph (ii) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in Sec. 303.321(e).

(ii) In the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days, the *regional site* will document those

circumstances; and develop and implement an interim IFSP, to the extent appropriate and consistent with 34 CFR 303.345. [34 CFR 303.322(e)]

D. Records of Child Find Activities B-2. *For any child who is referred to the IFSP Team as the result of child find activities, documentation in that child's cumulative record file shall specify:*

(1) The date, the regional site, and the person who coordinated the child find activities;

(2) A description or example of the child find activities, procedures, forms, or instruments used; and

(3) The results of the child find activities including any recommendations and/or referrals to the IFSP Team.

When the results of an individual's child find activities do not indicate a possible need for special instruction, a notation shall be entered in the child's cumulative record file to the effect that the child was evaluated for early intervention child find activities purposes, the date, and the administrative unit where the child find activities were conducted.

2. Child Find For Children Three To Twenty

A. Child Find Policy, Procedure, and Responsibility

Each SAU shall maintain and implement policies and procedures to ensure that all children residing in the *jurisdiction between the ages of 3 and 20 years*, including children with disabilities who are homeless children, are wards of the State *or state agency clients*, children with disabilities attending private schools *and receiving home instruction* , highly mobile children (including migrant *or homeless),children who have the equivalent of 10 full days of unexcused absences or 7 consecutive school days of unexcused absences during a school year, and children incarcerated in county jails,* and who are in need of special education and related services, even though they are advancing from grade to grade, are identified, located and evaluated *at public expense.* [34 CFR 300.111(a)(i,ii) and (c)(1,2)] *As noted on pages 7 and 12 of this rule, all references to school administrative units (SAUs) include intermediate educational units (IEUs).*

Each SAU shall provide child find during the first 30 days of the school year or during the first 30 days of enrollment for transfer children. If evidence of child find activities and a statement of the results can be found in a child's cumulative record, or the unit has

reason to believe the child has previously been identified as a child with a disability by another SAU, in state or out of state, child find is not necessary.

An SAU that tuitions or contracts for educational services for some or all of its children is responsible for child find either through appropriate arrangements with the receiving unit or school or through direct child find services by unit personnel or contracted personnel.

This child find responsibility shall be accomplished through a unit-wide process which, while not a definitive or final judgment of a child's capabilities or disability, is a possible indicator of special education needs.

Final identification of children with disabilities and programming for such children occurs only after an appropriate evaluation and a determination by the IEP Team.

(1) Child Find Responsibility for Incarcerated Children

(a) Responsibility for children with disabilities incarcerated in county jails shall rest with the school administrative unit in which the child resided prior to the incarceration.

(b) Responsibility for children incarcerated (committed) in State facilities shall rest with the Department of Corrections. Their responsibility includes the education of residents with disabilities in facilities operated under their jurisdiction as well as child find activities.

(c) For children who are non-adjudicated at state facilities under the Department of Corrections the responsibility shall rest with the school administrative unit in which the child resided prior to be detained.

B. IEP Case Manager

The IEP Case manager may oversee a child's needs to assure that requirements under the federal Individuals with Disabilities Education Act, Part B, are met. The case manager communicates with SAU staff, parents, the child, and teachers to provide coordination and follow up for the IEP process. An SAU may use funds received under 20 USC 1411(a)(4)(B) 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 that are needed

for the implementation of such case management activities. [20 USC 1413(a)(4)(C)]

C. Elements of Child Find Activities

The child find process in each IEU or SAU shall include obtaining data on each child, through multiple measures, direct assessment, and parent information, regarding the child's academic and functional performance, gross and fine motor skills, receptive and expressive language skills, vision, hearing and cognitive skills.

NOTE: An SAU may schedule child find activities during its annual kindergarten enrollment to assist in planning for necessary special education and related services at the start of the school year. If the screening occurs in the spring prior to school entry, the SAU will refer the child to the regional CDS site within 10 school days.

D. Referral after Child Find, Notice of Referral

If the child find process indicates that a child may require special education and related services in order to benefit from regular education, the child shall be referred to the Individualized Education Program (IEP) Team to determine the child's eligibility for special educational services.

If any referral is made to the IEP Team, including a referral requesting evaluation of existing data on the child, the parents of the child shall be sent prior written notice of the referral as defined in Appendix 1 of this rule.

E. Local Policy on Referral to IEP Team

Each IEU or SAU shall develop a written policy, consistent with this rule (specifically section V), regarding referral to the IEP Team. All referrals to the IEP Team must be acted upon in a timely manner. The IEP Team shall review existing evaluation data and determine the need for additional evaluations. The IEP Team may conduct its review without a meeting (V.3.B). If additional evaluations is needed the SAU must send a consent to evaluate form within 15 school days of the receipt of referral.

(1) Date of referral receipt – The SAU's policy on referral must define what date constitutes the receipt of a referral. The referral must be submitted in writing to the Special Education Director, authorized designee, or superintendent. An oral referral shall be reduced to writing by designated school personnel.

(2) Referrals by staff – The SAU's policy on the referral of a child to the IEP Team shall include a means whereby any professional employee of the SAU may make such a referral regardless of the results of the initial child find activities, but after completion of the pre-referral intervention process, when fully implemented, unless the SAU and the parent agree that one is not needed.. The SAU's policy or procedures for staff referrals shall require that the specific concerns of the staff member, the alternatives attempted prior to referral, and parent notification of concerns by the referring party are documented.

(3) Referral by parent – A parent may refer at any time. The parent of a child receiving general education interventions may request that the agency conduct a full and individual evaluation for possible eligibility determination at any time during the implementation of these general education interventions

(4) Referrals by others – The SAU's policy shall include a process whereby the IEP Team accepts referrals from individuals or agency representatives (including representatives from the Department of Health and Human Services) with knowledge of a child. Such referrals shall be made by contacting a designated school official or employee, in accordance with the SAU's policy.

F. Records of Child Find Activities Three To Twenty

For any child who is referred to the IEP Team as the result of child find activities, documentation in that child's cumulative record file shall specify:

(1) The date, SAU, and the person who coordinated the child find activities;

(2) A description or example of the child find activities, procedures, forms, or instruments used; and

(3) The results of the child find activities including any recommendations and/or referrals to the IEP Team.

When the results of a child's child find activities do not indicate a possible need for special education services, a notation shall be entered in the child's cumulative record file to the effect that the child was reviewed for special education child find activities purposes, the date, and the SAU where the child find activities were conducted.

G. Qualifications of Evaluators

Any person who provides an assessment or evaluation recommended by the IEP Team shall meet the professional qualifications of the publisher of the evaluation or assessment. Each evaluation or assessment shall be administered by trained personnel in conformance with the instructions provided by the publisher.

Qualified evaluators include certified school psychological service providers, special education teachers, special education consultants, speech clinicians, vocational evaluators and licensed audiologists, occupational therapists, physical therapists, psychologists, social workers, clinical professional counselors and speech-language pathologists. Aides, assistants or technicians are not considered qualified evaluators and may not administer, score, or interpret evaluations unless they hold appropriate certification or licensure.

The administration, scoring and interpretation of tests of academic, cognitive, behavioral and personality functioning, shall be conducted by qualified evaluators. Qualified evaluators shall have successfully completed appropriate training in each assessment area in which they conduct evaluations.

Administering and scoring of psychological/neuropsychological tests may be conducted by registered Neurocognitive Testing Assistants (NTAs) working under the supervision of a licensed psychologist, pursuant to rules of the Board of Examiners of Psychologists.

3. Responsibility for Early Intervention Services

The Board of Directors of a regional site shall ensure appropriate data collection, training, staff development and direct service provision to eligible children with disabilities B-2 and to coordinate with eligible families the development of individualized family service plans. [20-A MRSA §7209(8)(C,F)]

4. Responsibility for Special Education Services For Children Age 3-20

A. General Principles: Responsibility for Special Education Services and Finances.

Each school administrative unit is responsible for providing special education services to all resident children (as defined in this rule except for (G) below) within its geographical jurisdiction, who are identified as children with disabilities according to the procedures established in this rule). The SAU of residence is responsible for provision of special education and related services in situations where it does not operate public schools. When an SAU has the responsibility for providing special education services to children with disabilities, it may also bear financial

responsibility for the cost of such services, receiving subsidy according to 20-A MRSA C. 606-B, Essential Programs and Services. In some situations, a part or all of the cost may be borne directly by one or more state agencies, although the provision of special education services remains the responsibility of the SAU.

B. Resident Students

An SAU shall provide special education services to all children with disabilities whose parent resides within the SAU and to all adult children who reside within the SAU. This shall include all eligible children who attend the public schools of the unit, or who attend other public schools or private schools on a tuition or contract basis at public expense

C. Homeless Students

A child with a disability who is homeless is defined by 20-A M.R.S.A. §1(13-A).
"Homeless student" means a person eligible to attend elementary or secondary school pursuant to 20-A MRSA § 5201 who:

(1) Lacks a fixed, regular and adequate nighttime residence;

(2) Is a child or a youth:

(a) Who is sharing the housing of other persons due to loss of housing or economic hardship or a similar reason; is living in a motel, hotel, trailer park or camping ground due to the lack of alternative adequate accommodation; is living in an emergency or transitional shelter; is abandoned in a hospital; or is awaiting foster care placement;

(b) Who is living in a car, park or public space or in an abandoned building, substandard housing, bus or train station or similar setting;

(c) Who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; and

(d) Who is a migratory child, as defined in Section 1309 of the federal Elementary and Secondary Education Act of 1965, who qualifies as homeless for the purpose of this chapter because the child is living in circumstances described in this section.

The term "homeless student" does not include a person housed in a correctional facility, jail or detention facility. [20-A MRSA §1(13-A)]

Children who are homeless are protected by the federal McKinney-Vento Act (42 U.S.C. §11434).

Parents or guardians of children in homeless situations can keep their children in their schools of origin (to the extent feasible) or enroll them in any public school that students living in the same attendance area are eligible to attend. "School of origin" is the school the student attended before becoming homeless or the school in which the child was last enrolled.

Children may stay in their school of origin(to the extent feasible) for the entire time they are homeless, even if they move to a different school district. If children move into permanent housing during the school year, they can still finish the year in the same school. Students have the right to stay at their school of origin (to the extent feasible) whether or not they live with their parents.

D. State Wards

A state ward (a child who is in the custody of DHHS) who is in a residential placement, which does not include a hospital, shall be considered a resident of the school administrative unit where the residential placement is located.

(1) The SAU shall provide special education services to any state ward who requires special education services and who resides within the unit's boundaries in a foster home, group home, emergency shelter, shelters for homeless youth, residential treatment facility (as defined by 20-A MRSA §1(24-A), skilled nursing facility or intermediate care facility.

(2) The costs for such special education services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services were provided upon receipt of appropriate statements from the administrative unit and subject to 20-A MRSA Chapter 606-B. When a state ward is reunified with their family, that child shall be considered a state agency client for a period of 6 months after the child returns to his biological or kinship family. The Department of Education will cover 100% of special education costs during this period in order to support the reunification efforts.

(3) The regional administrator of the responsible state agency or the member of the agency's staff identified as responsible for case management of the state ward and the foster parent or administrator of the residence are entitled to participate in any IEP Team Meeting for the state ward. Surrogate parents have the special education rights and responsibilities under this rule.

(4) If a state ward is placed in a hospital, the costs for such special education services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services were provided. Responsibility for the child shall remain with the SAU that was serving the child at the time of placement.. These responsibilities include:

- *Development of the child's IEP;*
- *Annual review of the IEP;*
- *Credit assessment of the high school children;*
- *Determination of future appropriate programs and placements, until the state ward is discharged from the residential treatment center(hospital).*

(5) In the case of a highly mobile child who would not be adequately served pursuant to this section, the Commissioner may assign an SAU responsibility for the following functions:

- *Development of the child 's IEP;*
- *Annual review of the IEP;*
- *Credit assessment for high school children;*
- *Determination of future appropriate programs and placements, the costs for such special education services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services were delivered.*

E. State Agency Clients

(1) A state agency client who is placed by a ***state agency*** *in a residential placement shall be considered a resident of the school administrative unit where the residential placement is located.*

(2) An SAU shall provide special education services to any state agency client who requires special education services and who resides within the unit's boundaries in a foster home, therapeutic group home, emergency shelter, residential treatment facility, (as defined by 20-A MRSA §1(24-A)), skilled nursing facility or intermediate care facility.

(3) The costs for such special education services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services were provided upon receipt of appropriate statements from the SAU and subject to 20-A MRSA Chapter 606-B.

(4) The regional administrator of the responsible state agency or the member of the agency's staff identified as responsible for case management of the state agency client, the foster parent or administrator of the residence and the parents of the state agency client are entitled to participate in any IEP Team Meeting for the state agency client. However, for a child who is in the custody of the Department of Health and Human Services surrogate parents have the special education rights and responsibilities under this rule.

(5) The placement of a state agency client by an SAU for educational reasons in a residential treatment center shall be the responsibility of the school administrative unit in which the state agency client's parents reside. Such a child loses his/her state agency client status and the SAU of residence is responsible for payment. These responsibilities include:

- *The development of the child's IEP, the determination of the least restrictive educational alternative, the annual review of the IEP;*
- *Credit assessment for high school children;*
- *Program monitoring;*
- *Determination of future appropriate programs and/or placements.*

F. Other Students

Children other than state wards, state agency clients, or institutional residents who are living with persons other than their parents or legal guardians, are eligible to attend school where they reside if the superintendent determines it is in the best interest of the student (in accordance with 20-A MRSA §5205(2)) or the student is attending school in a district pursuant to a superintendent's agreement (in accordance with 20-A MRSA §5205(6)).

G. Responsibility for Children with Disabilities Enrolled by Their Parents in Private Schools [20 USC 1412(a)(10)]

(1) Children enrolled in private schools by their parents.

(a) In general.--To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by an SAU, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under a bypass for children in private schools pursuant to 20 USC 1412(f):

(i) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the SAU shall be equal to a proportionate amount of Federal funds made available under this part.

(ii) In calculating the proportionate amount of Federal funds, the SAU, after timely and meaningful consultation with representatives of private schools as described in clause (c), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the SAU.

(iii) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(iv) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

(v) Each SAU shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

(b) Child find requirement.—[34 CFR 300.131]

(i) In general.—Each SAU must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the SAU in accordance with ii-v of this section and 34 CFR 300.111 *(child find)*and 300.201 (*consistency with state policies)*.

(ii) Equitable participation.--The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

(iii) Activities.--In carrying out this clause, the SAU, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

(iv) Cost**.**--The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether an SAU has met its obligations under clause (i).

(v) Completion period.--Such child find process shall be completed in a time period comparable to that for other students attending public schools in the SAU.

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

(c) Consultation.-[34 CFR 300.134]-To ensure timely and meaningful consultation, a SAU , or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--

(i) The child find process and how parentally placed private school children suspected of having a

disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(ii) The determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

(iii) The consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(iv) How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(v) How, if the SAU disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the SAU shall provide to the private school officials a written explanation of the reasons why the SAU chose not to provide services directly or through a contract.

(d) Written affirmation.-[34 CFR 300.135]-When timely and meaningful consultation as required by clause (c) has occurred, the SAU shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the SAU shall forward the documentation of the consultation process to the State educational agency.

(e) Compliance.--

(i) In general.--A private school official shall have the right to submit a complaint to the State educational agency that the SAU did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official. [34 CFR 300.136(a)]

(ii) Procedure.--If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the SAU to the State educational agency, and the SAU shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the SAU to the Secretary and the State educational agency shall forward the appropriate documentation to the Secretary. [34 CFR 300.136(b)]

(iii) If a parent of a child who is 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 SAU may not use consent override procedures in 34 CFR 300.300(a)(3) and (c)(1) [*Section XV. Parental Consent]*; and the SAU is not required to consider the child eligible for services under 34 CFR 300.132 through 300.144. [34 CFR 300.300(d)(4)(i,ii)]

(f) Provision of equitable services.--

(i) Directly or through contracts.--The provision of services pursuant to this subparagraph shall be provided:

(I) By employees of a public agency; or

(II) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(ii) Secular, neutral, nonideological.--Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and non-ideological. [34 CFR 300.138(c)]

(g) Public control of funds.--The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.

(h) Services plan.--A services plan must be developed and implemented for each private school child with a disability who has been designated by the SAU in which the private school is located to receive special education and related services under 34 CFR Part 300. [34 CFR 300.132(b)]The SAU must initiate and conduct meetings to develop, review, and revise a services plan for the child and ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend the SAU shall use other methods to ensure participation by the religious or other private school, including individual or conference calls.[34 CFR 300.137(c)] Each parentally placed private school child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the SAU will provide to the child in light of the services that the SAU has determined, through the consultation process, and it will make available to parentally placed private school children with disabilities. The services plan must, to the extent appropriate meet the requirements of 34 CFR 300.320 [S*ection IX.3]*, or for a child ages three through five, meet the requirements of 34 CFR 300.323(b) *[Section IX.2]* with respect to the services provided and be developed, reviewed and revised consistent with 34 CFR 300.321 through 300.324. [34 CFR 300.138(b)]

(i) Consent for exchange of information. If a child is enrolled, or is going to enroll in a private school that is not located in the SAU of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the SAU

where the private school is located and officials in the SAU of the parent's residence. [34 CFR 300.622(3)]

(2) Children placed in, or referred to, private schools by public agencies.--

(a) In general.—A child with a disability who is placed in or referred to a private school or facility by an SAU is provided special education and related services, in conformance with an individualized education program that meets the requirements of 34 CFR 300.320 through 300.325 *[Section VI and IX]*, and, at no cost to their parents; and is provided an education that meets the standards that apply to education provided by the SEA and SAUs including the requirements of this part, except for 34 CFR 300.18 *[Section X Highly Qualified]* and 300.156(c); and has all of the rights of a child with a disability who is served by a public agency. [34 CFR 300.146]

(b) Implementation by the SEA. In implementing the provisions of (a) above, the SEA must monitor compliance through procedures such as written reports, onsite visits, and parent questionnaires; disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them. [34 CFR 300.147]

(3) Payment for education of children enrolled in private schools without consent of or referral by the public agency.--

(a) In general.-This part does not require an SAU to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with 34 CFR 300.131-144.*[Section IV.2.G]* [34 CFR 300.148(a)]

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of

financial reimbursement, are subject to the due process procedures in 34 CFR 300.504-300.520.*[Section XVI]* [34 CFR 300.148(b)]

(c) Reimbursement for private school placement.--If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and SAUs. [34 CFR 300.148(c)]

(d) Limitation on reimbursement.--The cost of reimbursement described in clause (c) may be reduced or denied:

(i) If--

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

(II) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (I);

(ii) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 20 USC 1415(b)(3)and 34 CFR 300.503(a)(i) *[Section XV Prior Written Notice]*, of its intent to evaluate the child (including a statement of the

purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(iii) Upon a judicial finding of unreasonableness with respect to actions taken by the parents. [34 CFR 300.148(d)]

(e) Exception.--Notwithstanding the notice requirement in clause (d)(i), the cost of reimbursement:

(i) Must not be reduced or denied for failure to provide such notice if--

(I) The school prevented the parent from providing such notice;

(II) The parents had not received notice, pursuant to 20 USC 1415 and 300.504 *[Section XV Communication of Procedural Safeguards]*, of the notice requirement in paragraph (d)(i); or

(III) Compliance with clause (d)(i) would likely result in physical harm to the child; and

(ii) May, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--

(I) The parent is illiterate or cannot write in English; or

(II) Compliance with clause (c)(i) would likely result in serious emotional harm to the child.

H. Home Instruction for Children age 5 to 20 [20-A MRSA §5001-A]

(1) Compulsory Attendance and Home Instruction

Home instruction is allowed as an alternative to attendance at public day school under 20-A MRSA § 5001-A which requires attendance at public day schools for children ages 7 to 17. Starting at age 5, and continuing to age 20, if a child seeks to access special education and related services in a public school while participating in a home instruction program the requirements in 20-A MRSA § 5021 shall apply.

(2) Child Find Responsibilities for Children enrolled in Home Instruction

Each SAU must identify, locate, and evaluate, at public expense, all resident children who are enrolled in home instruction programs

(3) Opportunity to Access Service

Children who are enrolled in home instruction programs do not have an individual right to receive some or all of the special education and related services that they would receive if enrolled in a public school. Should a child enrolled in a home instruction program, who chooses to enroll in specific day school classes at the public school, request access to special education and related services in a public school within their SAU, the provisions of 20-A MRSA §5021 shall apply and the Individual Education Program Team will meet to develop an individual service plan for services provided in a public school.

(4) If a parent of a child who is *receiving home instruction* does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the SAU may not use consent override procedures in 34 CFR 300.300(a)(3) and (c)(1) *[Section XV]*; and the SAU is not required to consider the child eligible for services under 34 CFR 300.132 through 300.144. *[Section IV.2.G]*[34 CFR 300.300(d)(4)(i,ii)]

V. EVALUATION AND REEVALUATIONS

1. Evaluations, Parental Consent, and Reevaluations [20 USC 1414(a-c) and 34 CFR 300.300- 306]

A. Initial evaluations

(1) In general.—*The Department*, other State agency, or SAU shall conduct a full and individual initial evaluation in accordance with this paragraph and 34 CFR 300.305 *[Section V.3]* through 306 *[Section VIII.2]*, before the initial provision of special education and related services to a child with a disability under this part.

(2) Request for initial evaluation**.--**Consistent with subparagraph (d), either a parent of a child, or *the Department*, other State agency, or SAU may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(3) Procedures.

(a) In general. Such initial evaluation shall consist of procedures

(i) To determine whether a child is a child with a disability (as defined in 20 USC 1402) *within 60 calendar days of receiving parental consent for the evaluation for children in the Child Development Services System and*–within *45 school* days of receiving parental consent for the evaluation *for children 5-20 years of age under the responsibility of the public school system*; and

(ii) Must consist of procedures to determine if the child is a child with a disability under 34 CFR 300.8 *[Section VII]* and to determine the educational needs of such child.

(b) Exception.--The relevant timeframe in clause (a)(i) shall not apply to a SAU if:

(i) A child enrolls in a school served by the SAU after the relevant timeframe in clause (a)(i) has begun and prior to a determination by the child's previous SAU as to whether the child is a child with a disability (as defined in 20 USC 1402), but only if

the subsequent SAU is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent SAU agree to a specific time when the evaluation will be completed; or

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

(4) Parental consent

(a) In general.

(i) Consent for initial evaluation.--The SAU proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability under 34 CFR 300.8 *[Section VII]* after providing notice consistent with 34 CFR 300.503 and 504 *[*Section *XV]*, obtain informed consent consistent with 34 CFR 300.9 *[Section II.6]*, from the parent of such child before conducting the evaluation. Parental consent for initial evaluation must not be construed as consent for placement for receipt of special education and related services. The SAU must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. [34 CFR 300.300(a)]

(ii) Consent for services**.--**An SAU that is responsible for making a free appropriate public education available to a child with a disability under this part must obtain informed consent from the parent of such child before providing special education and related services to the child. The SAU must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.[34 CFR 300.300(b)(1,2)]

(b) Absence of consent.

(i) For initial evaluation.--If the parent of a child, enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under clause (a)(i), or the parent

fails to respond to a request to provide the consent, the SAU may, but is not required to pursue the initial evaluation of the child by utilizing the procedures described in 20 USC 1415, if appropriate, . The SAU does not violate its obligation under 300.111 and 300.301 through 300.311 if it declines to pursue the evaluation. [34 CFR 300.300(a)(3)(i,iii)]

(ii) For services.--If the parent of such child fails to respond to a request for, or refuses to consent, to the initial provision of special education and related the SAU may not use the due process procedures in order to obtain agreement or a ruling that services may be provided to the child. The SAU will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent and is not required to convene and IEP Team meeting under §300.320 and 300.324 for the child. [34 CFR 300.300(b)(3)]

(iii) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the SAU:

(I) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;

(II) May not use the procedure in subpart E of IDEA (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child:

(III) Will not be considered to be in violation of the requirement to make available a free appropriate public education available to the child because of the failure to provide child with further special education and related services; and

(IV) Is not required to convene an IEP meeting or develop an IEP §§300.320 and 300.324 for the child for further special education and related services. [34 CFR 300.300(b)(4)]

(c) Consent for wards of the State.

(i) In general.—If the child is a ward of the State and is not residing with the child's parents, the SAU shall make reasonable efforts to obtain the informed consent from the parent (as defined in 20 USC 1402) of the child for an initial evaluation to determine whether the child is a child with a disability.

(ii) Exception.—For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the SAU shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if:

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

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

(III) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. [34 CFR 300.300(a)(2)]

(5) Rule of construction.--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. [34 CFR 300.302]

B. Reevaluations

(1) In general --An SAU must ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (1) and (2):

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

(b) If the child's parent or teacher requests a reevaluation.

(2) Limitation.--A reevaluation conducted under subparagraph (1) shall occur:

(a) Not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

(b) At least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary. [34 CFR 300.303]

(3) Parent consent for reevaluation

(a) Subject to paragraph (3)(b) of this section, each SAU:

(i) Must obtain informed parental consent, in accordance with 34 CFR 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the SAU may, but is not required to, pursue the reevaluation by using the consent override procedures described in (1)(A)(4)~~(a).~~(b)

(iii) Does not violate its obligation under 34 CFR 300.111 and 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(b) The informed parental consent described in paragraph (3)(a) of this section need not be obtained if the SAU can demonstrate that

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond. [34 CFR 300.300(c)]

2. Evaluation Procedures. [20 USC 1414(b) and 34 CFR 300.304]

A. Notice.--The SAU shall provide notice to the parents of a child with a disability, in accordance with 34 CFR 300.503 *[Section XV]*, that describes any evaluation procedures such SAU proposes to conduct.

B. Conduct of evaluation.--In conducting the evaluation, the SAU shall:

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining:

(a) Whether the child is a child with a disability under 34 CFR 300.8 *[Section VII]*; and

(b) The content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

C. Other Evaluation Procedures [34 CFR 300.304(c)]--Each SAU shall ensure that:

(1) Assessments and other evaluation materials used to assess a child under this section:

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

(b) Are provided and administered in the child's native language or other mode of communication and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

(c) Are used for 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 such 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 child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas of suspected disability; including, if appropriate, health, vision, hearing, social, and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(5) Assessments of children with disabilities who transfer from one SAU to another SAU in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 34 CFR 300.301(d)(2) and (e) *[Section V.1.A(3)(b)]*, to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under 34 CFR 300.304 through 300.306 *[Section V]*, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

D. Determination of eligibility and educational need. [34 CFR 300.306]--Upon completion of the administration of assessments and other evaluation measures:

(1) *The IEP Team, which includes* the parent of the child determine whether the child is a child with a disability, as defined in 34 CFR 300.8, in accordance with paragraph E of this section and the educational needs of the child;

(2) The SAU provides a copy of the evaluation report and the documentation of determination of eligibility *(prior written notice)* at no cost to the parent.

E. Special rule for eligibility determination. [34 CFR 300.306(b)]—A child must not be determined to be a child with a disability if the determinant factor for such determination is a:

(1) Lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);

(2) Lack of appropriate instruction in math; or

(3) Limited English proficiency and, the child does not otherwise meet the eligibility criteria under 34 CFR 300.8(a).

F. Procedures for determining eligibility and educational need –

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 34 CFR 300.8 *[Section VII]* and the educational needs of the child, each SAU must

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

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

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with 34 CFR 300.320 through 300.324.*[Section VI and IX]*

G. Specific learning disabilities.

(1) In general.--Notwithstanding 20 USC 1407(b), when determining whether a child has a specific learning disability as defined in 20 USC 1402, an SAU shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(2) Additional authority.--In determining whether a child has a specific learning disability, an SAU may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs B and C.

3. Additional Requirements For Evaluation and Reevaluations. [20 USC 1414(c) and 34 CFR 300.305(a-c)]

A. Review of existing evaluation data. [34 CFR 300.305(a)]-As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall:

(1) Review existing evaluation data on the child, including:

(a) Evaluations and information provided by the parents of the child;

(b) Current classroom-based, local, or State assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(a) Whether the child is a child with a disability as defined in 34 CFR 300.8 *[Section VII]*, and the educational needs of the child, or, in case of a reevaluation of a child, whether

the child continues to have such a disability and such educational needs;

(b) The present levels of academic achievement and related developmental needs of the child;

(c) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(d) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

B. Conduct of Review. [34 CFR 300.305(b)] The group described in paragraph 3(A) of this section may conduct its review without a meeting.

C. Source of data.-[34 CFR 300.305(c)]-The SAU shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (3)(A)(2).

D. Parental consent.—*Following prior written notice* each SAU shall obtain informed written parental consent, in accordance with subsection (1)(A)(4), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the SAU can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond. If the parent refuses to consent to the reevaluation, the SAU may, but is not required to , pursue the reevaluation by using the consent override procedures in 34 CFR 300.300(a)(3) *[Section XVI.2]*. The SAU does not violate its obligation under child find and evaluation and eligibility determination if it declines to pursue the evaluation or reevaluation. [34 CFR 300.300(c)(ii,iii)]

E. Requirements if additional data are not needed.-[34 CFR 300.305(d)]-If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the SAU:

(1) Shall notify the child's parents of:

(a) That determination and the reasons for the determination; and

(b) The right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

(2) Shall not be required to conduct such an assessment unless requested to by the child's parents.

F. Evaluations before change in eligibility. [34 CFR 300.305(e)]

(1) In general.--Except as provided in subparagraph (b, below), an SAU must evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(2) Exception

(a) In general.--The evaluation described in subparagraph (1) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(b) Summary of performance.--For a child whose eligibility under this part terminates under circumstances described in clause (a), an SAU shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

4. Standardized Reports of Evaluation for Children 3 to 20

A. Referral for Evaluation:
The SAU representative shall indicate to the evaluator when making a referral for evaluation:

(1) The suspected disability of concern;

(2) How the suspected disability is demonstrated within the educational setting;

(3) The information the IEP Team desires from the evaluator in order to plan an appropriate program for the child; and

(4) Any other information deemed relevant by the IEP Team.

B. Evaluation Report. The IEP Team shall require each person or agency completing an evaluation or diagnostic service recommended by the IEP Team to submit a written evaluation report no later than 40 school days from the receipt of parental consent to evaluate, recognizing the requirement that the parents receive the evaluation report at least 3 days prior to the IEP Team Meeting at which the evaluation will be discussed.

C. Each report shall include:

- *Evaluation date(s)*
- *Report date*
- *Birth date and age at date of evaluation*
- *Referral question and by whom*
- *Relevant background information*
- *Observation in the learning environment(which could be completed by another evaluator or an IEP team member and be considered in the preparation of the report)*
- *Clinical observation , if appropriate*
- *Results of informal assessment procedures*
- *Summary of the evaluation procedures employed*
- *Specification of the results of each evaluation with testing interpretation (including standard deviation scores).*
- *Summary of the evaluation results and diagnostic impressions; and*
- *Specification of the educational recommendations necessary to meet the child's educational needs.*
- *If intervention is recommended, the needs that could be addressed in regular education or in special education, if the child is identified by the IEP Team as a child with a disability.*

D. Evaluation reports shall not make either eligibility or placement determinations. These determinations are the responsibility of the IEP Team, pursuant to federal and State law and regulation.

E. The evaluation report shall be placed in the child's education record file.

F. The IEP Team shall only accept evaluation reports which the responsible SAU has ordered that conform with the description above. Other applicable reports provided may also be considered.

G. A copy of the evaluation report must be provided to the parent at least 3 days prior to the IEP Team Meeting at which the evaluation will be discussed.

5. Vocational Evaluations

Every child with a disability between 16 and 20 years of age may be provided an opportunity for an interest and aptitude evaluation. Such evaluations may include job sampling and practical experiences if determined to be appropriate. Such vocational evaluations may be provided by qualified evaluators. The purpose of the vocational evaluation is to assist the IEP Team to identify child's vocational interests, his/her vocational strengths, and deficits in work skills and behaviors that would interfere with appropriate educational programs and services that would be reasonably expected to result in the gainful employment of the child.

Based on the results of such an evaluation, a component of the child's Individualized Education Program shall be developed to include special education, supportive services and vocational services necessary to accomplish the identified vocational goals. A representative of the appropriate regional career and technical agency or program shall be invited to participate the development of this component of the child's Individualized Education Program.

6. Independent Educational Evaluation [34 CFR 300.502]

A. General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs B through E of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph 5 of this section.

(3) For the purposes of this subpart:

(a) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(b) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation

is otherwise provided at no cost to the parent, consistent with 34 CFR§ 300.103.

B. Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs B.(1) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either:

(a) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(b) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR§§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

C. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation:

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint regarding that child.

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

E. Agency criteria.

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph C.(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

VI. INDIVIDUALIZED PLAN TEAM MEMBERSHIP

1. Individual Family Service Plan (IFSP) Team for Children with Disabilities B-2

A. Advance Written Notice, Accessibility and convenience of meetings.

IFSP Meetings must be conducted in settings and at times that are convenient to families; and in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend. [34 CFR 303.342(d)]

A copy of the notice of the IFSP Team meeting shall be placed in the child's education record .

A copy of the evaluation report must be provided to the parents at least 3 days prior to the IFSP Team meeting at which the evaluation will be discussed.

The reports of all evaluations conducted at the SAU's request shall be provided to the case manager of each regional CDS site.

B. Initial and Annual IFSP Team Meetings for Children B-2 [34 CFR 303.343(a and b)].

(1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(a) The parent or parents of the child;

(b) Other family members, as requested by the parent, if feasible to do so;

(c) An advocate or person outside of the family, if the parent requests that the person participate;

(d) The *case manager* who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP and has written authorization to obligate the IEU's human and fiscal resources.;

(e) A person or persons directly involved in conducting the evaluations and assessments; and

(f) As appropriate, persons who will be providing services to the child or family.

(2) If a person directly involved in conducting the evaluations and assessments is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including:

(a) Participating in a telephone conference call;

(b) Having a knowledgeable authorized representative attend the meeting; or

(c) Making pertinent records available at the meeting.

C. Periodic review. Each periodic review must provide for the participation of persons in paragraphs (B)(1)(a-d). If conditions warrant, provisions must be made for the participation of other representatives from B.1. above.[20 USC 1436 (b)]

2. Individualized Family Service Plan (IFSP) Team or Individualized Education Program (IEP) Team for Children Three To Twenty

Federal statute permits the use of the IFSP to record the special education and related services provided under Part B for children 3-5**.** In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year old child with a disability who will turn age 3 during the school year), the IEP Team must consider *an* individualized family service plan that contains the IFSP content (including the natural environments statement) described in 20 USC 1436 and its implementing regulations including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age, and that is developed in accordance with the IEP procedures. The individualized family service plan may serve as the IEP of the child, if using that plan as the IEP is consistent with State policy; and agreed to by the agency and the child's parents. In implementing the requirements of this paragraph the SAU must provide to the child's parents a detailed explanation of the differences between an IFSP and IEP, and if the parents choose an IFSP, obtain written, informed consent from the parents. [34 CFR 300.323(b)]

The utilization of the IFSP does not afford the child the option of continuing the Part C services. Continuation of Part C services for children 3-5 is not a policy option in Maine. Part C of the Act (IDEA) does not apply to any child with a

disability receiving FAPE, in accordance with Part B of the Act, with funds under Section 619 of the Act. [34 CFR 300.818]

A. Advance Written Notice of IEP Meetings

Each SAU must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including, notifying parents of the meeting early enough, *at least 7 days prior to the meeting,* to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance; and inform the parents of the provisions in 34 CFR 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child *, B.5 below*), and 34 CFR 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the act). For a child with a disability beginning no later than the first IEP to be in effect when a child *enters 9th grade* or *earlier* if determined appropriate by the IEP Team, the notice must indicate that the purpose of the meeting will be the consideration of the post secondary goals and transition services for the child in accordance with 34 CFR 300.320(b) and that the SAU will invite the student and identify any other agency that will be invited to send a representative.[34 CFR 300.322(a) and (b)(1,2)]

A copy of the notice of the IEP Team Meeting shall be placed in the child's education record–.

A copy of the evaluation report must be provided to the parent at least 3 days prior to the IEP Team Meeting at which the evaluation will be discussed

The reports of all evaluations conducted at the SAU's request shall be provided to the IEP case manager of each regional site or SAU.

B. IEP Team Membership. [20 USC 1414(d)(1)(B) and 34 CFR 300.321(a)] Each IEP Team shall include the following members:

(1) The child's parents, ;

(2) No less than one regular education teacher for the child *which should include career and technical or adult education teachers, if appropriate* (if the child is, or may be, participating in the regular education environment);

(3) No less than one special education teacher or, where appropriate, not less than one special education provider (licensed or certified special education provider);

(4) A representative of the school administrative unit who

(a) Is qualified to provide or supervise the provision specially designed instruction to meet the unique needs of students with disabilities;

(b) Is knowledgeable about the general education curriculum;

(c) Is knowledgeable about the availability of resources of the local educational agency *and has written authorization to obligate the unit* ; and

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

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

(7) Whenever applicable, the child; *and*

(8) For a child who is a state ward or state agency client, the child's caseworker representing a youth serving state agency. The surrogate parent retains the sole authority to represent the child by exercising the procedural safeguards available under this rule.

The determination of knowledge or special expertise of an individual described in (B)(5) above shall be made by the party (parent or public agency) who invited the individual to be a member of the IEP Team.

C. IEP Team Meetings – Transition Services

(1) *Early Transition From Part C to Part B: At age 3 [20 USC 1437(a)(9)(A) and 34 CFR 303.148]– The regional CDS site Board, as the lead agency representative, is responsible for ensuring that all children age 2 who have been identified through the child find process as meeting the eligibility criteria for early intervention services have an IFSP Team meeting with the family and regional CDS site staff, at least ninety (90) days(and at the discretion of all such parties, not more than 9 months) prior to the*

child's third birthday with parental consent, for the purpose of developing an IFSP/IEP for implementation, at no cost to the family, and to discuss any such services that the child may receive, when the child turns age 3; in the case of a child who may not be eligible for such preschool services, with approval of the family, make reasonable efforts to convene a conference among the lead agency (Maine Department of Education or its regional representative), the family and the providers of other appropriate services for children who are not eligible for preschool services under Part B to discuss the appropriate services that the child may receive; and to establish a transition plan, including, as appropriate, steps to exit from the program.

(2) *Transition from Regional CDS site to Public School*

(a) The regional CDS system is responsible to convene a joint IEP Team Meeting in the spring of the year prior to a child's right to enroll in a public school. The receiving SAU will be responsible for the facilitation, plan development, and prior written notice for this joint meeting.

(b) The regional CDS system is responsible for extended school year services which are specified on a child's IEP until the start of the regular school year and the child's eligibility for enrollment in the public school.

(c) The SAU responsible for the provision of FAPE to an eligible child who resides within a district and who turns five on or before October 15th begin the first day that children attend classes at the start of the school year.

The IEP developed for the child to be in place from the transition meeting in the spring through the completion of the extended school year (ESY) services is not a separate document from the one to be implemented on the first day of public school. There should be only one IEP developed by CDS and the public school in the spring of the year the child will transition from CDS to the public school. The time frame for the IEP meeting and the development of the IEP is April 1st through June 15th. The regional CDS sites will contact the local SAUs and schedule transition meetings for children entering public school kindergarten in the fall. Prior to sending the advance written notice of the transition meeting, the CDS site and the public school will jointly, with input from the parent, determine who will be the members of the IEP Team.

The CDS staff, with input from providers and parents, will prepare information to share with the SAU such as:

1. *Current IEP with goals*
2. *Progress reports and /or all current evaluations*
3. *Present levels of performance*
4. *Anticipated Extended School Year Services information*

The IEP should clearly differentiate the responsible parties and the services time frame for which each party is responsible. Each party is liable for the services that the IEP has articulated as that party's respective responsibility. CDS is responsible for provision of and payment for the free appropriate public education [FAPE] services determined by the team through the end of the CDS school year, as well as any ESY services determined by the team as necessary. The public school is responsible for the FAPE services determined by the team to begin on the first day of the school year based on the public school's calendar. There may be some specific transition goals for a child that will be a joint responsibility, such as, a visit to the public school classroom or a practice ride on the public school bus. CDS, on behalf of its contracted providers, must provide to the public school access to the child's CDS programs in order for the public school to make informed decisions about future planning for the child.

While 2(a) above requires the CDS site to convene the meeting, it also requires the school administrative unit to facilitate the transition meeting held between April 1 and June 15th of the year that the child will enter public school kindergarten. Both the CDS site and the public school must have a representative at the meeting who is qualified and authorized to obligate the unit as required in the MUSER at VI.2.B(4). If the IEP Team does not reach consensus, the CDS representative authorizes the service(s) to be provided by CDS and the public school representative will authorize the service(s) to be provided by the public school. The parent has the right to request a mediation, complaint, or due process hearing if there is a dispute about the determinations of the IEP Team.

If the team, including the parents, determines that there is not sufficient evaluative information to address all potential goal areas in the joint IEP, the need for any further evaluations will be determined by the transition IEP Team. If CDS needs an evaluation to complete their responsibilities, CDS is responsible for the payment. Otherwise the evaluation will be paid for by the receiving public school, which may use federal IDEA, Part B, Section 619 funds for this purpose. The public school will need to consider the 60 calendar day requirement, regarding the administration and completion of the evaluation. Please see section V.1.A(3)(a)(i) of the MUSER.

(3) Secondary Transition

(a) Transition services means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that: is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post school activities, including post-secondary education, vocational education, integrated employment(including supported employment), continuing and adult education, adult services, independent living, or community participation; is based upon the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post school adult living objectives, and if appropriate, acquisition of daily living skills and provision of a functional vocational assessment. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. [34 CFR 300.43]

(*b)* Beginning not later than *9th grade the IEP Team will start the transition plan and it will be* updated annually thereafter—

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
(bb) the transition services (including courses of study *,(such as participation in advanced placement courses, a vocational education program, or adult education program)* needed to assist the child in reaching those goals; and
(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under IDEA, if any, that will transfer to the child on reaching the age of majority under 20 USC 1415(m) of IDEA. [20 USC 1414(d)(1)(A)(VIII) and 34 CFR 300.320(b)]

(c) The public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of post secondary goals for the child and the transition services needed to assist the child in reaching those goals. [34 CFR 300.321(b)(1)]

(d) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered. [34 CFR 300.321(b)(2)]

(e) To the extent appropriate, with the consent of the parents or the child who has reached age of majority, in implementing the requirements of (c) above, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. [34 CFR 300.321(b)(3)]

(f) Failure to meet transition objectives. If a participating agency, other than the SAU, fails to provide the transition services described in the IEP, the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP. [20 USC 1414(d)(6)]

Nothing in these rules relieves any other agency, including the Maine Department of Health and Human Services, the Maine Department of Labor, the Maine Department of Corrections, the Maine Department of Public Safety, or the Bureau of Vocational Rehabilitation, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

D. Alternative Means of Meeting Participation [20 USC 1414(f)]

When conducting IEP team meetings and placement meetings pursuant to 20 USC 1414(d), 1415(e), and 1415(f)(1)(B), and carrying out administrative matters under 1415 (such as scheduling, exchange of witness lists, and status conferences) the parent of a child with a disability and a SAU may agree to use alternative means of meeting participation, such as video conferences and conference calls.

E. Attendance Not Necessary [20 USC 1414(d)(1)(C)(i) and 34 CFR 300.321(e)(1)]

A member of the IEP Team *described in 2.B(2-5) of this section is not* required to attend an IEP Team Meeting, in whole or in part, if the parent of a child with a disability and the SAU agree in writing that the attendance of such member is not necessary because the member's area of

curriculum or related services is not being modified or discussed in the meeting.

F. Excusal [20 USC 1414(d)(1)(C)(ii) and 34 CFR 300. 321(e)(2)]

A member of the IEP Team 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 curriculum or related services, if—

(1) The parent, in writing, and the SAU consent to the excusal; and

(2) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

The SAU must ensure that the child's IEP Team is informed of changes (made to the IEP). [34 CFR 300.324(a)(4)(ii)]

Initial IEP Team Meeting for the child under Part C. In the case of a child who was previously served under Part C of IDEA, an invitation to the initial IEP Team Meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. [34 CFR 300.321(f)]

G. Written Agreement and Consent Required [20 USC 1414(d)(1)(C)(iii)]

A parent's agreement under (E) and consent under (F) above shall be in writing.

H. Parent Participation

(1) Public agency responsibility general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed on time and place.

(2) Information provided to parents.

(a) The notice required under paragraph (1)(a) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(b) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16 ~~14,~~ or younger if determined appropriate by the IEP Team, the notice also must—

(i) Indicate—

(I) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and

(II) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

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

(4) 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 must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

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

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

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

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

(6) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent *within 21 school days of the IEP Team Meeting.* [20 U.S.C. 1414(d)(1)(B)(i) and 34 CFR 300.322 (a-f)]

I. IEP Decision-Making Process

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding:

(1) the child's needs and appropriate goals;

(2) the extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and

(3) the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP Team must consider the parents' concerns and the information that they provide regarding their child in determining eligibility; developing, reviewing, and revising IEPs; and determining placement.

The IEP Team should work toward consensus, but the SAU has ultimate responsibility to ensure that a child is appropriately evaluated; that the IEP includes the services that the child needs in order to receive FAPE; and that the child's placement is in the least restrictive educational placement. It is not appropriate to make evaluation, eligibility, IEP or placement decisions based upon a majority "vote." If the team cannot reach consensus, the SAU must provide the parents with prior written notice of the school's proposals or refusals, or both, regarding their child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing or a State complaint investigation.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resorting to a due process hearing. However a mediation or other informal procedure may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under these rules.

J. Major IEP Team Responsibilities

The major responsibilities of an IEP Team are:

(1) To review, as part of an initial evaluation (if appropriate) and as part of any reevaluation of a child , existing evaluation data including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and supportive services providers observation to determine, with input from the child's parents, what additional data, if any, are needed to determine whether a child is a child with a disability as defined in VII of this rule.

(2) To determine the present levels of performance and educational needs of the child in all affected academic and non-academic areas.

(3) To determine any necessary modifications and/or adaptations in the child's regular education program if existing data is insufficient to identify the child as eligible for special education services.

(4) To develop or revise an Individualized Education Program (IEP) as described in IX to provide each identified child with a disability a free appropriate public education.

(5) To review, at least annually, the Individualized Education Program of each child with a disability to:

(a) determine whether the annual goals for the child are being achieved;

(b) revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

(c) consider the results of any reevaluation;

(d) consider any information about the child provided to, or by, the parents;

K. Audio Recording of IEP Meetings

Parents shall be permitted to audio record any IEP meeting regarding their child at their own expense. Schools may also audio record (or video record for families who are deaf or hard of hearing) IEP Meetings in which case the recording becomes an educational record subject to the provisions of XIV of this rule.

L. Abbreviated school day

IEP teams shall make every effort to maintain students in full-day programs utilizing supplementary aids and services before determining that an abbreviated school day is appropriate and necessary. If the team subsequently determines that an abbreviated school day is appropriate and necessary, the IEP Team must: 1) document in the Written Notice the basis for the determination of an abbreviated school day; 2) address how the child will meet Maine's Learning Results; 3) must develop a plan for the child to return

to a full-time school day within a reasonable period of time, no longer than 45 calendar days; and, 4) delineate the actions the SAU will take to assist the child to participate in a full-day of school. NOTE: This provision applies only through June 30, 2011; the former language of the rule is restored on that date.

VII. ELIGIBILITY CRITERIA AND PROCEDURES FOR DETERMINATION

1. Eligibility Criteria For Children B-2

A. Developmental Delay

(1) Definition. An infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual 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 has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. [20 USC 1432(5)(A)]

For children B-2 with diagnosed physical or mental conditions each child's diagnostic evaluation must include demonstration that the child has a high probability to have a developmental delay resulting from that condition. The diagnostic evaluation will demonstrate the severity and chronicity of the condition which can then be discussed by the team to determine its impact on eligibility.

The level of developmental delay required for eligibility will be defined as any of the following (unless the measures used, such as hearing and vision tests, have different criteria for establishing abnormal development):

(a) A delay of at least 2.0 or more standard deviations below the mean in at least one of the five areas of development listed above; or

(b) A delay of at least 1.5 standard deviations below the mean in at least two of the five areas of development listed in 1(A)(1), above.[20 USC 1435(a)(1)]

(2) Procedures for Determination

(a) Evaluation and assessment of each child age B-2 referred must include:

(i) Health: A review of pertinent records related to the child's current health status and medical history.[34 CFR 303.322(c)(3)(i)] ;

(ii) Multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs. [20 USC 1436(a)(1)] *The evaluation and assessment team must administer one of the Department-approved instruments for determining eligibility; and*

(iii) Family: a family directed assessment of the resources, priorities and concerns of the family and identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler. [20 USC 1436(a)(2)]

The procedures for these assessments are set forth in IV.1.C of this rule.

(*b*) *The level of developmental delay required for eligibility will be defined as any of the following (unless the measures used, such as hearing and vision tests, have different criteria for establishing abnormal development):*

(i) A delay of at least 2.0 or more standard deviations below the mean in at least one of the five areas of development listed above; or

(ii) A delay of at least 1.5 standard deviations below the mean in at least two of the five areas of development listed in 1(A)(1), above.[Developed pursuant to 20 USC 1435(a)(1)]

(c) *Informed Clinical Opinion*

An IFSP team always utilizes informed clinical opinion in the administration and interpretation of each of the tools approved by the Department. Informed clinical opinion (ICO) means the consensus of an early intervention team consisting of the parents(s) of the child and at least two early childhood professionals who are appropriately certified in their area(s) of expertise, who together, after a comprehensive assessment process utilizing qualitative and quantitative, formal and informal sources of information, reach an "informed" conclusion about a child's abilities

and needs within his/her natural environment. Informed clinical opinion must be included in evaluation and assessment procedures for children B-2 as a safeguard against eligibility determination based upon isolated information or test scores alone.

When determining eligibility through the informed clinical opinion of an IFSP Team, the Team must document the following:

(i) Explain why the evaluation standards and procedures, that are used with the majority of children resulted in invalid findings for this child.

(ii) Indicate what objective data was used to conclude that the child has a developmental delay. Data may include test scores; parent input; childcare provider comments; observations of the child in his/her daily routine; use of behavior checklists or criteria-referenced measures; and other developmental data including current health status and medical history.

(iii) Indicate which data had the greatest relative importance for the eligibility decision.

(iv) Indicate agreement of the use of informed clinical opinion. If one or more team members disagree with the decision, the dissenting team members will develop a written statement of the areas of disagreement, signed by those members and will be kept in the child's education record

2. Eligibility Criteria for Children Three to Twenty

The references to data from general education interventions apply only to children age five to twenty. Parents may always make a referral without waiting for the completion of the general education interventions.

A child with a disability is an individual who:

Has reached the age of 3 years;

Has neither graduated from a secondary school program with a regular high school diploma nor reached 20 years of age at the start of the school year;

Has been observed in the learning environment/classroom setting; and

Has been evaluated according to these rules and has been determined to have a disability which requires the provision of special education and supportive services.

A child with a disability shall have one or more of the disabilities listed in this section.

A. Autism

(1) Definition. Autism means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three that adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

The term does not apply if a child's educational performance is adversely affected primarily because the student has an emotional disability, *as defined in Section VII of this rule.*

A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph one of this section is satisfied. [34 CFR 300.8(c)(1)(i-iii)]

Autism is defined as one of the "pervasive developmental disorders" which includes: PDD, PDDNOS, Asperger's Syndrome, Autistic Disorder, Rett's Syndrome, and Childhood Disintegrative Disorder.

(2) Procedure for Determination. All steps below are required.

(a) Data from general education interventions¸ if appropriate, utilizing research based intervention techniques indicate that the response to general education intervention is not adequate.

(b) Diagnostic impressions will be based upon an evaluation undertaken by a licensed or certified professional who is qualified to make a diagnostic impression under the DSM codes for pervasive developmental disorders.

B. Deaf-Blindness

(1) Definition. Deaf-blindness means concomitant visual and hearing impairments, the combination of which causes such severe communication, and other developmental and educational needs that he cannot be accommodated in special education programs solely for children with deafness or children with blindness. [34 CFR 300.8(c)(2)]

(2) Procedure for Determination. All steps below are required.

(a) Deaf-blindness is a separate eligibility category. These children should not be categorized or counted as multiply disabled, unless there is another distinct disability and the team is unable to determine the primary disability.

(b) Audiological and medical evaluations are utilized as part of the multidisciplinary evaluation in determination of eligibility.

(c) Once deaf-blindness is diagnosed, further assessments by specialists in the field of deaf-blindness education are needed for the IEP Team's determination of adverse effect on educational performance and language acquisition.

C. Deafness

(1) Definition. Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. [34 CFR 300.8(c)(3)]

(2) Procedure for Determination. All steps below are required.

(a) Audiological and medical evaluations will determine the diagnosis under this criteria.

(b) Once deafness is diagnosed, further assessments by specialists in the field of deaf education are needed for the IEP Team's determination of adverse effect on educational performance and language acquisition. These additional assessments may be conducted by a Teacher of the Deaf/Hearing Impaired, a speech-language pathologist, or other qualified personnel, as deemed appropriate by the IEP Team.

D. Developmental Delay

(1) Definition. A child with a disability aged 3-5, may, at the discretion of the local educational agency, include a child experiencing developmental delays, as defined *below* and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and who, by reason thereof, needs special education and related services. [20 USC 1401(a)(3)(B)(i-ii)]

The measured delays must be so significant as to adversely affect the child's educational performance or achievement in age-relevant, developmentally, and individually appropriate activities such that the child does not achieve or perform at a level commensurate with that of typically developing children of the same age.

Every effort will be made to identify a child's primary disability under one of the other Part B eligibility criteria, reserving developmental delay for those situations in which a clear determination cannot be made under any other category.

For a five-year-old who has transitioned from early childhood special education to a public school, and who has been determined eligible under developmental delay by CDS, and for whom the IEP Team cannot achieve consensus on Part B criteria for the kindergarten year, the SAU may continue the eligible child under the developmental delay criteria for that year consistent with 34 CFR 300.111. During the kindergarten year, the IEP Team will determine by means of further evaluation, assessments and classroom observations., whether the child is eligible as a child with a disability under Part B criteria.

(2) *Procedure for Determination. All steps below are required.*

(a) A developmental delay will be determined through the use of standardized measures intended to examine all five areas of development, and administered by a licensed or certified individual with formal training in professional standards of the assessment of young children.

(b) Criteria for identifying significant delays are scores of at least 1.5 standard deviations below the mean in at least two of the five listed domains or 2 standard deviations below the mean in one of the five listed domains.

(c) The composite standard score of the overall domain will be used to determine a standard deviation below the mean in a developmental area.

(d) The identification of a young child with a developmental delay will include consideration of an observation of the child in the learning environment or an environment appropriate for a child of that age, to document educational performance and behavior in the areas of difficulty. The observation will be done by a certified special education personnel, other than the child's current provider

(e) The IEP Team will determine if the child's delay adversely affects the child's educational performance.

E. *Emotional Disturbance*

(1) Definition. *Emotional Disturbance* means a condition which exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:

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

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

(c) Inappropriate types of behaviors or feelings under normal circumstances;

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

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

The term includes schizophrenia. The term does not apply to students who are "socially maladjusted," unless it is determined that they have an emotional disability. [34 CFR 300.8(c)(4)]

(2) Procedure for Determination. All steps below are required.

(a) Data from general education interventions, if appropriate, utilizing research based intervention techniques indicate that the response to general education intervention is not adequate.

(b) Evaluation will be done by a licensed or certified professional who is qualified to make a diagnostic impression under the DSM codes.

F. Hearing Impairment

(1) Definition. Hearing impairment means an impairment in hearing whether permanent or fluctuating, that adversely affects the child's educational-performance but who is not included under the definition of deafness *in Section VII.(2)(C) of this rule..*[34 CFR 300.8(c)(5)]

(2) Procedure For Determination. All steps below are required.

(a) An audiological and a medical evaluation are to be utilized as part of the multidisciplinary determination of eligibility under this criteria.

(b) The IEP Team will determine if the impairment adversely affects the child's educational performance.

G. Mental Retardation

(1) Definition. Mental retardation means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behaviors and manifested during the developmental period that adversely affect the child's educational performance. [34 CFR 300.8(c)(6)]

(2) Procedure for Determination. All steps below are required.

(a) Diagnostic impression will be based upon an evaluation completed by a licensed or certified professional who is qualified to make a diagnostic impression under current DSM codes, as part of the multidisciplinary evaluation.

(b) The IEP Team will determine if the impairment adversely affects the child's educational performance.

H. Multiple Disabilities

(1) Definition. Multiple disabilities means concomitant impairments the combination of which causes such severe educational needs that the child cannot be accommodated in special educational

programs solely for one of the impairments. The term does not include children who have deaf-blindness. [34 CFR 300.8(c)(7)]

(2) Procedure For Determination. All steps below are required.

(a) A child under this category will have a diagnostic report which specifically articulates the distinct documented disabilities—the combination of which causes such severe educational needs that the child cannot be accommodated in special education programs solely for one impairment. The disabilities are concomitant.

(b) If the IEP Team is unable to determine a primary disability and the conditions under (a) are met, the child should be categorized as a child with multiple disabilities.

(c) The IEP Team will determine if the concomitant disabilities adversely affect the child's educational performance.

I. Orthopedic impairment

(1) Definition. Orthopedic impairment means a severe orthopedic impairment that adversely affects a child'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). [34 CFR 300.8(c)(8)]

(2) Procedure For Determination. All steps below are required.

(a) A referral shall include a diagnosis from a licensed physician as to the existence of an orthopedic impairment, resulting from a congenital anomaly, disease, or other condition.

(b) The IEP Team will determine if the impairment adversely affects the child's educational performance.

J. Other Health Impairment

(1) Definition. Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, such as asthma, attention deficit disorder,

attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, or sickle cell anemia, Tourette Syndrome and adversely affects the child's educational performance. [34 CFR 300.8(c)(9)]

(2) Procedure for Determination. All steps below are required.

(a) Data from general education interventions, if appropriate, using research based intervention techniques indicate that the response to general education intervention is not adequate.

(b) The I.E.P. Team shall consider any available written diagnoses and/or educational, psychological or medical evaluation results relevant to the identification process.

(c) Current diagnostic criteria must have been considered in making the diagnosis or diagnostic impression.

(d) The I.E.P. Team shall review written reports of observations conducted across settings including observations within the educational environment, if the child is participating in an educational environment. These observations must include a comparison of the referred/identified student's behaviors to same-aged peers' behaviors from the same environment.

(e) When considering eligibility due to an attention deficit hyperactivity disorder, diagnostic impressions of ADHD must be based on a multi-method and multi-informant assessment process conducted across multiple environments including the educational setting for children participating in an educational setting. Methods for ADHD assessment must include at least the following:

- *Psychosocial History;*
- *Clinical interviews;*
- *Structured observations of the child's behavior in the educational setting;*
- *Behavior rating scales measuring features of attention, hyperactivity and impulsivity across multiple settings including the educational setting; and*
- *Measures that rule out other disorders that may manifest with similar symptoms.*

(f) A child with a medical condition listed under Other Health Impairment may also be eligible under another category if he or she meets the criteria for that other category and needs special education and related services. All children who have one or more of the conditions listed under Other Health Impairment are not necessarily eligible to receive special education services under IDEA.

K. Speech or Language Impairment

(1) Definition. Speech or language impairment means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects the child's educational performance. [34 CFR 300.8(c)(11)]

(2) Procedure for Determination. All steps below are required.

(a) Data from general education interventions, if appropriate, utilizing research based intervention techniques indicate that the response to intervention is not adequate.

(b) For assessments that provide standard scores, the criteria for determining disability will be in the moderate to severe range for the child's age as determined by the rating scales.

(c) For assessments that do not provide standard scores, criteria for a moderate to severe disability must be met by the quantifiable measure as determined by the rating scales.

(d) For clinical observations documenting the effect of communication on educational performance in evaluation reports, the criteria for meeting a moderate to severe disability must be detailed by the examiner as determined by the rating scales.

(e) Evaluation data shall be entered into a rating scale by the IEP Team which measures a moderate to severe level of speech or language impairment in all levels of assessment

(f) Diagnosis will be by a licensed or certified professional who is qualified to make a diagnosis under this criteria, as reflected below:

- *Certified speech/language clinician*
- *Licensed speech/language pathologist*

L. Specific Learning Disability

(1) Definition. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disabilities does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or environmental, cultural or economical disadvantage. [34 CFR 300.8(c)(10)]

(2) Procedure For Determination. All steps below are required.

(a) The IEP Team may determine that a child has a specific learning disability if:

(i) Data from (e.g. response to intervention) general education intervention, if appropriate, utilizing research based intervention techniques indicate that the response to general education intervention is not adequate.

(ii) The child scores 1.5 or more standard deviations below the mean for the child 's age on tests in one area of psychological processing, or 1 or more standard deviations below the mean in two or more areas of psychological processing. Instruments used for determining processing disorders must have peer reviewed, scientific research documentation, independent of that provided in the test manual, that supports a correlation between the processing problem and the academic deficit; Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test -psychological processing and

(iii) For children in grades 4-12, the following criteria must also be met: The child obtains a composite standardized score that is no lower than 1.5 standard deviations below the mean on at least one index/scale of cognitive functioning from a standardized measure of general cognitive ability. The index/scale must

include at least 3 subtests and the score must be interpretable according to the test used.

(b) Additional group members. The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8 *and VII.2(L) of this rule* must be made by the child's parents and a team of qualified professionals, which must include:

(i) The child's regular teacher; or

(ii) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(iii) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(iv) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. [20 U.S.C. 1221e–3; 1401(30); 1414(b)(6)) and 34 CFR 300.308]

(c) Determining the existence of a specific learning disability.

(i) The group described in 34 CFR § 300.306 and 2(a) above may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—

(I) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

(aa) Oral expression.
(bb) Listening comprehension.
(cc) Written expression.
(dd) Basic reading skill.
(ee) Reading fluency skills.
(ff) Reading comprehension.
(gg) Mathematics calculation.
(hh) Mathematics problem solving.

(II) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (i)(I) of this section when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305*[Section V]*; and

(III) The group determines that its findings under paragraphs (i)(I) and (II) of this section are not primarily the result of—

(aa) A visual, hearing, or motor disability;
(bb) Mental retardation;
(cc) Emotional disturbance;
(dd) Cultural factors;
(ee) Environmental or economic disadvantage; or
(ff) Limited English proficiency.

(ii) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306*[Section V]*—

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

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

(iii) The public agency must promptly request parental consent to evaluate the child to determine if the

child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.306(a)(1)—

(I) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (ii(I) and (ii)(II) of this section; and

(II) Whenever a child is referred for an evaluation. (Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6)) [34 CFR 300.309]

(d) Observation.

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

(ii) The group described in § 300.306(a)(1)*[Section VI]*, in determining whether a child has a specific learning disability, must decide to—

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

(II) Have at least one member of the group described in §300.306(a)(1) *[Section VI]* conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.

(iii.) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. (Authority: 20 U.S.C. 1221e–3; 1401(30); [34 CFR 300.310]

(e) Specific documentation for the eligibility determination.

(i) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—

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

(II) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);

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

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

(V) Whether— The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1) *[Section VII.2.L(2)(c)(i)(I)];* and the child does not make sufficient progress to meet age or State approved grade-level standards consistent with § 300.309(a)(2)(i) *[Section VII.2.L(2)(c)(i)(II)];* or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2)(ii);

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

(VII) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(aa) The instructional strategies used and the student-centered data collected; and

(bb) The documentation that the child's parents were notified about—

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

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

C) The parents' right to request an evaluation.

(ii) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. (Authority: 20 U.S.C. 1221e–3; 1401(30); and 34 CFR 300.311]

M. Traumatic Brain Injury

(1) Definition. Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment or both that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. [34 CFR 300.8(c)(12)]

(*2*) *Procedure For Determination. All steps below are required.*

(a) *Evaluation will be done by a licensed professional who is qualified to make the diagnosis.*

(b) *The IEP Team will determine if the impairment adversely affects the child's educational performance.*

N. Visual Impairment including Blindness

(1) Definition. Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects the child's educational performance. The term includes both partial sight and blindness. [34 CFR 300.8(c)(13)]

(2) Procedure For Determination. The step below is required.

(a) A child displays a visual impairment when a visual impairment or a progressive vision loss has been diagnosed by a licensed, qualified optometrist or ophthalmologist, and the referral indicates that the child displays a visual impairment.

***3.* Data Based Procedure for Eligibility Determination**

NOTE: This provision applies only through June 30, 2011; the former language of the rule is restored on that date.

A. Federal background.

For a child to access special education services, the IEP or IFSP Team must determine that he or she is a "child with a disability" as defined in federal regulations (34CFR §300.8).

In these cases, three elements must be shown:

1. that the specific disability exists;
2. that the disability "adversely affects the child's educational performance;" and
3. that by reason of the disability, the child "needs special education and related services."

B. The "adversely affects" requirement.

Although federal regulations do not define "adversely affects," the word "adverse" commonly means "harmful, impeding, obstructing or detrimental." "Adversely affects" means having a negative impact that is more than a small or transient hindrance. It means a chronic or episodic condition, not merely detectable, but distinctly measurable over time.

It is evidenced by persistent findings and observations based on objective assessments with replicable results. It does not include minor or transitory effects or those that are commonly experienced by children in the general population.

For children 3 to 20, a disability that "adversely affects educational performance", which means academic and functional areas, is one that creates a

distinctly measurable and persistent gap between the demands of the educational setting and the child's educational performance (as defined in item #10 of Section II).

C. Procedure for Determination.
The IEP Team's determination of adverse effect shall be based upon the results of no fewer than two (2) assessments or data sources, determined by the team to be appropriate, that measure the area(s) of educational performance, which means academic and functional areas, affected and the child's unique strengths and needs. The following are examples of assessments or data sources to serve as a guide that the IEP team might determine are appropriate:

(1) Standard or percentile scores on a nationally normed individually administered achievement test; or, for children ages 3 to 5, an appropriate multi-domain nationally normed test or rating scales;

(2) Standard or percentile scores on a nationally normed group administered achievement test, including nationally normed curriculum-based measures;

(3) Any reports prepared by the SAU that reflect academic or functional performance;

(4) Performance on comprehensive assessments based on Maine's Learning Results or measurement of indicators within the Early Childhood Learning Guidelines;

(5) Criterion referenced assessments of academic or functional performance;

(6) Student work products, language samples or portfolios;

(7) Disciplinary evidence or rating scales based on systematic observations in more than one setting by professionals or parents;

(8) In cases of reevaluation, a determination by the IEP Team, including the parent, that adverse performance may result from removal of current supports and services that cannot be provided by general education;

(9) Attendance patterns; or

(10) Social or emotional deficits as observed by professionals or parents in multiple settings, in clinical rating scales or in clinical interviews.

The consideration of assessments or data sources relates only to the adverse effect prong of three parts of eligibility determination noted in (A) above.

D. Documentation

The evaluation process must include documentation of the intervention strategies employed in a general education setting for children ages 3 to 20. The documentationshall include:

(1) Each type of strategy considered by the IEP Team;

(2) The findings of the IEP Team, with respect to each strategy considered, as to whether the measure is sufficient to support a finding of adverse effect and a need for special education services;

(3)The specific testing, data, scores, student work and education records relied upon by the Team to support its findings; and

(4)An identification of each academic, functional, or developmental domain affected by the child's disability.

E. Needs special education and related services.

Although federal regulations do not define "needs," the word commonly signifies something necessary, something exigent or the "lack of something essential." A child "needs" special education and related services when, because of the disability, the child can neither progress effectively in a regular education program nor receive reasonable benefit from such a program in spite of other services available to the child.

The need is best established through evidence of a distinctly measurable and persistent gap in the child's educational or functional performance that cannot be addressed through services or accommodations available through the general education program.

4. **Criteria For Change in Eligibility.**

A child's change in eligibility shall be made by the IFSP/IEP Team and shall be based on the recommendation of the members of the IFSP/IEP Team utilizing the following criteria:

A. In school/preschool/natural environment: The child no longer meets eligibility standards for either early intervention or special education services.

(1) Measured achievement on IFSP/IEP goals and data indicate adequate progress;

(2) Needs can be met through identified general educational services;

(3) A plan is in place for assessing that the student continues to make progress once the IEP is terminated, including a plan for what will be done if progress ceases after change in eligibility; and

(4) No pre-referral would be required if the child's progress lessens during the same school year as a change in eligibility.

B. Graduation; or

C. Aging out.

Except for children who graduate or age out, the SAU shall evaluate a child consistent with Section V(1),(2)and (3) of this rule, before determining that the child is no longer a child with a disability.

Even if the services are discontinued, a child can be referred again at a later date. If a child is re-referred, the IFSP/IEP Team shall compare the reason for the referral with information on the previous change in eligibility. The IFSP/IEP Team must then determine, on an individual child basis, the appropriate course of action to be taken.

VIII. ELIGIBILITY FOR FAPE FOR FIVE YEAR OLDS BY PARENT CHOICE

Notwithstanding Section II.35 of this rule, parents of children whose fifth birthday falls between July 1st and October 15th and who are already receiving free appropriate public education (FAPE) services through Child Development Services (CDS) have the right to choose not to enroll their children in kindergarten until the start of the following school year and to have their child continue to receive FAPE services from CDS in the interim. A child is considered to have been already receiving FAPE services through CDS if they were counted in the prior year's December 1st Child Count. [20-A MRSA §7001 (2-A)]

1. Parental Choice:

The parents of an eligible five-year-old child have the right to choose whether to enroll their child in kindergarten or continue to receive FAPE services through CDS.

A. Regional CDS sites are responsible for notifying parents of eligible children in writing of this right to choose on or before January 1st of the year the child is eligible for kindergarten.

B Parents must inform their regional CDS site of their decision, in writing, on or before May 1st of the year their child becomes school age eligible.

C. The parents must provide informed consent to their regional CDS site. That consent must include an explanation of the option for their child to either remain in the CDS System or the option to enroll in kindergarten and the specific free, appropriate public education services that are available in kindergarten.

2. Joint IEP Team Meeting

A. CDS regional sites shall convene a joint IEP Team meeting with the receiving SAU on or before April 15th for each child whose fifth birthday falls between July 1st and October 15th and who is already receiving FAPE services through CDS, in order to discuss and document the programs being offered by both the CDS regional site and the SAU. The joint IEP Team meeting is not required if the parent has already informed the CDS site of their decision in writing; however, each CDS regional site remains responsible for ensuring that a transition IEP Team meeting occurs with the receiving SAU for all children who will be attending the SAU in the fall.

3. Fiscal Process

A. The regional CDS site will submit to the CDS State Office a copy of the Individualized Family Service Plan (IFSP) consistent with 20 USC

1436(a)(3)(b-c) or Individualized Education Program (IEP) for each eligible child whose parents elect to receive services pursuant to this section.

B. On a monthly basis, the regional CDS site will submit invoices to the CDS State Office for payment to the site for the services actually rendered to the child in the prior month.

4. Request For Consideration

A. If a parent has been unable to inform their regional CDS site of their choice by May 1st, they can submit a request for consideration to the CDS State Office by June 15th.

IX. INDIVIDUALIZED PLANS

1. Individualized Family Service Plans (IFSPs) for Children B-2 [20 USC 1436(a)(3),(b-e)]

A. Definition. A written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (E), including a description of the appropriate transition services for the infant or toddler.

B. Periodic Review. The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

C. Promptness After Assessment. The individualized family service plan shall be developed within a reasonable time after the assessment required is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

D. Content of Plan. The individualized family service plan shall be in writing and contain--

(1) A statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) A statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) A statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

(4) A statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) A statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(6) The projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

(7) The identification of the *case manager* from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

(8) The steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

E. Parental Consent. The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

2. IFSPs for Children 3-5

Federal statute permits the use of the IFSP to record the special education and related services provided under Part B for children 3-5**.** In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team must consider the individualized family service plan that contains the IFSP content (including the natural environments statement) described in 20 USC 1436 and its implementing regulations including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age, and that is developed in accordance with the IEP procedures. The individualized family service plan may serve as the IEP of the child, if using that plan as the IEP is consistent with State policy; and agreed to by the agency and the child's parents. In implementing the requirements of this paragraph the SAU must provide to the child's parents a detailed explanation of the differences between an IFSP and IEP, and if the parents choose an IFSP, obtain written, informed consent from the parents. [34 CFR 300.323(b)]

The utilization of the IFSP does not afford the child the option of continuing the Part C services. The option for the continuation of Part C services for children 3-

5 is not available in Maine. Part C of the Act (IDEA) does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds under Section 619 of the Act. [34 CFR 300.818]

3. Individualized Education Programs (IEPs) for Children Three to Twenty-[20 USC 1414(d)(1-4) excluding (d)(2)(B) covered above]

A. Definitions.

(1) In general. The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes:

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

(i) How the child's disability affects the child's involvement and progress in the general education curriculum;

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(iii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;

(b) A statement of measurable annual goals, including academic and functional goals, designed to:

(i) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum *which must be for children 3-5 aligned with the Early Learning Guidelines and for children 5-20 aligned with the system of Maine's Learning Results*; and

(ii) Meet each of the child's other educational needs that result from the child's disability;

(iii) *The IEP shall reflect the individual goals to successfully meet the content standards of the*

system of Maine's Learning Results in addition to any other diploma requirements applicable to all secondary school children pursuant to 20-A MRSA §4722.

(c) A description of how the child's progress toward meeting the annual goals described in (b) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(d) A statement of the special education (*Section X of this rule*) and related services (*Section XI of this rule*) and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with (a) and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and non-disabled children in the activities described in this subparagraph;

(e) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the activities described in (d)(iii);

(f)

(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments consistent with 20 USC 1412(a)(16)(A); and

(ii) If the IEP Team determines that the child shall take an alternate assessment on a particular State or

district-wide assessment of student achievement, a statement of why--

(I) The child cannot participate in the regular assessment; and

(II) The particular alternate assessment selected is appropriate for the child;

(g) The projected date for the beginning of the services and modifications described in subclause (d), and the anticipated frequency, location, and duration of those services and modifications; and

(h) *Beginning no later than 9th grade the IEP Team will start the transition plan and it will be* updated annually thereafter:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(ii) The transition services (including courses of study, such as participation in advanced placement courses, a vocational education program, or adult education program, and instruction, related services, community experiences, the development of employment and post school adult living objectives and if appropriate, acquisition of daily living skills and the provisions of a functional vocational evaluation per 34 CFR 300.43) needed to assist the child in reaching those goals; and

(iii) Beginning not later than 1 year before the child reaches the age of *eighteen* a statement that the child has been informed of the child's rights under this title [IDEA], if any, that will transfer to the child on reaching *eighteen years of age.*

(2) Rule of Construction**.** Nothing in this section shall be construed to require:

(a) That additional information be included in a child's IEP beyond what is explicitly required in this section; and

(b) The IEP Team to include information under one component of a child's IEP that is already contained under another component of such IEP.

B. Requirement That Program Be in Effect.

(1) General. At the beginning of each school year, each SAU must have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (3)(A). [34 CFR 300.323(a)]

(2) Initial IEPs; Provision of Services. Each SAU must ensure that

(a) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(b) As soon as possible following development of the IEP, special education and relates services are made available to the child in accordance with the child's IEP. [34 CFR 300.323(c)]

(3) *Implementation of the Individualized Education Program*

Each school administrative unit shall implement a child with a disability's Individualized Education Program as soon as possible following the IEP Meeting but no later than 30 days after the IEP Team's initial identification of the child as a child with a disability in need of special education and supportive services. All identified children with disabilities shall have a current Individualized Education Program in effect at the start of each school year.

If a school unit is unable to hire or contract with the professional staff necessary to implement a child's Individualized Education Program, the SAU shall reconvene an IEP Team to identify alternative service options. This IEP Meeting shall occur no later than 30 days after the start of the school year or the date of the IEP Team's development of the IEP. The IEP Team shall determine any amendments to the IEP necessary to reflect the inability to commence services as originally anticipated by the IEP Team.

(4) Accessibility of child's IEP to teachers and others. Each SAU must ensure that

(a) The child's IEP is accessible to each regular education teacher, special education teacher, related services

provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in paragraph (3)(a) of this section is informed of

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

(ii) The specific accommodations, modifications , and supports that must be provided for the child in accordance with the IEP. [34 CFR 300.323(d)]

(5) Program for Children Who Transfer School Districts.--

(a) In general.

(i) IEPs for Children Who Transfer SAUs in the Same State**.**—If a child with a disability(who had an IEP that was in effect in a previous SAU in the same State) transfers to a new SAU in the same State, and enrolls in a new school within the same school year, the new SAI (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous SAU), until the new SAU either adopts the child's IEP from the previous SAU; or develops, adopts, and implements a new IEP that meets the applicable requirements in 300.320 through 300.324. [34 CFR 300.323(e)]

(ii) IEPs for Children Who Transfer From Another State. –If a child with a disability (who had an IEP that was in effect in a previous SAU in another State) transfers to a SAU in a new State, and enrolls in a new school within the same year, the new SAU (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous SAU), until the new SAU

(I) Conducts an evaluation pursuant to 34 CFR 300.304 through 300.306 (if determined to be necessary by the new SAU); and

(II) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR 300.320 through 300.324. [34 CFR 300.323(f)]

(b) Transmittal of records**.--**To facilitate the transition for a child described in clause (a):

(i) The new SAU in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous SAU in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(ii) The previous SAU in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new SAU. [34 CFR 300.323(g)] *Education records must follow students who transfer to a school in another school administrative unit in the State. The education records of students who transfer from educational programs or schools for juveniles located in or operated by correctional facilities or out of state schools are also subject to this requirement. [20-A MRSA §6001-B(1)]*

C. Development of IEP.

(1) In general.--In developing each child's IEP, the IEP Team, subject to subparagraph (3), must consider:

(a) The strengths of the child;

(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 child; and

(d) The academic, developmental, and functional needs of the child.

(2) Consideration of Special Factors.--The IEP Team shall:

(a) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(b) In the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

(c) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(d) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

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

(3) Requirement with Respect to Regular Education Teacher.--A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with *Section IX(3)(A)(1)(d)of this rule.*

(4) Agreement. In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the SAU may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP. If changes are made to the child's IEP in accordance with 34 CFR

300.324(a)(4)(i) the SAU must ensure the child's IEP Team is informed of these changes [34 CFR 300.324(a)(4)] *and the parent is provided prior written notice in accordance with 34 CFR 300.503.*

(5) Consolidation of IEP Team Meetings.--To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments.--Changes to the IEP may be made either by the entire IEP Team or, as provided in (4) above, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated. [34 CFR 300.324(a)(1-6)]

D. Review and revision of IEP.

(1) In general.--The SAU shall ensure that, subject to C.2 above, the IEP Team:

(a) Reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(b) Revises the IEP *consistent with C above (Development of IEP)* as appropriate to address

(i) Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

(ii) The results of any reevaluation conducted under this section;

(iii) Information about the child provided to, or by, the parents, as described in 20 USC 1414(c)(1)(B);

(iv) The child's anticipated needs; or

(v) Other matters. [34 CFR 300.324(b)(1)]

(c) Consideration of Special Factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in C.2 of this section. [34 CFR 300.324(b)(2)]

(d) Requirement with Respect to Regular Education Teacher . A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph(C)(3) of this section, participate in the review and revision of the IEP of the child. [34 CFR 300.324(b)(3)]

E. Failure of Transition Objectives

(1) Participating Agency Failure. If a participating agency other than the SAU, fails to provide the transition services described in the IEP in accordance with 34 CFR 300.320(b), the SAU must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would other wise provide to children with disabilities who meet the eligibility criteria of that agency. [34 CFR 300.324(c)]

F. Children with Disabilities in Adult Prisons

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

(a) The requirements contained in section 14612(a)(16) of the Act and 34 CFR 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(b) The requirements in 34 CFR 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or Placement.

(a) Subject to paragraph (F)(2)(b) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling

penological interest that cannot otherwise be accommodated.

(b) The requirements of 34 CFR 300.320 (relating to IEPs), and 34 CFR 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph D(2)(b) of this section. [34 CFR 300.324(d)]

G. *Copy of IEP to Parents. A complete copy of the Individualized Education Program shall be provided to the parent within 21 school days of the IEP Meeting at which the IEP was developed.*

H. *IEP Requirements in Out-of-Unit Placements.--Before an IEP Team decides to place a child with a disability in an out-of-unit placement, it shall initiate and convene an IEP meeting to develop an Individualized Education Program for the child. The IEP developed will reflect the Team's program design to meet the child's needs and will include goals for the child's growth in the areas of concern. The IEP Team shall discuss and document the program components of a placement that will support the IEP developed at this meeting. If the placement is known, a representative of the placement shall be involved in this meeting. If a representative cannot attend the meeting, the IEP Team shall attempt to use other methods, such as individual or conference telephone calls, to ensure participation by the receiving placement. If the placement is not known, another IEP Team Meeting shall be held to discuss the child's program at the new placement,* including the representative of the private school or facility. If the representative cannot attend, the SAU must use other methods to ensure participation by the private school or facility, including individual or conference calls *pursuant to 34 CFR 300.325(a)(2).*

The SAU will locate a facility and finalize the child's placement. Any appropriate out-of-unit placements shall be as close to the child's home as possible.

The IEP Team will reconvene 30 days subsequent to placement to review the IEP and make any revisions required. In the interim, the IEP that has been developed for a child's current setting shall be utilized while the proposed placement is located and finalized.

I. *Revision of Out-of-Unit IEPs. The sending SAU has the administrative responsibility for the education of a child with a disability who has been placed in an out-of-unit placement. The receiving (out of unit) placement is the placement that has accepted the tuition placement of a child with a disability.*

The sending SAU is responsible for:

(1) Initiating the 30 day IEP review meeting and any other reviews recommended;

(2) Initiating the required annual review of the child's IEP and placement;

(3) Revising the child's Individualized Education Program as a result of any meetings;

(4) Ensuring the completion of any required re-evaluations of a child,

(5) Participating in any meetings related to proposed changes in the child's Individualized Education Program;

(6) Ensuring the parent's involvement in the meetings;

(7) Providing prior written notice as defined in Section XV of this rule; and

(8) Ensuring compliance with this rule.

The sending SAU shall schedule IEP meetings at a mutually convenient time for all parties and shall notify the receiving placement and the parents of the meeting, as described and defined in Section VI.2.(A) of this rule. A copy of each such notification shall also be sent by the sending SAU to the receiving placement.

The receiving placement is responsible for:

(1) Providing representative attendance at the initial IEP Team Meeting when requested by the sending SAU;

(2) Providing representative attendance at the 30 day IEP review meeting;

(3) Providing representative attendance at the annual review and at any other meetings when the receiving placement or the sending SAU propose to revise a child's Individualized Education Program;

(4) Implementing a child's Individual Education Program; and

(5) Ensuring compliance with these rules and the Individuals with Disabilities Education Act

X. EARLY INTERVENTION /SPECIAL EDUCATION SERVICES AND SETTINGS

1. Early Intervention Services, including Special Instruction in Natural Environments Birth-2

"Early intervention services" means developmental services that are provided under public supervision; are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees; are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team in one or more of the following areas, physical development, cognitive development, communication development, social or emotional development or adaptive development; meet the standards of the state in which the services are provided; are provided by qualified personnel; to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and are provided in conformity with an individualized family service plan. [20 USC 1432(4)] Appropriate early intervention services must be based upon scientifically based research.

Early intervention services are built upon the principles and procedures of evidence-based practice. These family-centered practices are based on the outcome of well-controlled, replicable experience and client values. Early Intervention Practitioners provide instruction, support and resources to assist family members and caregivers in their facilitation of children's learning and development in the natural environment and in the context of everyday activities that provide learning opportunities throughout the child's day.

A. Natural Environment for Children Birth to 2. *The primary role of a service provider in early intervention is to work with and support family members and caregivers in children's everyday routines and learning opportunities.*

To the maximum extent appropriate, early intervention services are provided in natural environments, including the home and community settings in which children without disabilities participate and are provided in conformity with an Individualized Family Service Plan (IFSP). [20 USC 1432(a)(4)(G,H)]

B. ***Evidence Based Early Intervention Practices****. For children B-2 the preferred model of service delivery is the provision of services that are embedded in everyday routines and activities by a primary coach in the child's natural environment. This primary coach will be selected from, and is supported by, a multidisciplinary team of professionals including a B-2 case manager, an early childhood special educator/early intervention specialist, an occupational therapist, a physical therapist, and a speech-language pathologist, and/or other qualified professionals as determined by the IFSP Team, which includes the parent(s). The primary coach for each family and the child will be determined by the child's IFSP team based upon the family's desired outcomes and the*

knowledge/expertise of the coach. The coach will work with and support the family/ caregivers to promote progress toward the IFSP outcomes.

(1) Special Instruction, Birth – 2. Special instruction includes the design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction; curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan; providing families with information, skills, and support related to enhancing the skill development of the child; and working with the child to enhance the child's development. [34 CFR 303.12(a)(13)].

(2) *Early Intervention Team Consultation Services. Consultation services may be provided by team members or other qualified professionals to the primary coach or family members in team meetings and in the natural environment to the primary coach. families, and caregivers or teachers of children B-2 to assist them in modifying and/or adapting their natural learning activities to enable children to appropriately advance toward achieving the goals set out in their IFSP. Consultation services shall be provided by an appropriately licensed or certified early intervention professional employed or contracted by an SAU.*

(3) Duration of Services. The IFSP for a child B-2 is to be written on the basis of a twelve month program year, unless the IFSP Team recommends that the duration of services be less than twelve months, based on the individual needs of the child.

(4) Qualified Staff. Special Instruction and/or early intervention services provided to a child with a disability shall be considered as a part of the child's early intervention program, shall be specified in the child's IFSP and shall be provided by appropriately licensed or certified education personnel, or licensed contractors. An educational technician III approved by the Office of Certification of the Department may provide special instruction when supervised by the certified special education teacher responsible for the program. See Section XVII.AC of this rule

(5) Supervision of Educational Technicians. Supervision of educational technicians shall be as required by Maine Department of Education Regulations Chapter 115.

EDUCATIONAL TECHNICIAN	***Permitted Responsibilities***	***Required Supervision***
I	*(a) Review and reinforce learning previously introduced by the classroom teacher or appropriate content specialist, or assist in drill or practice activities;* *(b) Perform non-instructional, non-evaluative functions;* *(c) Assist in the preparation of instructional materials; and* *(d) Provide classroom management functions.*	*(a) Be assigned instructional duties that are directly supervised by the classroom teacher or appropriate content specialist in the classroom; or* *(b) Serve under general administrative supervision when performing non-instructional student-related duties.*
II	*(a) Perform all of the duties of an Educational Technician I; and* *(b) Introduce new learning preplanned in collaboration with the classroom teacher or appropriate content specialist.*	*(a) Meet with the classroom/program teacher or appropriate content specialist and receive direction on a regular basis, whenever possible on a daily basis;* *(b) Perform short-term instruction in small groups under the direct supervision of the teacher or appropriate content specialist in the classroom; or* *(c) Conduct one-on-one or small group instruction with indirect supervision.*
III	*(a) Perform all of the duties of an Educational Technician I or II;* *(b) Introduce new learning preplanned in consultation with the classroom teacher or appropriate content specialist; and* *(c) Supervise small groups of students in community-based programs.*	*(a) Meet with the classroom/program teacher or appropriate content area specialist and receive direction, whenever possible on a twice weekly basis; or* *(b) Perform short-term instruction in small classes or in community-based programs with indirect supervision.*

An Educational Technician I, II, or III may not work with more than five children at any one time.

2. Special Education in the Least Restrictive Environment for Children Three to Twenty

A. Types of Special Education

(1) *Consultation Services. Consultation services may be provided to general education teachers of children with disabilities to assist them in modifying and/or adapting their general education curriculum to enable children to appropriately progress in the general curriculum and to appropriately advance toward achieving the goals set out in their IFSP/IEP. Consultation services shall be provided by an appropriately certified and or licensed special education professional employed or contracted by an SAU.*

When a special education teacher responsible for case management and specially designed instruction also provides regularly scheduled consultation services, the caseload permitted shall be no greater than 35 students for each full-time equivalent, special education teacher.

When a speech/language clinician or pathologist responsible for case management and specially designed instruction also provides regularly scheduled consultation services, the caseload permitted shall be no greater than 50 children for each full-time equivalent speech-language pathologist or speech clinician.

When a licensed occupational therapist or licensed physical therapist responsible for specially designed instruction also provides regularly scheduled consultation services, the caseload permitted shall be no greater than 50 children for each full-time equivalent provider.

The caseload limits apply to the number of children for whom a special education teacher carries the responsibility for case management and/or consultation in addition to specially designed instruction.

(2) Specially Designed Instruction. Specially designed instruction means adapting, as appropriate to the needs of an eligible child under Part B of IDEA, the content, methodology, or delivery of instruction to address the unique needs of the child that results from the child's disability, and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the SAU that apply to all children [34 CFR 300.39(b)(3)]. *Specially designed instruction is instruction provided to children ages three to twenty by an appropriately*

certified or licensed special education professional or an appropriately authorized and supervised educational technician consistent with a child's IEP. The design and delivery of services is uniquely designed to assist children to meet the goals of the child's IEP.

This includes (for children 3-5):

** Embedding a child's goals into developmentally appropriate activities or into the general education curriculum.*

** Designing learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, as well as generalization of those skills across a variety of environments, and:*

** Planning curriculum/treatment, including the planned interaction of personnel, materials, and time and space, that leads to achieving the goals in the child's IEP, and the ongoing assessment of progress through the recording of the child's measured performance over time (data collection).*

(a) Frequency and Intensity (For Children 3-5)

For purposes of compliance with this rule, the appropriate frequency and intensity of center-based specially designed instruction (developmental therapy) for any child 3-5 eligible for such instruction is presumed to be as follows:

- *No more than six (6) hours per week for children two (2) years prior to kindergarten; and no more than nine (9) hours per week for children one (1) year prior to kindergarten. In addition, the appropriate duration of center-based specially designed instruction (developmental therapy) for children age 3-5 is presumed to be no longer than the duration of the public school year.*

- *For purposes of compliance with this rule, the appropriate frequency and intensity of home-based specially designed instruction (developmental therapy) for any eligible child is presumed to be no more than five (5) hours per week for children 3-5.*

- *In making recommendations for specially designed instruction (developmental therapy) the IEP Team must consider the amount of time recommended for other*

services for the child, and the goals relative to those other services, in order to avoid duplication.

- *The presumption of the appropriate frequency, intensity or duration of specially designed instruction (developmental therapy) may be rebutted, in the case of any individual child, by an IEP Team decision based on consideration of the following:*

  (i) An evaluation by an SAU's qualified evaluator who is not the child's provider of specially designed instruction (developmental therapy) that includes a recommendation of a greater frequency, intensity or duration of special instruction; and

  (ii) Documentation, in the child's IEP, of the modifications and supports that have been tried or considered in the specially designed instruction program of the frequency, intensity or duration considered typical for the age of the child and rejected as inappropriate, and why. The required documentation will include consideration of the child's progress toward the successful completion of goals based on the child's present level of educational performance, and included in the child's IEP.

(b) Program Teacher:Child Ratio

Ages 3-5	*1:1 to 1:4*	*Self Contained*
	1:1 to 1:12	*Inclusive Placement*

(3) Speech and Language Services. Speech and Language services are provided by a Speech-Language pathologist licensed by the Maine Board of Examiners of Speech-Language Pathologists and Audiologists, or speech and language clinician certified by the Department when recommended by the IEP Team and included in the student's Individualized Education Program. The maximum child-therapist caseload, including case management, consultation, and direct services, shall not exceed 50 for each full-time equivalent speech-language pathologist or speech and language clinician.

A certified speech and language clinician may provide speech and language services if employed by a school administrative unit. A certified speech and language clinician shall also be licensed by the Maine Board of Examiners of Speech-Language Pathologists

and Audiologists in order to provide contracted speech and language services (See Section XVIII.(1)(C)of this rule).

A speech-language pathology aide or assistant registered with the Board of Speech-Language Pathology and Audiology may provide speech and language services under the supervision of a licensed speech-language pathologist as required by 32 MRSA Chapter 77 and accompanying regulations relating to the practice of speech-language pathology.

(4) *Tutorial Services. Tutorial services are services provided to any child with a disability who is unable to participate in a school administrative unit's regular or special education classes as determined by the IEP Team consistent with the federal requirements of least restrictive environment. Tutorial services may occur in school, off site in a neutral setting, in an interim alternative education setting, in the child's home, or in a hospital setting.*

Any tutorial services offered to a child with a disability shall be provided by an appropriately certified special education teacher, by a certified regular education teacher, or by an educational technician III.

Tutorial services shall be determined on an individual basis by the IEP Team and shall consist of services necessary to enable the child to continue to participate in the general curriculum and to progress toward meeting the goals set out in the child's IEP.

There is no minimum or maximum number of hours a day that must be provided, rather the determination will be made by the IEP Team on an individual basis.

If the duration of the tutorial services is anticipated to exceed 10 school days, an IEP Team shall convene to develop a new Individualized Education Program.

(5) Qualified Staff. *Special education and/or related services provided to a child with a disability shall be considered as a part of the child's special education program, shall be specified in the child's IFSP/IEP and shall be provided by appropriately certified education personnel, or licensed contractors. An Educational Technician approved by the Office of Certification of the Department may provide special education services when supervised in accordance with requirements of Chapter 115.See Section XVIII(1)(C) of this rule for costs of qualified personnel.*

If a school administrative unit is unable to hire qualified staff for the provision of related services, the unit shall make an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel to provide related services to children with disabilities. In a geographic area of the State where there is a shortage of qualified personnel who meet the requirements of this section, the unit may hire the most qualified individuals available who are making satisfactory progress toward completing, within three years, the applicable course work necessary to meet the licensing standards described in Chapter 115.

Federal Requirement	How Maine Meets the Requirement
• All special education teachers must hold at least a bachelor's degree and must obtain full State special education certification or equivalent licensure.	• *All special education teachers must hold at least a bachelor's degree and must obtain full State special education certification or equivalent licensure, which requires passing the Special Education PRAXIS II exam*
• Special education teachers who teach only core subjects exclusively to the most severely disabled children and those who teach more than one core subject who meet the IDEA criteria are considered as meeting ESEA.	• *All special education teachers must hold at least a bachelor's degree and must obtain full State special education certification or equivalent licensure, which requires passing the Special Education PRAXIS II exam.*
• New and veteran teachers who teach core subjects exclusively to children with disabilities who are assessed against alternative achievement standards are considered highly qualified by meeting ESEA standards.	• *New and veteran teachers who teach core subjects exclusively to children with disabilities who are assessed against alternative achievement standards are considered highly qualified by meeting Maine Highly Qualified standards (see previous answers) for the level of the standards at which their students are assessed.*
• New and veteran teachers at the elementary level may take HOUSSE.	• *Per USDE 2006 guidance, HOUSSE may only be used for: teachers hired after the end of the 2005-06 school year, with those secondary school teachers teaching multiple subjects in eligible rural schools (who, if highly qualified in at least one subject at the time of hire, may use HOUSSE to demonstrate competence in additional subjects within three years); and special education teachers (who, if they are new to the profession and highly qualified in language arts, mathematics, or science at the time of hire) to demonstrate competence in additional subjects within two years. Veteran teachers already operating under*

Federal Requirement	How Maine Meets the Requirement
	HOUSSE may continue to pursue "Highly Qualified" status per their "Teacher Action Statement".
• Teachers at middle and high school must demonstrate subject matter knowledge appropriate to the level of instruction as determined by the State.	*Teachers at middle and high school must demonstrate subject matter knowledge appropriate to the level of instruction by the use of HOUSSE if eligible or by passing the PRAXIS II. Those special education teachers teaching multiple subjects (who, if they are new to the profession and highly qualified in language arts, mathematics, or science at the time of hire), may use HOUSSE to demonstrate competence in additional subjects within two years.*
• New and veteran teachers who teach two or more core subjects exclusively to children with disabilities qualify by meeting core requirements of each subject.	• *New and veteran teachers who teach core subjects exclusively to children with disabilities, who are assessed against alternative achievement standards, are considered highly qualified by meeting Maine "Highly Qualified" standards (see previous answers) for the level of the standards their students are assessed.*
• Veteran teachers teaching two or more core subjects may qualify with an ESEA HOUSSE (with a single evaluation of multiple subjects).	• *HOUSSE may only be used, for teachers hired after the end of the 2005-06 school year, with those secondary school teachers teaching multiple subjects in eligible rural schools (who, if highly qualified in at least one subject at the time of hire, may use HOUSSE to demonstrate competence in additional subjects within three years), and special education teachers (who, if they are new to the profession and highly qualified in language arts, mathematics, or science at the time of hire) may use HOUSSE to demonstrate competence in additional subjects within two years.*
• Newly hired special education teachers teaching two or more core subjects who are already highly qualified in	• *Newly hired special education teachers teaching two or more core subjects who are already highly qualified in*

Federal Requirement	How Maine Meets the Requirement
mathematics, language arts, or science have two (2) years from date of employment to meet highly qualified status in other core areas.	*mathematics, language arts, or science have two (2) years from date of employment to meet "highly qualified" status in other core areas.*
• Consultative teachers who do not provide direct instruction in a core subject need a bachelor's degree and must be fully certified.	*Consultative teachers who do not provide direct instruction in a core subject need a bachelor's degree and must be fully certified*

NOTE: The requirements in this section [regarding highly qualified teachers] do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by SAUs to provide equitable services to parentally placed private school children with disabilities under 34 CFR 300.138 [34 CFR 300.18(h)]

NOTE: The teachers of children who are publicly placed in private schools shall meet the program approval standards in 20-A MRSA §7204(4) and in Section XII of this rule.

(6) Supervision of Educational Technicians. Supervision of educational technicians shall be as required by Maine Department of Education Regulations Chapter 115 with the following exception:

EDUCATIONAL TECHNICIAN	***Permitted Responsibilities***	***Required Supervision***
I	*(a) Review and reinforce learning previously introduced by the classroom teacher or appropriate content specialist, or assist in drill or practice activities;* *(b) Perform non-instructional, non-evaluative functions;* *(c) Assist in the preparation of instructional materials; and* *(d) Provide classroom management functions.*	*(a) Be assigned instructional duties that are directly supervised by the classroom teacher or appropriate content specialist in the classroom; or* *(b) Serve under general administrative supervision when performing non-instructional student-related duties.*
II	*(a) Perform all of the duties of an Educational Technician I; and* *(b) Introduce new learning preplanned in collaboration with the classroom teacher or appropriate content specialist.*	*(a) Meet with the classroom/program teacher or appropriate content specialist and receive direction on a regular basis, whenever possible on a daily basis;* *(b) Perform short-term instruction in small groups under the direct supervision of the teacher or appropriate content specialist in the classroom; or* *(c) Conduct one-on-one or small group instruction with indirect supervision.*
III	*(a) Perform all of the duties of an Educational Technician I or II;* *(b) Introduce new learning preplanned in consultation with the classroom teacher or appropriate content specialist; and* *(c) Supervise small groups of students in community-based programs.*	*(a) Meet with the classroom/program teacher or appropriate content area specialist and receive direction, whenever possible on a twice weekly basis; or* *(b) Perform short-term instruction in small classes or in community-based programs with indirect supervision.*

An Educational Technician I, II, or III may not work with more than five children at any one time.

(7) Extended School Year Services: Extended school year (ESY) means special education and related services that are provided to a

child age three to twenty with a disability beyond the normal school year *in any SAU or special purpose program*; provided in accordance with the child's IEP at no cost to the parents and they meet the standards *set forth in this rule.* ESY services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324 *and IX.3 of this rule,* that the services are necessary for the provision of FAPE to the child. In implementing the requirements of this section, SAUs may not limit extended school year (ESY) services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services. [34 CFR 300.106]

The need for the particular services is demonstrated by means of:

(a) A review by the child's IEP Team of relevant information including, but not limited to, progress reports and relevant assessments, parent report, observations or documentation;

(b) Consideration by the child's IEP Team of the significance of the child's disability, progress toward IEP goals; and

(c) Consideration of the impact of previous service interruptions, if applicable, and the probability that the child is unable to recoup, in a reasonable amount of time, skills previously mastered.

The Individualized Educational Program Team makes a determination about extended school year services at every Individualized Educational Program Team meeting for young children 3-5 in the Child Development Services System.

B. Least Restrictive Educational Environment for Children with Disabilities Three to Twenty

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled, and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [20 USC 1412(a)(5) and 34 CFR 300.114]

Each SAU must ensure that a continuum of alternate placements is available to meet the needs of children with disabilities for special education and related services. The continuum required must include the

alternative placements in the definition of special education under 34 CFR 300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with the regular class placement. [34 CFR 300.115] *Comparable facilities – facilities in which special education services are provided to children with disabilities shall be comparable to those in which regular education is provided to children and located in chronologically age appropriate settings. Self contained classrooms shall be limited to serving children within a five year chronological age span.*

In determining the educational placement of a child with a disability, including a preschool child with a disability, each SAU must ensure that:

- the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child and , the placement options; and is made in conformity with the LRE provisions *of this rule;*
- The child's placement is determined at least annually; is based on the child's IEP, and is as close as possible to the child's home;
- Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if non-disabled;
- In selecting the LRE, consideration is given to any harmful effect on the child or on the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. [34 CFR 300.116]

C. Program Settings

(1) For Children 3-5

(a) Early Childhood Program A program that includes at least 50% non-disabled children. Federal child count breaks out the children in these settings in three different percentages –in the regular early childhood setting at least 80 percent of the time; in the regular early childhood program 40 percent to 79 percent of the time; or in the regular early childhood program less that 40 percent of the time. Early childhood programs include, but are not limited to:

- Headstart;
- Kindergarten;
- Reverse Mainstream;
- Private preschools;
- Preschool classes offered to an eligible pre-kindergarten population by the public school system;
- Group child care

(b) Special Education Program. A program that includes less than 50% non-disabled children. Special education programs include, but are not limited to special education and related services provided in:

- Special education classrooms ;
  - Regular school buildings
  - Trailers or portables outside regular school buildings
  - Child care facilities
  - Hospital facilities on an outpatient basis
  - Other community based settings
- Separate schools; and
- Residential facilities .

(c) Home – the principal residence of the child's family or caregivers.

(d) Service provider location, such as private clinicians' offices, clinicians' offices located in school building, hospital facilities on an outpatient basis, and libraries and other public locations.

(2) For Children age Five to Twenty

(a) Special Education outside the regular classroom less than 21 percent of the day. This may include children with disabilities placed in:

- Regular class with special education/related services provided within regular classes;

- Regular class with special education/related services provided outside regular classes; or

- Regular class with special education services provided in resource rooms.

The ratio of children to full-time equivalent certified special education teacher (s) providing case management and specially designed instruction shall not exceed a total of 35 children for special education teacher(s) providing specially designed instruction and concurrently carrying the responsibility for case management and/or consultation. No more than 8 children may be served at any one time.

During the time that educational technicians work under the supervision of the certified special education teacher providing direct instructional services, 13 children may be served, but the total caseload ratio shall not change.

(b) Special education inside the regular class no more than 79 percent of the day and no less than 40 percent of the day. This may include children with disabilities placed in:

- Resource rooms with special education/related services provided within the resource room; or

- Resource rooms with part-time instruction in a regular class.

The ratio of children to full-time equivalent certified special education teacher(s) providing case management and specially designed instruction shall not exceed a total of 35 children for special education teacher(s) providing specially designed instruction and concurrently carrying the responsibility for case management and/or consultation. No more than eight (8) children may be served at any one time.

During the time that educational technicians work under the supervision of the certified special education teacher providing the direct instructional services, thirteen (13) children may be served, but the total caseload ratio shall not change.

(c) Special education inside the regular class for less than 40 percent of the day. This may include children with disabilities placed in:

- Self contained special classrooms with part-time instruction in a regular class; or
- Self contained special classrooms with full time special education instruction on a regular school campus.

The following child-teacher ratios shall not be exceeded for self-contained services from a special education teacher (educational technician) for a full school day. The figures in parentheses represent the number of additional children who may be provided self-contained services during the time that one or more educational technicians work under the supervision of the certified special education teacher responsible for the program.

Staff:Child Ratios:

Ages 5-9	*6:1 (5)*
Ages 10-14	*8:1 (5)*
Ages 15-20	*10:1 (5)*

Classes for children with a severe to profound degree of impairment shall be staffed with a minimum of two (2) providers (i.e., one teacher and one educational technician) at all times to ensure the safety and well being of the students.

(d) Separate School-Special Education outside public or private school for greater than 50 percent of the school day. This may include children with disabilities placed in:

- Public or private day schools for children with disabilities;
- Public or private day schools for students with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day; or
- Public or private residential facilities if the student does not live in the facility.

(e) Public or private Residential Facility-Special education outside public school for more than 50 percent of the school day. This may include children with disabilities placed in:

- Public or private residential schools for children with disabilities; or
- Public or private residential schools for children with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

This does not include children who receive education programs at the facility but do not live there.

(f) Homebound/Hospital-Special education outside public school in hospital/homebound environment. This may include children with disabilities placed in:

- Hospital programs; or
- Homebound programs.

This does not include children with disabilities whose parents have opted to home-school them and who receive special education at public expense. Home-schooled children should be reported in one of the regular class categories according to the amount of time the youth spends in separate special education environments (e.g. resource rooms, self-contained special education classrooms, separate schools)

(g) Correctional facility. Children and youth receiving special education in:

- Short term detention facilities (community-based or residential). Or
- Correctional facilities.

(h) Parentally placed in private schools. Children with disabilities who have been enrolled by their parents or guardians in regular parochial or other private schools and whose basic education is paid through private resources, and who receive special education

and related services at public expense from a local educational agency or intermediate educational unit.

XI. EARLY INTERVENTION SERVICES FOR YOUNG CHILDREN B-2 AND RELATED SERVICES FOR CHILDREN THREE TO TWENTY

General Principles: Need for Early Intervention Services
"Early intervention services" means developmental services that are provided under public supervision; are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees; are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team in one or more of the following areas, physical development, cognitive development, communication development, social or emotional development or adaptive development; meet the standards of the state in which the services are provided; are provided by qualified personnel; to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and are provided in conformity with an individualized family service plan. [20 USC 1432(4)] Appropriate early intervention services must be based upon scientifically based research.

"**Related Services**" means special education transportation, and such developmental, corrective, and other related services pursuant to the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1401 (26) and, *as defined by the Commissioner,* as required to assist children with disabilities to benefit from special education. The term related services does not include a medical device that is surgically implanted, or the replacement of such device. [20 USC 1401(26)]

Related services does 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. Nothing in the prior paragraph limits the right of a child with a surgically implanted device to receive related services that are determined by the IEP Team to be necessary for the child to receive FAPE, limits the responsibility of an SAU to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly. [34 CFR 300.34(b)(2)(i-iii)]

Early Intervention Services B-2	Related Services 3 to 20
Audiology includes: i. Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques; ii. Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; iii. Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; iv. Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services; v. Provision of services for prevention of hearing loss; and vi. Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.	Audiology includes— i. Identification of children with hearing loss; ii. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; iii. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation; iv. Creation and administration of programs for prevention of hearing loss; v. Counseling and guidance of children, parents, and teachers regarding hearing loss; and vi. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
Family Training and Counseling Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologist, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.	Counseling services means services provided by qualified social workers, psychologists, or other qualified personnel. *A licensed clinical professional counselor licensed by the Maine State Board of Counseling Professional Licensure may provide assessment, consultation, counseling and referral services to children with disabilities and their parents consistent with the laws and regulations governing the practice of professional counseling (32 MRSA Chap. 119).*

	Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
Health Services. Health services means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services. i. The term includes: a. Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and b. Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services. ii. The term does not include the following: a. Services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose). b. Devices necessary to control or treat a medical condition. c. Medical-health services (such as immunizations and regular "well-baby" care) that are routinely	

recommended for all children.	
	Hearing Aids Each public agency (*SAU)* must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.[34 CFR 300.113(a)] *Hearing aids will be checked no less than weekly by an individual assigned the responsibility and trained to identify typical malfunctions in hearing aids.*
	Interpreting services, as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, and sign language, transliterator and interpreting services, such as communication access realtime transliteration (CART), C-print, and type service and special interpreting services for children who are deaf/blind. *i. An interpreter for a student who is disabled shall be licensed with the Office of Licensing and Registration, Department of Professional and Financial Regulation, (32 MRSA Chap. 22 and accompanying regulations).* *ii. A cued speech transliterator shall be licensed with the Office of Licensing and Registration, Department of Professional and Financial Regulation, (32 MRSA Chap. 22 and accompanying regulations).*
Medical Services (only for diagnostic or evaluation purposes) means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.	Medical Services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services. Such medical services shall be for diagnostic and evaluation purposes only.
Vision services means: i. Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays and abilities;	Orientation and mobility services means services provided to students who are blind or visually impaired by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction and teaching students the following, as appropriate:

ii. Referral for medical or other professional services necessary for the habilitation or rehabilitation or visual functioning disorders, or both; and iii. Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.	i. 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); ii. To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; iii. To understand and use remaining vision and distance low vision aids; and iv. Other concepts, techniques, and tools.
Occupational therapy includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include: i. Identification, assessment, and intervention; ii. Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and iii. Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.	Occupational therapy means— i. Services provided by a qualified occupational therapist; and ii. Includes— a. Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; b. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and c. Preventing, through early intervention, initial or further impairment or loss of function. *A licensed occupational therapist may provide occupational therapy The maximum student-therapist caseload, including both consultation and direct services, shall not exceed 50 students per each full-time equivalent provider.* *Occupational therapy includes improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function.* *Occupational therapy assistants may provide services under the professional supervision of an appropriately licensed therapist as required by the laws and regulations*

	regarding the practice of occupational therapy and physical therapy (32 MRSA Chapters 32 and 45-A and accompanying regulations).
Physical therapy includes services to address the promotion of sensory-motor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include: i. Screening, evaluation and assessment of infants and toddlers to identify movement dysfunction; ii. Obtaining, interpreting and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and iii. Providing individual and group services or treatment to prevent, alleviate or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.	Physical therapy means services provided by a qualified physical therapist. *A licensed physical therapist may provide physical therapy services The maximum student-therapist caseload, including both consultation and direct services, shall not exceed 50 students per each full-time equivalent provider.* *Physical therapist assistants may provide services under the professional supervision of an appropriately licensed therapist as required by the laws and regulations regarding the practice of occupational therapy and physical therapy (32 MRSA Chapters 32 and 45-A and accompanying regulations).* *Physical therapy means services provided by a qualified physical therapist.*
Psychological services include: i. Administering psychological and developmental tests and other assessment procedures; ii. Interpreting assessment results; iii. Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and iv. Planning and managing a program of psychological services including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.	Psychological services includes— i. Administering psychological and educational tests, and other assessment procedures; ii. Interpreting assessment results *offering diagnostic impressions;* iii. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; iv. Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; v. Planning and managing a program of psychological services, including psychological

	counseling for children and parents; and vi. Assisting in developing positive behavioral intervention strategies. *A certified school psychological service provider or psychologist licensed by the Board of Examiners of Psychologists may provide consultation services to children, school staff members and parents; evaluation services for children; behavior management including assisting in designing, implementing, evaluation and modifying positive behavioral intervention strategies; and social skills training (including individual or group counseling for children). Psychologists may provide psychotherapy if required by a child with a disability and specified in the child's IEP. A certified school psychological service provider may offer diagnostic impressions.* *The Maine Psychological Association (MePA) maintains a register for Neurocognitive Testing Assistants (NTAs). NTAs must be registered and supervised by a psychologist, who is the evaluator, and who is licensed by the Department of Professional and Financial Regulation Board of Examiners of Psychologists. This register is referenced by the Department of Education when special education directors request reimbursement for a student's assessment.* *This registration procedure has been in effect since August, 2001, as a result of a Final Report of the Commissioner of Professional and Financial Regulation to the Joint Standing Committee on Education and Cultural Affairs.* *The registration requires, as recommended in this Report and required by the Legislative Committee, a minimum of a bachelor's degree in psychology or a related field. The licensed psychologist is fully responsible and liable for the conduct of the NTA.* *The Report further states that the Department of Education indicated to the Department of Professional and Financial Regulation and to the Board of Examiners of Psychologists that a program of self regulation, such as a registration program administered by a private organization such as the*

	MePA, would satisfy federal requirements, so long as the minimum qualifications for registration are established and met by the registrants. This provision will remain in effect in this chapter until the Department of Professional and Financial Regulation Board of Examiners of Psychologists completes rulemaking on the neurocognitive assistants.
	Recreation includes assessment of leisure function; therapeutic recreation services; recreation programs in schools and community agencies; and leisure education.
	Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a child with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
Nursing services include: i. The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems; ii. Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and iii. Administration of medications, treatments, and regimens prescribed by a licensed physician.	School health and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as discussed in the child's IEP. School nurse services are 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.
Social work services include: i. Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;	Social work services includes— i. Preparing a social or developmental history on a child with a disability;

ii. Preparing a social or emotional developmental assessment of the child within the family context; iii. Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; iv. Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services provided) that affect the child's maximum utilization of early intervention services; and v. Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.	ii. Group and individual counseling with the child and family; iii. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; iv. Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and v. Assisting in developing positive behavioral intervention strategies. *A social worker licensed by the Maine State Board of Social Work Licensure may provide social work services including preparing a social or developmental history of a child with a disability; group and individual counseling with the child and family; working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program and assisting in developing positive behavioral interventions and strategies.* *A social worker licensed by the Maine State Board of Social Work Licensure may provide social work services to children, school staff members, and parents consistent with the laws and regulations governing the practice of social work (32 MRSA Chap. 83 and accompanying regulations). The maximum student-therapist caseload shall not exceed 50 children per each full-time equivalent licensed social worker.*
Assistive Technology Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. <u>The term does not include a medical device that is surgically implanted, or the replacement of such device.</u>	Assistive Technology Assistive technology device. In general the term assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The exception is the term does not include a medical device that is surgically implanted, or the replacement of such device.

Assistive technology service means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include: i. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; ii. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; iii. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; iv. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; v. Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and vi. Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities. *If the IFSP Team determines that an AT device or service is necessary for the provision of services and specifies the AT device or service in the child's IFSP, the SAU is responsible for ensuring the provision of the AT device or service . The use of the purchased AT device(s) in a child's home or other settings is required if*	Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes: i. The evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment; ii. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child; iii. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; iv. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; v. Training or technical assistance for such child, or where appropriate, the family of such child; and vi. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are other wise substantially involved in the major life functions of the child. *If the IEP Team determines that an assistive technology device or service is necessary for the provision of a Free, Appropriate Public Education and specifies the assistive technology device or service within the children's IEP, the school administrative unit is responsible for ensuring the provision of the assistive technology device or service at no cost to the parents.* *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 child's IEP Team determines that the child needs access to those devices in order to receive a free appropriate public education.*

the child's IFSP Team determines that the child needs these devices in order for the child to benefit from early intervention services.	
Speech-language pathology services include: i. Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; ii. Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and iii. Provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills. *Speech and Language Services B-2.* *Speech and language services may be provided by a speech-language pathologist licensed by the Maine Board of Examiners of Speech-Language Pathologists and Audiologists, or speech and language clinician certified by the Department, when recommended by the IFSP Team and included in the child IFSP. The maximum child-therapist caseload, including case management, consultation, and direct services, shall not exceed 50 for each full-time equivalent speech-language pathologist or speech and language clinician.*	Speech-language pathology services includes: i. Identification of children with speech or language impairments; ii. Diagnosis and appraisal of specific speech or language impairments; iii. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments; iv. Provision of speech and language services for the habilitation or prevention of communicative impairments; and v. Counseling and guidance of parents, children, and teachers regarding speech and language impairments. *A speech-language pathologist licensed by the Maine Board of Examiners of Speech-Language Pathologists and Audiologists, or speech clinician certified by the Department may provide speech and language services if recommended by the IEP Team and included in the child's Individualized Education Program. The maximum child-therapist caseload, including both consultation and direct services, shall not exceed 50 for each full-time equivalent speech-language pathologist or speech clinician.* *A certified speech clinician may provide speech and language services if employed by an administrative unit. A certified speech clinician shall also be licensed by the Maine Board of Examiners of Speech-Language Pathologists and Audiologists in order to provide contracted speech and language services* A speech-language pathology aide or assistant registered with the Board of Examiners of Speech-Language Pathologists and Audiologists may provide speech and language services under the supervision of a licensed speech-language pathologist as required by 32 MRSA Chapter 77 and accompanying regulations relating to the practice of speech-language pathology.

Transportation and related costs includes the cost of travel (e.g., mileage or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.	Transportation - Special Education 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 child with a disability. *Special education transportation shall be specified by the IEP Team in the child's Individualized Education Program when the Team determines that the transportation is necessary in order for the child with a disability to benefit from an education program. The IEP Team shall determine any modifications and/or adaptations, including the employment of a "transportation aide," that need to be made to the unit's regular transportation services in order to ensure appropriate and accessible transportation services.* *Pursuant to 20-A MRSA §5401(4) special education students shall be provided transportation as provided by Chapter 301 or to and from classes. 20-A MRSA §7001 (4-B) defines "related services" as special education transportation and such developmental, corrective and other related services, as defined by the Commissioner, as are required to assist children with disabilities to benefit from their special education programs.* *Therefore, special education transportation in Maine is that which is above and beyond regular transportation described in 20-A MRSA §5401-5402.* *Transportation for special education for state wards and state agency clients is treated as a related service and included on the child's IEP. Transportation costs for state wards and state agency clients are claimed for subsidy on the EF-S-04B State Agency Client Billing Form.* *Transportation cost associated with out-of-district special education programs is considered a predicted per pupil transportation cost as defined in 20-A §15672 (22A) and includes an adjustment for out of district special education transportation as reported on the EF-M-43, subsidy for which is governed by 20-A §5205.*

	Transportation - Residential School *School administrative units which have placed children with disabilities in residential schools shall provide transportation to these children at the beginning and the end of the school year, on weekends if the school does not provide weekend residential services, and on regularly scheduled vacations and holidays that correspond to the calendar of the residential school. Local administrative units shall provide for additional trips when determined by the IEP Team to be part of the child's Individualized Education Program.* *In cases where the parents or guardian and the IEP Team determine that there is reason to transport the parents or guardian to the school during the holiday or vacation periods, this arrangement may be made in lieu of transporting the child to his/her residence.* *If the parents of a child with a disability have been asked and agreed to transport the child to and/or from a residential school, the administrative unit shall reimburse the parents for mileage and necessary travel expenses in accordance with school district employee reimbursement policies and providing that such transportation is at no cost to the parent. Reimbursement to the parents shall be made within 45 days of each trip. If another means of transportation is procured, such as air or bus, the allowable rate shall be the actual cost.* *Necessary travel expenses (such as tolls, parking, food and lodging) for the student and/or any required adult escort shall also be reimbursed in accordance with school district employee reimbursement policies.*
Nutrition services include: i. Conducting individual assessments in: a. Nutritional history and dietary intake; b. Anthropometric, biochemical, and clinical variables; c. Feeding skills and feeding problems; and d. Food habits and food preferences;	

ii. Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings from individual nutritional assessments; and iii. Making referrals to appropriate community resources to carry out nutritional goals.	
Case management services means the activities carried out by a *case manager* to assist and enable an eligible child and the child's family to receive the services, rights and procedural safeguards authorized to be provided under the State's early intervention program.	*The IEP case manager may oversee a child's (age 3 to 20) needs to assure that due process requirements under the federal Individuals with Disabilities Education Act are met. The case manager communicates with SAU staff, parents, the child, and teachers to provide coordination and follow up for the IEP process.*

XII. PROGRAM APPROVAL

1. For Programs for Children with Disabilities B-20

A. State Approval of Programs. Each program that serves children B-20 with disabilities must submit an application for approval to the Department utilizing a format prescribed by the Commissioner. Children B-2 are to be served in their natural environment to the maximum extent possible, unless determined by their IFSP Team that their program should be with children who are not typically developing.

Each application must, include the following:

(1) Requirements for approval:

a. General description of the program;

b. Qualification or certification of staff (copies of professional licenses (if applicable).

c. Plan of instruction, curriculum, assessments, access to the general curriculum, and extracurricular activities.

d. Documentation of adequacy of facilities to meet the needs of the children served by the school/program.

e. Adequate related services.

f. Professional supervision/professional development.

g. Teacher-child ratios.

h. Capacity to support movement on the educational continuum for each child.

i. Agreement regarding how high school children will earn credits towards graduation in collaboration with the sending SAUs..

j. Documents of incorporation.

k. Parent handbook.

l. Administrative policy manual

m. Copy of annual budget; and

n. Policy for immediate notification and reporting of serious events. In the event of serious injury or death of a child, criminal activity on the part of a child or staff member, or other serious incident affecting the well-being of any child, the approved special purpose private school shall immediately notify, by telephone and by letter, the parents, the sending school district(s), any state agency involved in child care or program placement, and the Department of Education.

B. Department Review and Program Approval. The Department shall review for approval each application submitted and shall consult with other state agencies as necessary. The Department may, at its discretion, schedule site visits, interviews, or other inspection of the proposed program. The Department may deny approval, issue temporary approval (for up to 3 months),or grant full approval. The Department shall provide the applicant with a written notice of its actions and reasons for such actions.

C. Revisions to Application. Any changes to the application which include, but are not limited to: change in personnel, facilities, staffing patterns, or population served requires the submission and approval of an amended application.

D. Revocation of Approval. The Department may place a program, previously fully approved on non-approval status, if it becomes aware of conditions at the program that, in the Department's judgement, compromise the program's ability to provide a safe, healthy, and appropriate educational environment. In such circumstances, the Department shall provide written notice of the status, the circumstances that caused the Department to take such action, and the actions necessary to correct the problem within a timeframe determined by the Department.

E. Request for Reconsideration. Within one month of receipt of written request for reconsideration of any Department action in relation to approval status, the Department shall consider the request and provide a formal written response. The Department may, at its discretion, hold a hearing on the facts, make site visits, or issue an alternative remedy.

F. Department Review of Placements Through Documentation Review

(1) Placements Requiring Review. In order to determine that the out- of-district placement is an approved special education program, that all funding is in place, and that the supporting documentation (IEP,, recent evaluations) are included in the out of district placement

packet; the Department of Education , Special Services Team reviews the documentation for sufficiency for placement of children in:

(a) Private Special Purpose School Outside the State. The Commissioner may grant approval to a school outside Maine based upon the actions of another state education agency. If such a school is disapproved by the applicable state education agency, the Commissioner shall similarly disapprove the school

(b) Special Education Program in a General Purpose Private School (other than one used by the SAU as the regular placement for children without disabilities). Notwithstanding any contract or tuition arrangements with a secondary school approved for tuition purposes pursuant to 20-A M.R.S.A. §2951, no child with a disability shall be placed in a private general purpose school through the IEP process unless the school also has special education approval

© Regional Special Education Program. A regional special education program is a public separate day school program serving students from the public school districts in a given region. The Regional Special Education Program that is approved under this part exists to provide support to students whose academic, behavioral and emotional and functional difficulties prevent them from being able to take advantage of least restrictive environment programming in their local SAU.

XIII. GENERAL SUPERVISION SYSTEM

1. ***Department Approval.*** *Children with disabilities from birth to age 20 may be served only in schools and/or programs that have been approved by the Department for the provision of early intervention, special education and related services. To determine if schools or programs meet all applicable provisions outlined in Title 20-A MRSA § 7001 and § 7204(4), monitoring of each school administrative unit, regional early intervention or special education program, State-operated special education program, and special purpose private school shall be conducted by the Maine Department of Education.*

Using data and quantitative key compliance and performance indicators to be determined by the Department, representatives of the Commissioner shall collect data and report on every SAU program at least once during the six year period of the State's Performance Plan. Site visits shall be conducted when it is determined by the Commissioner that additional oversight or technical assistance is necessary to ensure compliance with federal and State special education requirements.

The primary focus of *the Department's* General Supervision System shall be on-

A. Improving educational results and functional outcomes for all children with disabilities; and

B. Ensuring that SAUs meet the program requirements under *this rule* with particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

2. General Supervision System Priorities.

The Commissioner shall require general supervision of each SAU using quantifiable measures in each of the following priority areas within the SAUs jurisdiction, and using such qualitative indicators as needed to adequately document performance in the following areas:

A. Provision of early intervention in natural environments.

B. Provision of a free appropriate public education in the least restrictive environment.

C. The SAU's exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration and a system of transition services.

D. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. [20 USC 1416]

3. General Supervision System Activities.

A. The state must provide written notification to any SAU regarding findings of noncompliance and of the requirement that the non compliance be corrected in a timely manner (within one year from identification-the date on which the state provided written notification to the SAU program of the noncompliance)

B. For any non-compliance concerning a child specific requirement that is not subject to a specific timeline requirement, the State must ensure that the SAU has corrected each individual case of non compliance, unless the child is no longer within the jurisdiction of the SAU.

C. Complete Annual IDEA Determinations for each SAU from the following options:
(1)Meets Requirements
(2)Needs Assistance
(3)Needs Intervention
(4)Needs Substantial Intervention

D. Based on individual SAU determination, provide oversight of assigned Annual Determination Response by each SAU .

4. Approval/Enforcement Activities.

Based on the SAU determination, there are enforcement actions available including:

A. Requirement of proof of utilization of technical assistance and identified resources;
B. Commissioner directing the use of the SAU funds on the areas demonstrating continued need;
C. Withholding of State subsidy payments to eligible SAUs;
D. Withholding of special education or other federal grant funds SAUs and/or programs which are subrecipients; and/or
E. Referral to the Office of Attorney General for appropriate civil action. (See 20-A MRSA § 6801-A and §7206)

5. Public Access:

Letters of Findings are public records and shall be made available to parents and other members of the public upon request in accordance with the Freedom of Access Act (1 MRSA §401 et seq.)

XIV. EDUCATION RECORDS

1. General Principles: Confidentiality Requirements

Each school administrative unit shall adopt and implement procedures to protect the confidentiality of student records, in accordance with the federal Family Educational Rights and Privacy Act of 1974 and the Individuals with Disabilities Education Act.

NOTE: Copies of the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act are available from the Special Services Team, Maine Department of Education.

3. Definitions.

The following terms shall have the definitions set forth here for purposes of these rules:

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

Education records means the type of records covered under the definition of educational records in 34 CFR Part 99 (regulation implementing the Family Educational Rights and Privacy Act of 1974,[(FERPA) 20 USC 1232g]

Participating agency means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, *under these rules.*[34 CFR 300.611]

3. Access rights

Each SAU must permit parents to inspect and review any education records relating to their child which are collected, maintained, or used by the SAU under these regulations. The SAU must comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing pursuant to 34 CFR 300.507 or 300.530 through 300.532, or resolution session pursuant to 34 CFR 300.510, and in no case more than 45 days after the request has been made.

The right to inspect and review education records under this section includes:

A. The right to a response from the SAU to reasonable requests for explanations and interpretations of the records;

B. The right to request that the SAU 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;

C. The right to have a representative of the parent inspect and review the records.

An SAU 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. [34 CFR 300.613]

4. Record of access

Each SAU must keep a record of parties obtaining access to education records collected, maintained, or used under part B of IDEA(except for access by parents and authorized employees of the school), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. [34 CFR 300.614]

5. Records on more than one student

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information. [34 CFR 300.615]

6. List of types and locations of information

Each SAU must provide parents on request a list of the types and locations of educational records collected, maintained, or used by the SAU. [34 CFR 300.616]

7. Fees

An SAU may charge a fee for copies of records that are made for parents under this *rule* if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

An SAU may not charge a fee to search for or to retrieve information under *these regulations.* [34 CFR 300.617]

8. Amendment of records at parental request

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

B. The SAU must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

C. If the SAU decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.619. [34 CFR 3oo.618]

9. Opportunity for a hearing

The SAU must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. [34 CFR 300.619]

10. Result of hearing

If, as the result of the hearing*, the hearing officer* decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, *the SAU* shall amend the information accordingly and so inform the parent in writing.

If, as the result of the hearing*, the hearing officer* decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, *the hearing officer* must inform the parent of the right to place in records the SAU maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the SAU.

Any explanation placed in the education record of the child under this section shall:

(1) Be maintained by the SAU as part of the records of the child as long as the record or contested portion is maintained by the SAU; and

(2) If the records of the child or the contested portion is disclosed by the SAU to any party, the explanation must also be disclosed to the party. [34 CFR 300.620]

11. Consent

Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph 3 of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR 99.

Except as provided in paragraphs 3 and 4 of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this *rule.*

Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 CFR 300.321(b)(3).

If a child is enrolled, or is going to enroll in a private school that is not located in the SAU of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the SAU where the private school is located and officials in the SAU of the parent's residence. [34 CFR 300.622]

12. Safeguards

Each SAU must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

The superintendent of each SAU, each school director, and each regional CDS site director shall appoint an individual to be responsible for ensuring the confidentiality of education records and training other staff.

All persons collecting or using personally identifiable information must receive training or instruction regarding *the federal law, state and local policies and procedures for ensuring confidentiality.*

Each SAU must maintain, for public inspection, a current listing of the names and positions of those employees within the SAU who may have access to personally identifiable information. [34 CFR 300.623]

13. Destruction of information

The SAU must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

The information must be destroyed at the request of the parents. However, a permanent record of a child's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitations. [34 CFR 300.624]

NOTE: Education records pertaining to children with disabilities may be useful in the future to the child or their parents if application is made for federal benefits.

NOTE: For the most up-to-date information on the State of Maine's Rules for Disposition of Local Government Records (which includes educational records) please see the Maine State Archives website : www.state.me.us/sos/arc

XV. PROCEDURAL SAFEGUARDS

All SAUs shall adopt and implement procedural safeguards contained in 34 CFR 300.500-300.520 and 300.530-300.537. *All SAUs must distribute the notice of procedural safeguards set forth in Appendix 1of this rule at the time specified in the notice.*

Independent Educational evaluations, Attorneys' fees and discipline are not applicable to children and their families' birth through age two. The parents of a child eligible under the Part C program may determine whether they, their child, or other family members will accept or decline any early intervention service under this rule, and may decline such service after first accepting it, without jeopardizing other early intervention services under this rule.

NOTE: Throughout Appendix 1, areas in which Maine's Special Education Regulations exceed the federal statute are indicated by italics.

XVI. DISPUTE RESOLUTION PROCEDURES: (MEDIATIONS, COMPLAINTS AND HEARINGS)

1. Right to Dispute Resolution, Generally

A. For children B-2

(1) Any parent or interested party may submit a written request for a state complaint to the Department alleging that a regional site has failed to comply with State or federal special education law or regulation, or when there is a dispute regarding the identification, evaluation, placement or provision of appropriate services to a child.

(2) A parent or SAU may submit a request for mediation to the Department to resolve a dispute regarding a regional site's compliance with this rule or provision of services in the natural environment to a child with a disability.

(3) A parent or SAU may submit a written request for a due process hearing to the Department when there is a dispute regarding the identification, evaluation, placement or the provision of appropriate services to the child.

B. For Children 3-20

(1) Any parent, adult student or interested party may submit a written complaint to the Department alleging that a public agency has failed to comply with this rule, or when there is a dispute regarding the identification, evaluation, placement or the provision of appropriate services to a child..

(2) A parent, adult student, or SAU may submit a written request to the Department for mediation to resolve a dispute regarding a unit's compliance with this rule or the provision of a free appropriate public education in the least restrictive educational alternative to a child with a disability

(3) A parent, adult student or SAU may submit a written request for a due process hearing to the Department, after having submitted the written request first to the responding party, when there is a disagreement regarding the identification, evaluation, placement or the provision of a free appropriate public education to a child.

2. Stand-alone Mediation

A. Request

(1) Request by Parent or Adult Student - A parent, an adult student, the designated representative of the parent, surrogate parent or adult student, who requests a stand-alone mediation shall notify, in writing, the School Administrative Unit (SAU) and the Due Process Coordinator in the Department of Education of the request for a stand-alone mediation. A stand-alone mediation is a mediation that is not associated with a state complaint, a hearing, or an expedited hearing.

(a) The request shall:

(i) Include the name of the child involved, the parent's name, address and telephone number, the school administrative unit which the child attends, a brief summary of the disagreement and any facts relating to the disagreement;

(ii) Include a summary of how the SAU was informed of the disagreement, any actions taken by the SAU to resolve the problem and how the problem could be resolved; and

(iii) Be in writing. An oral request shall be reduced to writing by the superintendent or a designee of the SAU and signed by the parent or adult students.

(2) Request by SAU - If the SAU seeks a stand-alone mediation, the superintendent shall send the notice to the parent or adult student prior to forwarding the request to the Due Process Coordinator.

(a) The notice to the parent and the request to the Due Process Coordinator shall:

(i) Include the name of the child involved, the parent's name, address and telephone number, the school administrative unit which the child attends, a brief summary of the disagreement and any facts relating to the disagreement;

(ii) Include a summary of how the parent was informed of the disagreement, any actions taken by the SAU to resolve the problem and how the problem could be resolved; and

(iii) Be in writing.

(3) Duties of the Department - Upon receipt of the request for a stand-alone mediation, the Due Process Coordinator shall provide the parents with information pertaining to the availability of free or low-cost legal aid and other related services.

(4) Requirements – See Section XVI(3)(B)and (C) of this rule.

3. Mediation Associated with a Request for a Due Process Hearing

If either a parent, adult student or an SAU seeks a due process hearing, the superintendent shall encourage the parents to resolve the disagreement through a resolution session or mediation or other third-party assistance. Such attempts shall not interfere with the parent's or adult student's right to a due process hearing nor with the hearing timeline.

A. General. [34 CFR 300.506]

Each SAU must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process *hearing request*, to resolve disputes through a mediation process.

B. Requirements. [34 CFR 300.506]

The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process:

(a) Is voluntary on the part of the parties;

(b) Is not used to deny or delay a parent's right to a hearing on the parent's due process hearing request, or to deny any other rights afforded under Part B of the Act; 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 section 671 or 672 of the Act; and

(b) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)

(a) The State must 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 SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (B)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that-

(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 is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(8) Parents may be accompanied to the mediation by an advocate or other person knowledgeable in providing special education services. School personnel with authorization to commit resources

and personnel involved with the dispute shall attend any mediation. School administrative units may be represented by counsel in a mediation only when the parents are represented by counsel. An attorney representing a parent shall provide the superintendent of the school administrative unit and the Due Process Office of the Maine Department of Education with at least 7 days written notice prior to the mediation that they will be representing the parent at the mediation. Parties may consult with their attorneys prior to and after engaging in mediation. Both parties may agree in writing to waive the 7-day written notice of the parent's attorney's planned attendance at the mediation.

(9) State enforcement mechanisms. For enforcement of a mediation agreement, the SEA provides to parents and adult students the State complaint investigation procedure. The State complaint investigation procedure is not mandatory and will not delay or deny a party the right to seek enforcement of the written mediation agreement in a State court of competent jurisdiction or in a district court of the United States. [34 CFR 300.537 provides the State the option of enforcement.] A mediation agreement item involving attorney's fees will not be enforceable through a State complaint investigation procedure.

C. Impartiality of Mediator.

(1) An individual who serves as a mediator under this part:

(a) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(b) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Sec. 300.228 solely because he or she is paid by the agency to serve as a mediator. [34 CFR 300.506(c)]

4. Complaints

A. Minimum State Complaint Procedures.

(1) Time limit; minimum procedures. The SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to:

(a) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506;

(d) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(e) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--

(i) Findings of fact and conclusions; and

(ii)The reasons for the SEA's final decision.

(2) Time extension; final decision; implementation. The SEA's procedures described in paragraph (1) of this section also must:

(a) Permit an extension of the time limit under paragraph (1) of this section only if--

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (1)(c)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(b) Include procedures for effective implementation of the SEA's final decision, if needed, including--

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(3) Complaints filed under this section and due process hearings under §300.507 and §§ 300.530 through 300.532.

(a) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(b) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(c) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. [20 U.S.C. 1221e-3 and 34 CFR 300.152]

B. Filing a Complaint.

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

(2) The complaint must include:

(a) A statement that a public agency has violated a requirement of Part B or Part C of the Act or of this part;

(b) The facts on which the statement is based;

(c) The signature and contact information for the complainant; and

(d) If alleging violations with respect to a specific child --

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

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

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(3) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.151 *unless a longer period is reasonable because the complainant is requesting compensatory services for a violation that allegedly occurred not more than two years prior to the date that the written complaint is received by the Department of Education.*

(4) The party filing the complaint must forward a copy of the complaint to the SAU or public agency serving the child at the same time the party files the complaint with the SEA. [20 USC 1221e-3 and 34 CFR 300.153]

5. Filing a Due Process *Hearing Request*

A. General.

(1) A parent, adult student, or a public agency may file a due process Hearing request on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation, placement or the provision of appropriate services to a child B-2 or the educational placement of, or the provision of FAPE to the child three to twenty).

(2) The due process hearing request must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process hearing request.

B. Information for Parents.

The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency files a due process hearing request under this section. [Authority: 20 U.S.C. 1415(b)(6) and 34 CFR 300.507]

6. Due Process *Hearing Request.* [34 CFR 300.508]

A. General.

(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process hearing request (which must remain confidential).

(2) The party filing a due process hearing request must forward a copy of the due process hearing request to the SEA.

B. Content of *Hearing Request.*

The due process hearing request required in paragraph (A)(1) of this section must include:

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

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

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

C. Notice Required Before a Hearing on a Due Process *Hearing Request.*

A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of paragraph (B) of this section.

D. Sufficiency of *Hearing Request.*

(1) The due process hearing request required by this section must be deemed sufficient unless the party receiving the due process *hearing request* notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements in paragraph (B) of this section.

(2) Within five days of receipt of notification under paragraph (D)(1) of this section, the hearing officer must make a determination on the face of the due process *hearing request* of whether the due process *hearing request* meets the requirements of paragraph (B) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process *hearing request* 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 § 300.510; or

(b) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process hearing request, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process *hearing request*.

E. SAU Response to a Due Process *Hearing Request*.

(1) If the SAU has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process *hearing request*, the LEA must, within 10 days of receiving the due process *hearing request*, 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 due process *hearing request;*

(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 SAU under paragraph (E)(1) of this section shall not be construed to preclude the SAU from asserting that the parent's due process *hearing request* was insufficient, where appropriate.

F. Other Party Response to a Due Process *Hearing Request*.

Except as provided in paragraph (E) of this section, the party receiving a due process *hearing request* must, within 10 days of receiving the due process hearing request, send to the other party a response that specifically addresses the issues raised in the due process *hearing request*. [34 CFR 300.508]

G. Pre-hearing Conference.

The hearing officer shall convene a pre-hearing conference to consider the simplification or clarification of issues, the limitation of the number of witnesses, the possibility of agreement disposing of all or any of the issues in dispute, and such other matters as may aid in the disposition of the adjudicatory proceeding.

7. Subpoenas

A. Issuance of subpoena.

The Commissioner may issue subpoenas in the name of the Department to require the attendance and testimony of any witness and the production of any evidence relating to any issue or fact in the due process hearing upon the request of either party to the hearing.

B. Fees, Expenses.

Any fees for attendance and travel required by the witnesses shall be the responsibility of the party seeking the subpoena.

Issuance of subpoenas shall conform in all other respects to the requirements of the Maine Administrative Procedure Act, 5 MRSA §9060.

C. Petition for Modification of Subpoena.

Any witness subpoenaed may petition the hearing officer to vacate or modify the subpoena issued. The hearing officer shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the hearing officer deems appropriate, the petition may be granted in whole or in part upon a finding that the testimony or the evidence requested does not relate with reasonable directness to any matter in question, or that the subpoena for attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when evidence is requested.

8. Pre-Hearing Motions

If a party in a hearing requires a response from the hearing officer about an issue in the hearing prior to the hearing or wishes for the hearing officer to dismiss the request for hearing, the party may submit a written motion to the hearing officer, the other party, and their representatives, if applicable. Upon receiving a motion the hearing officer shall set a deadline for the opposing party to respond to the motion.

9. Hearing Procedures

The due process hearing shall be conducted according to the procedures established in this section.

A. Opening Statement.

The hearing officer shall open the hearing by describing the procedures to be followed during the hearing, the facts and issues to be determined in

the hearing, any stipulations or agreements between the parties, and a statement of the right to appeal the decision.

B. Testimony.

Witnesses called by either party shall testify one at a time. They shall be permitted to listen to one another's testimony only with the consent of both parties and at the discretion of the hearing officer.

C. Recording.

A written or electronic verbatim recording of all testimony and other evidence presented at the hearing shall be made and shall become part of the record of the hearing.

D. Evidence Admitted.

The hearing officer shall not be bound by the rules of evidence applicable to the courts, but shall be bound by the rules of privilege recognized by law. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The hearing officer may exclude irrelevant or unduly repetitious evidence and shall exclude evidence not disclosed to the other party at least five business days prior to the due process hearing.

E. Persons Presenting Testimony or Exhibits Shall be Sworn or Affirmed.

F. Official Notice.

The hearing officer may take official notice of any facts on which judicial notice could be taken and in addition may take official notice of statutes, regulations and similar non-confidential Department or school documents. Parties shall be notified of the material so noticed and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed.

G. Facts Officially Noticed Shall be Included and Indicated as such in the record.

H. Cross-Examination.

Both parties and the hearing officer have the right to examine and cross-examine witnesses.

I. Order of Presentation.

The order of presentation of testimony and exhibits shall be as follows unless otherwise agreed by the parties or determined appropriate by the hearing officer.

(1) Opening remarks by the hearing officer;

(2) Opening statement by the party requesting the hearing;

(3) Opening statement by the other party;

(4) Presentation of evidence by the party (superintendent/superintendent designees or parents) requesting the hearing and any witnesses for that party;

(5) Presentation of evidence by the other party and any witnesses for that party;

(6) Rebuttal witnesses for the party requesting the hearing;

(7) Rebuttal witnesses for the other party;

(8) Summation by the party requesting the hearing; and

(9) Summation by the other party.

I. Concluding Remarks by the Hearing Officer.

Prior to adjournment, the hearing officer shall advise all parties that the findings of fact and the hearing officer's written decision shall be made within 15 days of the conclusion of the hearing.

J. Conclusion of Hearing; Reopening of Record.

Upon conclusion of the hearing, no other evidence or testimony shall be permitted unless the record is held open by the hearing officer for the receipt of additional material specifically designated. The hearing officer may reopen the record for further proceedings at any time prior to the issuance of the final decision upon provision of appropriate notice to the parties.

10. Model Forms

A. Each SEA must develop model forms to assist parents and public agencies in filing a due process *hearing request* in accordance with §§ 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing

a State hearing request under §§ 300.151 through 300.153. However, the SEA or SAU may not require the use of the model forms.

B. Parents, public agencies, and other parties may use the appropriate model form described in paragraph (A) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in § 300.508(b) for filing a due process hearing request, or the requirements in § 300.153(b) for filing a State complaint. [34 CFR 300.509]

11. Resolution Process

A. Resolution Meeting.

(1) Within 15 days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing under § 300.511, the SAU must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process *hearing request* 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 SAU unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process *hearing request*, and the facts that form the basis of the due process *hearing request*, so that the SAU 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 SAU agree in writing to waive the meeting; or

(b) The parent and the SAU agree to use the mediation process described in § 300.506.

(4) The parent and the SAU determine the relevant members of the IEP Team to attend the meeting.

B. Resolution Period.

(1) If the SAU has not resolved the due process *hearing request* to the satisfaction of the parent within 30 days of the receipt of the due process *hearing request*, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (B)(1) and (2) of this section, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the SAU is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 300.322(d)), the SAU may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process *hearing request*.

(5) If the SAU fails to hold the resolution meeting specified in paragraph (A) of this section within 15 days of receiving notice of a parent's due process *hearing request* or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

C. Adjustments to 30-day Resolution Period.

The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

D. Written Settlement Agreement.

If a resolution to the dispute is reached at the meeting described in paragraphs (A)(1) and (2) of this section, the parties must execute a legally binding agreement that is--

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to § 300.537. *[Section XVI.11.F below]*

E. Agreement Review Period.

If the parties execute an agreement pursuant to paragraph (D) of this section, a party may void the agreement within 3 business days of the agreement's execution.[34 CFR 300.510]

F. State Enforcement Mechanisms.

For enforcement of a resolution session agreement, the SEA provides to parent and adult students the State complaint investigation procedure. The State complaint investigation procedure is not mandatory and will not delay or deny a party the right to seek enforcement of the written resolution session agreement in a State court of competent jurisdiction or in a district court of the United States. [34 CFR §300.537 provides the State the option for enforcement] A resolution session agreement item involving attorney's fees will not be enforceable through a State complaint investigation procedure.

12. Settlement Offer

A. The SAU may provide the parents with a written settlement offer prior to the date of the hearing. If the parents accept the settlement offer, they shall notify the SAU, the hearing officer, and the Commissioner no later than the date of the prehearing conference. Under no circumstances shall either party inform the hearing officer, or introduce as evidence, a settlement offer that has not been accepted, in whole or in part, by the parents.

B. The parties may at any time prior to, during, or after the due process hearing engage in private settlement discussions.

13. Impartial Due Process Hearing

A. General.

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

B. Agency Responsible for Conducting the Due Process Hearing.

The hearing described in paragraph (A) of this section must be conducted by the SEA.

C. Impartial Hearing Officer.

(1) At a minimum, a hearing officer--

(a) Must not be--

(i) An employee of the SEA or the SAU that is involved in the education or care of the child; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(b) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (C)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

D. Subject Matter of Due Process Hearings.

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process *hearing request* filed under Sec. 300.508(b), unless the other party agrees otherwise.

E. Timeline for Requesting a Hearing.

A parent or agency must request an impartial hearing on their due process hearing request within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process hearing request.

F. Exceptions to the Timeline.

The timeline described in paragraph (E) of this section does not apply to a parent if the parent was prevented from filing a due process hearing request due to--

(1) Specific misrepresentations by the SAU that it had resolved the problem forming the basis of the due process hearing request; or

(2) The SAUs withholding of information from the parent that was required under this part to be provided to the parent. [20 USC 1415(f)(1)(A), 1415(f)(3)(A)-(D)and 34 CFR 300.511]

14. Hearing Rights

A. General.

Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to Sec. 300.514, has the right to--

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

B. Additional Disclosure of Information.

(1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (B)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

C. Parental Rights at Hearings. Parents involved in hearings must be given the right to--

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents. [20 USC 1415(f)(2), 1415(h)and 34 CFR 300.512]

15. Hearing Decisions

A. Decision of Hearing Officer on the Provision of FAPE.

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--

(a) Impeded the child's right to a FAPE;

(b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(c) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (A) of this section shall be construed to preclude a hearing officer from ordering an SAU to comply with procedural requirements under §§ 300.500 through 300.536.

B. Separate Request for a Due Process Hearing.

Nothing in §§ 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process 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 public agency, after deleting any personally identifiable information, must--

(1) Transmit the findings and decisions referred to in § 300.512(a)(5) to the State advisory panel established under § 300.167; and

(2) Make those findings and decisions available to the public. [20 USC 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o)and 34 CFR 300.513]

16. Finality of Decision; Appeal; Impartial Review

A. Finality of Hearing Decision.

A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under § 300.516 *[Section XV. Civil Actions]*

B. Finality of Review Decision.

The decision made by the hearing officer is final unless a party brings a civil action under § 300.516.*[Section XV.17]* [20 USC 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2)and 34 CFR 300.514]

17. Timelines and Convenience of Hearings

A. The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c)--

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

B. A hearing officer may grant specific extensions of time beyond the periods set out in paragraphs (A) of this section at the request of either party.

C. Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. [20 USC 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1)and 34 CFR .300.515]

18. Attorneys' Fees

A. In general.

(1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--

(a) The prevailing party who is the parent of a child with a disability;

(b) To a prevailing party who is an SEA or SAU against the attorney of a parent who files a hearing request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing SEA or SAU against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

B. Prohibition on Use of Funds.

(1) Funds under Part B or Part C of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

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

C. Award of Fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this 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 Act 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 §300.506.

(c) A meeting conducted pursuant to § 300.510 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 Act, 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 § 300.508.

(5) The provisions of paragraph (C)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act. [20 USC 1415(i)(3)(B)-(G)and 34 CFR 300.517]

D. Responsibility for Attorneys' Fees

(1) SAU expenses - Personnel expenses incurred by an SAU in the conduct of a hearing shall be considered allowable special education costs. All expenditures (such as fees, honoraria, and per diem expenses) by an SAU to personnel involved in a hearing shall be supported by contractual agreements between these personnel and the SAU. Attorneys' fees and expenses for qualified special education or related services providers may be claimed as special education costs using only local or State funds. Funds under Part B and Part C of the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under the procedural safeguards section of IDEA or Section XVI of this rule.

(2) Private expenses of hearing - Reasonable attorneys' fees incurred by a parent related to a special education hearing shall be the responsibility of the SAU when the parent prevails in the special education hearing and when ordered by a court of appropriate jurisdiction. Attorneys' fees shall be considered an allowable special education expenses using only local or State funds. Funds under Part B and Part C of the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under the procedural safeguards section of IDEA or Section XVI of this rule.

(3) Public expenses of hearing - Impartial hearing officer expenses for due process hearings will be paid directly by the Department.

19. Civil Action

A. General.

Any party aggrieved by the findings and decision made under §§ 300.507 through 300.513 or § 300.530 through 300.534 who does not have the right to an appeal under § 300.514(b), and any party aggrieved by the findings and decision under § 300.514(b), has the right to bring a civil action with respect to the due process hearing request notice requesting a due process hearing under § 300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

B. Time Limitation.

The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action.

C. Additional Requirements.

In any action brought under paragraph (A) of this section, the court--

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

D. Jurisdiction of District Courts.

The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

E. Rule of Construction.

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under § 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act. [20 U.S.C. 1415(i)(2) and (3)(A), 1415(l)and 34 CFR 300.516]

F. If a party appeals a hearing decision, that party must send a copy of that appeal to the Department of Education Due Process Office at the same time as the appeal is filed with the court.

20. Child's Status During Proceedings

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

B. If the hearing request involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

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

D. If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's

parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section. [20 USC 1415(j) and 34 CFR 300.518]

21. Appeal

A. General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531 or the manifestation determination under §300.530(e), or an SAU believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b). [34 CFR 300.532(a)]

B. Authority of Hearing Officer.

(1) A hearing officer under 34 CFR 300.511 hears, and makes a determination regarding an appeal under paragraph (A) of this section.

(2) In making the determination under paragraph (B)(1) of this section, the hearing officer may

(a) Return the child with a disability to the placement from which the child was removed if the hearing officer determines the removal was a violation of 34 CFR 300.530 or that the child's behavior was a manifestation of the child's disability, or

(b) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

(3) The procedures under paragraphs (A) and (B)(1) and (2) of this section may be repeated, if the SAU believes that returning the child to the original placement is substantially likely to result in injury to the child and to others. [34 CFR 300.532(b)]

C. Expedited Due Process Hearing Procedure.

(1) Whenever a hearing is requested under paragraph (a) of §300.532 , the parents or the SAU involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507 and 300.508(a) through (c) and §§

300.510 through 300.514, except as provided in paragraph (C)(2) through (4) of this section.

(2) The SEA or SAU is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and SAU agree in writing to waive the resolution meeting described in paragraph (C)(3)(a) of this section, or agree to use the mediation process described in § 300.506—

(a) A resolution meeting must occur within seven days of receiving *the parent's request for a 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 due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (C)(3) of this section, the State must ensure that the requirements in §§ 300.510 through 300.514 are met. [*Section XVI.21.C(6)(a) and (b)]*

(5) The decisions on expedited due process hearings are appealable consistent with § 300.514. [20 USC 1415(k)(3) and (4)(B), 1415(f)(1)(A) and 34 CFR 300.532(c)]

(6) Expedited Due Process Hearings *shall only be available for persons who have been removed from school for disciplinary purposes and shall:*

(a) *Meet the hearing procedure, described in this section except that the hearing officer may elect to limit the hearing to a single day for presentation of evidence, direct and cross-examination of witnesses, and rebuttal.*

(b) The appointment of the hearing officer shall meet the requirements of Section XV of this rule, (Impartial Hearing Officer), except that the time periods identified in Section XVI.14 of this rule, (Hearing Rights) for disclosure of

evidence shall, for purposes of expedited due process hearings, be not less than five business days.

22. Final Decision Notice

Every decision made at the conclusion of a proceeding subject to this rule shall be in writing and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision.

A. Findings of Fact; Final Decision.

The hearing officer shall issue the findings of fact and the final decision to all parties within 15 days after the conclusion of the hearing.

B. Transmittal of Record of Hearing.

The hearing officer shall forward the complete record of the hearing, the findings of fact, and the final decision to the Due Process Coordinator within 15 days after the conclusion of the hearing. The Department will transmit the findings of fact and decision, after deleting personally identifiable information, to the Maine Advisory Panel on the Education of Children with Disabilities.

C. Appeal.

Any party to the hearing may appeal the decision of the hearing officer to the Maine Superior Court or the Federal District Court. Federal law requires that such appeals be brought in Maine Superior Court or Federal District Court within 90 days of the receipt of the decision of the hearing officer. An appeal may be filed in Maine Superior Court for the county in which the student resides or the county in which the administrative unit is located. If a party serves an appeal to court of a hearing decision, that party must send a copy of that appeal to the Department of Education Due Process Office at the same time as the appeal is served to the court.

D. Compliance.

The SAU shall submit to the Commissioner, within 45 days of the date the unit receives the final decision, documentation that the unit has complied with the decision or that an appeal is pending.

E. Enforcement.

If the SAU refuses to comply with a hearing decision and neither party appeals the decision, the Commissioner shall initiate enforcement action. (20-A MRSA §§6801-A and 7206)

23. Hearing Record

In proceedings subject to this rule, the hearing officer shall make a record consisting of:

A. All papers filed and evidence received or considered;

B. A statement of facts officially noticed;

C Offers of proof, objections and rulings thereon;

D. Findings of fact; and

E. The final decision.

The Commissioner shall retain the entire record of the hearing.

XVII. DISCIPLINE OF CHILDREN WITH DISABILITIES

1. Authority of School Personnel [34 CFR 300.530]

A. Case-by-case Determination.

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

B. General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), 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 §300.536).

(2) After a child 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 must provide services to the extent required under paragraph (D) of this section.

C. Additional Authority.

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

D. Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (C), or (G) of this section must—

(a) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(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 paragraph (D)(1), (D)(3), (D)(4), and (D)(5) of this section may be provided in an interim alternative educational setting.

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

(4) After a child with a disability has been removed from his or her current placement for 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 § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (D)(1) of this section.

E. Manifestation Determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the SAU, the parent, and relevant members of the child's IEP Team (as determined by the parent and the SAU) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(b) If the conduct in question was the direct result of the SAU's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the SAU, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (E)(1)(a) or (1)(b) of this section was met.

(3) If the SAU, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (E)(1)(b) of this section was met, the SAU must take immediate steps to remedy those deficiencies.

F. Determination that Behavior Was a Manifestation.

If the SAU, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—

(1) Either—

(a) Conduct a functional behavioral assessment, unless the SAU had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (G) of this section, return the child to the placement from which the child was removed, unless the parent and the SAU 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 child's disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an SAU;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an SAU; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an SAU.

H. Notification.

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the SAU must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.

(1) Definitions.

(a) For purposes of this section, the following definitions apply:

(i) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(ii) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(iii) Serious bodily injury has the meaning given the term serious bodily injury under paragraph (3) of subsection (H) of section 1365 of title 18, United States Code.

(iv) Weapon has the meaning given the term dangerous weapon under paragraph (2) of the first subsection (G) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

2. Determination of Setting [34 CFR 300.531]

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

3. Appeal [34 CFR 300.532]

A. General.

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

B. Authority of Hearing Officer.

(1) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (A) of this section.

(2) In making the determination under paragraph (B)(1) of this section, the hearing officer may—

(a) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or

(b) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (A) and (B)(1) and (2) of this section may be repeated, if the SAU believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

C. Expedited Due Process Hearing.

(1) Whenever a hearing is requested under paragraph (A) of this section, the parents or the SAU involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507 and 300.508(a) through (c) and §§ 300.510 through 300.514, except as provided in paragraph (C)(2) through (4) of this section.

(2) The SEA or SAU is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and SAU agree in writing to waive the resolution meeting described in paragraph (C)(3)(a) of this section, or agree to use the mediation process described in § 300.506—

(a) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(b) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (C)(3) of this section, the State must ensure that the requirements in §§ 300.510 through 300.514 are met. *[Section XVI.21.C(6)(a) and (b)]*

(5) The decisions on expedited due process hearings are appealable consistent with § 300.514.

4. Placement During Appeals [34 CFR 300.533]

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

5. Protections for Children Not Determined Eligible for Special Education and Related Services [34 CFR 300.534]

A. General.

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

B. Basis of Knowledge.

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the SAU, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

C. Exception.

A public agency would not be deemed to have knowledge under paragraph (B) of this section if—

(1) The parent of the child—

(a) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(b) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.

D. Conditions that Apply If No Basis of Knowledge.

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (B) and (C) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (D)(2) of this section.

(2)

(a) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.530, the evaluation must be conducted in an expedited manner.

(b) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(c) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act.

6. Referral to and Action by Law Enforcement and Judicial Authorities. [34 CFR 300.535]

A. Rule of Construction.

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

B. Transmittal of Records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

7. Change of Placement Because of Disciplinary Removals [34 CFR 300.536]

A. For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child 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 child's behavior is substantially similar to the child'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 child 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.

8. State Enforcement Mechanisms

For enforcement of a written agreement reached as a result of mediation or resolution meeting, the SEA offers to parents and adult students the State

complaint investigation procedure. The State complaint investigation procedure is not mandatory and will not delay or deny a party the right to seek enforcement of the written mediation agreement or resolution meeting agreement in a court of competent jurisdiction or in a district court of the United States. [34 CFR 300.537 provides the State the option of including enforcement.] A resolution session agreement or mediation agreement item involving attorney's fees will not be enforceable through a State complaint investigation procedure.

XVIII. SPECIAL EDUCATION FINANCE

1. Special Education Finances: State Subsidy and Direct Payments

A. General Principles; Intermediate Educational Unit and School Administrative Unit Responsibility

CDS:
For the CDS regional sites that function as intermediate educational units, the CDS State IEU Allocation Methodology governs the distribution of annual grant awards from available funds to regional intermediate educational units in accordance with an allocation methodology to ensure the provision of child find, early intervention services for eligible children birth to under age 3, and special education and related services for eligible children three to under age 6 with disabilities and their families.

The purpose of the allocation methodology is to distribute available funds based on objective statistical methods of allocation that reflect site needs related to personnel and to children to be served. The allocation methodology distributes available funds from federal Part B, §619, federal Part C and State General Fund, including Medicaid Targeted Case Management (TCM) cost reimbursement to the regional sites, or to local educational agencies functioning as pilot sites. Medicaid cost reimbursement for direct services is also accounted for.

The allocation methodology includes consideration of the costs associated with the following functions: administration; child find; case management; and provision of mandated services to eligible children. The allocation methodology takes into consideration other factors, which include the statewide population of children from birth under age 6; ChildCount; the Medicaid eligibility rate; and cost containment measures. The total allocations made under the allocation methodology may not exceed funds allocated or appropriated to the program.

SAUs for Children 5-20:
School administrative units are generally responsible for financing the special education services to children with disabilities age five to twenty in the first instance, with subsidy payments from the State made pursuant to 20-A MRSA §15681-A and with local property taxes.

Beginning in fiscal year 2005-06, a SAU receives an additional weight of at least 1.20 but not greater than 1.40 for each special education child identified on the annual December 1st Child Count as required by the federal Individuals with Disabilities Education Act for the most recent year, up to a maximum of 15% of the SAU's resident pupils as determined under 20-A MRSA §15674, subsection 1, paragraph C, subparagraph (1).

For those school administrative units in which the annual December 1st Child Count for the most recent year is less than 15% of the school administrative unit's resident pupils as determined under 20-A MRSA §15674, subsection 1, paragraph C, subparagraph (1), the special education Child Count percentage may not increase more than 0.5% in any given year, up to a maximum of 1.0% in any given 3-year period. For each special education child above the 15% maximum, the unit receives an additional weight of .38. In addition, each school administrative unit must receive additional funds:

(1) For lower staff-student ratios and expenditures for related services for SAUs with fewer than 20 special education children identified on the annual December 1st[1] Child Count as required by the federal Individuals with Disabilities Education Act for the most recent year;

(2) For high-cost in-district special education placements. Additional funds must be allocated for each child estimated to cost 3 times the statewide special education EPS per-pupil rate. The additional funds for each child must equal the amount by which that student's estimated costs exceed 3 times the statewide special education EPS per-pupil rate;

(3) For high-cost out-of-district special education placements. Additional funds must be allocated for each child estimated to cost 4 times the statewide special EPS per-pupil rate. The additional funds for each child must equal the amount by which that student's estimated costs exceed 4 times the statewide special education EPS per-pupil rate; and

(4) To ensure the SAU meets the federal maintenance of effort requirement for receiving federal Individuals with Disabilities Education Act funds.

B. Essential Program and Services Funding Act: Allowable Special Education Costs

(1) The salary and benefit costs of qualified professional personnel, Educational Technicians, clerical staff or qualified independent contractors providing special education services or related services as reported on EF-S-02 Report.

(2) The costs of tuition, board, and special education services paid to other SAUs or private schools which have been approved by the Commissioner for the provision of special education and related services as reported on the EF-S-07 Report.

C. Costs of Qualified Personnel

The salary and benefit costs for qualified educational personnel shall be funded in part by the Department to the extent that these personnel are assigned to special education functions. The personnel providing early intervention services must meet qualifications that are consistent with any state-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services.

(1) Certified Educational Personnel

For B-5 special education teachers shall have a #282 certificate.

For 5-20:

These shall include administrators, teachers and educational specialists assigned to provide or administer special education services:

Department of Education Certificate Title	
Administrator of Special Education	*#030*
Assistant Special Education Director	*#078*
Special Education Consultant	*#079*
School Psychological Service Provider	*#093*
Vocational Education Evaluator	*#094*
Speech & Hearing Clinician	*#293*
*School Nurse **	*#524*
Teacher of Students w/ Disabilities	*#282*
Teacher - Severe Impairments	*#286*
Teacher - Hearing Impairments	*#292*
Teacher - Visual Impairments	*#291*
Adapted Physical Education	*#515*

***Only as is necessary as identified on the child's Individualized Education Program (IEP).*

School units may not report as program costs the salaries or benefits (full or prorated) of regular classroom teachers, administrators or educational specialists (such as guidance counselors) that provide instruction and services to children with disabilities in the same manner as to all other children.

(2) Auxiliary Staff

These shall include those Educational Technicians I, II, and III approved by the Department's Office of Certification and assigned full-time or part-time to provide special education services. The salaries or benefits (full or partial) of persons who are assigned as Educational Technicians in regular classrooms and are not providing direct services to children with disabilities within those classrooms, are not allowable special education costs.

(3) Licensed Contractors

These shall include those persons licensed by appropriate state agencies to provide related services to children with disabilities.

(a) Qualified Licensed Contractors

Job Title	***Licensing Authority***
Audiologists	*Maine Board of Examiners of Speech-Language Pathology and Audiology*
Interpreter / Transliterator	*Office of Licensing and Registration, Department of Professional and Financial Regulation*
Licensed Clinical Professional Counselors	*Maine Board of Professional Counselor Licensure*
Occupational Therapists and Occupational Therapy Aides	*Maine Board of Examiners of Occupational Therapists*
Physical Therapists and Physical Therapist Assistants	*Maine Board of Examiners of Physical Therapists*
Psychologists	*Maine Board of Examiners of Psychologists*
Social Workers	*Maine Board of Examiners of Social Workers*
Speech-Language Pathologists, Speech-Language Pathology Aides and Assistants	*Maine Board of Examiners of Speech-Language Pathology and Audiology*

(b) Required Procedures for Contracted Special Education Services.

(i) Use of independent contractors - If the IEP Team determines that the provision of special education or related services is necessary to identify or provide for a child's special education needs and if the provider of such special education or related services is not an employee of the SAU, such services shall be provided in accordance with the terms of a written contract approved by the superintendent or the governing board of a regional CDS site.

(ii) Contracts – SAUs shall negotiate a written contract with any individual or agency from which they wish to obtain special education or related services.

The following information shall be included in each contract:

(I) Total costs for services, listed in detail;

(II) Nature and extent of consultation and/or evaluation services to be provided;

(III) The name, social security number, and certification/licensure of the provider;

(IV) Provision for the proration of charges and payments; and

(V) Provision for the timely exchange of essential information and individual student reports between the provider and the sending unit.

(iii) Credentials of independent contractors - When contracted special education or related services are provided to children, the provider shall be certified by the Department of Education as a special education teacher (B-5), special education consultant, special education director, assistant special education director, school psychological service provider, or vocational education evaluator; or hold a valid Maine license to practice in the areas of occupational therapy, physical

therapy, audiology, speech-language pathology, psychology, counseling or social work.

Contracted consultants who do not possess either certification or licensure, as described in paragraph (b)(iii) above, shall not provide special education services without prior written approval from the Department of Education.

Fingerprinting is required for all contracted providers.

(c) Annual Report of Contracted Services

School units shall annually report all contracted special education service providers on the "Contracted Services Report" (EF-S-03 form) in the manner required by the Commissioner.

(d) Payment for Contracted Services

Payment for services by school administrative units to qualified licensed contractors may be no higher than 140% of the Medicaid rate paid for comparable services on the effective date of the final adoption of this rule and must be considered payment in full. The payment for psychological service providers may be no higher than 140% of the Medicaid rate that is provided for psychologists.

(e) If a school administrative unit is unable to find a qualified licensed contractor at or below 140% of the Medicaid rate for comparable services, the first priority of the school administrative unit must be to ensure the provision of free, appropriate public education for eligible children, and the second priority of the school administrative unit must be to enter into a short-term contract with a qualified licensed contractor. The Department of Education shall provide guidance to school administrative units on the procedures that must be followed when a qualified licensed contractor is not available at or below the Medicaid rate ceiling for comparable services.

D. State Payment for State Agency Clients

Special education costs for state agency clients shall be paid by the Department in the year of allocation at 100 percent of actual costs in accordance with 20-A MRSA §15689-A. Administrative units seeking

state payment for state agency clients shall submit Forms EF-S- 01, EF-S-04A and EF-S-04B in the manner required by the Commissioner.

E. Special Education Services Reporting

Annual report of allowable special education expenses shall be made following the close of each fiscal year using the MEDMS Financial System in accordance with the accompanying instructions and with provisions of the Essential Program and Services Funding Act.

F. Reconciliation of Audit Findings

The annual audit of SAUs shall determine whether a SAU which receives tuitioned children with disabilities has generated a surplus of income over allowable costs or incurred a deficit. The Commissioner may require a rebate to sending units or additional tuition payments from sending units in such cases or require such other arrangements as are deemed equitable where the audit reveals that reports were made in error.

G. Use of Third-Party Funding

(1) Nothing in these regulations or the regulations implementing the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq.) is intended to relieve an insurer, Maine Care or other third party, from an otherwise valid obligation to provide or pay for services to a child with a disability.

(2) Children with disabilities who are covered by public insurance.

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

(b) With regard to services required to provide free appropriate public education to an eligible child *under this rule,* the SAU. 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 *IDEA* and 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, but may pay the cost the parents otherwise would be required to pay. The SAU may not use a child's benefits under a public benefits or insurance program if that use would decrease available lifetime

coverage or any other insured benefit; would result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; would increase premiums or lead to the discontinuation of benefits or insurance; or would risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and, must obtain parental consent, consistent with §300.9, each time that access to public benefits or insurance is sought; and notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the SAU of its responsibility to ensure that all required services are provided at no cost to the parents.[34 CFR 300.154 (d)]

The consent is provided at the time of the development of the annual IEP for the agreed upon frequency and intensity of service. If the IEP is amended to change the frequency and intensity of services, a new consent is required.

(3) Children with disabilities who are covered by private insurance.

(a) With regard to services required to provide FAPE to an eligible child under these rules, the SAU may access a parent's private insurance proceeds only if the parent provides informed consent consistent with *Section XV of this rule.*

(b) Each time the SAU proposes to access the parent's private insurance proceeds, it must obtain parental consent in accordance with these rules; and inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the SAU of its responsibility to ensure that all required services are provided at no cost to the parents.

H. Local Entitlement Funds

Each SAU providing special education services to children with disabilities is eligible to receive federal "local entitlement" funds upon the Department's approval of the SAU's application (Form EF-S-08) for such funding. Applications shall be submitted in the manner required by the Commissioner. The Department shall respond within a reasonable period of the receipt of each such application.

I. Other Agency Responsibility

The Department is responsible for ensuring that children with disabilities who are eligible for special education services are provided a free appropriate public education and that all educational programs for children with disabilities in the State, including any such programs administered by any other state or local agency, are under the general supervision of the Department and meet the standards contained in these regulations.

Nothing in these rules relieves any other public agency, including the Maine Department of Health and Human Services, the Department of Labor, and Bureau of Vocational Rehabilitation or the Department of Corrections, of the responsibility to provide or pay for any early intervention, special education or related service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

Responsibility for services, dispute resolution, and any reimbursement of cost to the Department or local agency shall be governed by Interagency Agreements and the Interagency Dispute Resolution Process,

If a public agency other than an educational agency fails to provide or pay for the special education and related services, the SAU shall provide or pay for these services to the student in a timely manner. The SAU may then 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 SAU in accordance with the terms of the interagency agreement.

2. Special Education Finances: Public School Tuition Computations

A. General Principles

SAUs may, in accordance with this rule, provide special education services to its children by tuitioning them to another SAU. The tuition rate charged by the receiving SAU shall be based upon the allowable costs of special education and related services and shall not exceed the actual per pupil costs for these services.

B. Allowable Costs

The allowable costs for computation of tuition rates shall be the same as those used in computation of tuition rates for children in regular education: all special education costs except for costs of community services, capital outlay, debt retirement, tuition and transportation.

C. Computation of Tuition Rates

The tuition rate for each SAU receiving tuitioned children with disabilities shall be determined by dividing the sum of the allowable expenditures by the average daily enrollment of children. Both the allowable expenditures and the average daily membership used in computing tuition of an on-going public school special education service shall be based on the ***prior year*** *expenditures and actual number of children enrolled in the service for the current school year.*

D. Tuition Rates for New Programs

In the case of a new public special education service that receives tuitioned children, the tuition shall be computed by dividing the estimated allowable expenditures by the estimated average daily enrollment of children.

E. Regular Tuition Costs and Allowable Costs

If the SAU pays a regular tuition, as calculated under 20-A MRSA Chapter 219, plus an additional amount for allowable special education services for a child, only the additional amount for allowable special education services shall be considered a special education expenditure.

3. Special Education Finance: Private School Tuition Computations, Approval Procedures

A. General Principles

Private special purpose schools and private general purpose schools may, in accordance with this rule, provide special education services to children with disabilities and receive tuition payments for such services from school administrative units or the Department.

B. Annual Year-End Reports

Each private special purpose school shall file an EF-S-01 Year-End Report with the Department in the format required by the Commissioner. All requested information pertaining to actual revenues, expenditures, and enrollments and, where applicable, estimates shall be provided within the specified time limits.

C. Tuition Computation: Private Special Purpose Schools

The tuition rate for each private special purpose school shall be determined by dividing the sum of the allowable costs by the average daily enrollment of students over the year. Tuition rates for private special

purpose schools that also receive Maine Care funds will be determined in a joint rate setting process with the Office of Maine Care. Tuition rates may not exceed the actual per child cost of operation of the preceding school year and shall be approved by the Commissioner. Tuition rates will only cover appropriately qualified special services staff. No payments shall be made or accepted without prior approval of the tuition rate.

Increases in the tuition rate may not exceed the tuition rate established unless the school presents sufficient evidence to the Commissioner that a hardship will exist if a higher rate is not approved.

D. Exempted Private Agencies

This section shall not apply to, and the Commissioner shall have no authority over, tuition rates charged for special education programs by private agencies where the tuition is not paid, reimbursed or otherwise funded in whole or in part by this State.

E. Private Special Purpose Schools with Day Treatment Components

In order to align rates and procedures with Maine Care funded programs, the tuition rate will include an occupancy factor. Therefore, billing for education will only occur when the child is in attendance.

F. Private General Purpose Schools With Exclusive Contracts Or A Child Enrollment With Greater Than 60% Public Tuition Children.

A private general purpose school that has a contract with a SAU for the provision of elementary and/or secondary education or enrollment of greater than 60% publicly tuitioned children shall establish a tuition rate based on actual per child costs. The tuition rate for such private school special education services shall be determined by dividing the sum of the allowable costs by the average daily enrollment of children. Both the allowable expenditures and the average daily enrollment of children used in computing tuition of an on-going special education service in a general purpose private school shall be based on the prior year expenditures and actual number of children enrolled in the service for the current school year.

G. Private General Purpose Schools With Tuition Children

A private general purpose school that does not have a contract with a school administrative unit for the provision of elementary and/or secondary education shall charge a tuition rate that does not exceed the State elementary or secondary per child tuition rate as computed under 20-A MRSA §§ 5804 and 5806. In order to receive public funds, a special

purpose private school shall comply with 20-A MRSA Chapter 117, sub-chapter 2.

XIX. WAIVERS

1. Commissioner Waiver of Certain Regulations

The superintendent of a school administrative unit or the director of a private school serving children with disabilities may request a waiver of certain regulations. Requests for waivers to the requirements regarding child-teacher ratios, caseload ratios, qualified contracted consultant, or the location of special education programs in chronologically, age-appropriate settings:

A. Shall be in writing;

B. Shall include documentation of the SAU's or school's efforts to achieve compliance;

C. Shall state the rationale for requesting the waiver;

D. Shall specify the corrective action to be taken to achieve compliance by the beginning of the next school year;

E. Shall include documentation of notification and opportunity to comment provided to the parents of all children with disabilities affected by the waiver request; and

F. Shall include a signed statement from the superintendent assuring that all children affected by the waiver are receiving a free, appropriate public education (FAPE) consistent with their IEPs.

The Commissioner shall review and approve, modify, or disapprove all such requests for a waiver, and provide the response in writing.

2. Agreement Between Parent and School

A. Waiver of 7-day Notice for an IEP Meeting

The school must document in writing and with parent/guardian signature that the parent/guardian has waived their right to the 7-day notice of an IEP meeting as described in Section V.2 (A) of this rule. The SAU must still provide the parent with the notice of the IEP meeting as described in Section V.2 (A) of this rule, to ensure compliance, even if the 7-day requirement is waived .

B. Seven day Advance Notice of an Appearance of an Attorney at Parent Request at a Due Process Mediation

If both parties agree, the parties may sign a waiver of the 7-day written notice of attendance of the parent's attorney at mediation.

If both parties agree, the parties may sign a waiver of the 7-day written notice of attendance of the parent's paralegal at mediation.

C. ***Waiver of Resolution Meeting for Regular Hearings Requested by Parents***

Both parties may waive in writing the requirement to hold a resolution session. The resolution session is only required when parents request a regular hearing.

STATUTORY AUTHORITY: 20-A M.R.S.A. §7003

EFFECTIVE DATE:
September 7, 1978

AMENDED:
October 30, 1979 - (EMERGENCY) Sec. 16(E)
April 5, 1980 - Sec. 16(E)
February 29, 1981 - Sec. 3, Section 11(C)
September 23, 1981 - Sec. 16(E), 8 (N)+ Sec. 16(A) - (EMERGENCY)
March 29, 1982 - Sec. 9(Q)+ Section 16(A) -
September 21, 1983 - Sec. 5 (g) - (EMERGENCY)

REPEALED AND REPLACED:
August 1, 1988

AMENDED:
June 23, 1992
October 26, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):
May 19, 1996

REPEALED AND REPLACED:
November 1, 1999

AMENDED:
June 24, 2003 - filing 2003-191, Sec. 11.15, 12.11(C), (S), 13.16

REPEALED AND REPLACED:
August 3, 2007 – filing 2007-280 (major substantive)

APPENDIX 1

Notice of Procedural Safeguards

In the Individuals with Disabilities Improvement Act of 2004 (the reauthorization of the IDEA, 2004), the Congress required the U.S. Department of Education to publish and widely disseminate 'model forms', that are "consistent with the requirements of [Part B of the IDEA]" and "sufficient to meet the requirements." This notice of procedural safeguards has been provided to the states.

NOTE: Italicized text signifies State requirements. **Non-italicized Time Roman text signifies federal statutory or regulatory requirements.**

Opportunity to examine records; parent participation in meetings. 34 CFR § 300.501

(a) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(b) *Parent participation in meetings.*

(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) *Parent involvement in placement decisions.*

(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

Communication of Procedural Safeguards
34 CFR §300.504

(a) A copy of the procedural safeguards available to the parents of a child with a disability *or an adult student with a disability* must be given to the parents *or the adult student* only one time a school year, except that a copy also must be given to the parents –

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint and upon receipt of the first due process *hearing request;*

(3) In accordance with discipline procedures *(see* ***Procedures When Disciplining a Child with Disabilities,*** *below);* and

(4) Upon request by a parent *or adult student.*

(b) Internet Web site. *The School Administrative Unit (SAU*) may place a current copy of the procedural safeguards notice on its Internet Web site if a web site exists.

Sources the parent may contact for assistance in understanding the parent's rights include the Due Process Office of the Maine Department of Education (207-624-6650), Maine Parent Federation (1-800-870-7746), the Disability Rights Center (1-800-452-1948) and Southern Maine Parent Awareness (1-800-564-9696), and KIDS LEGAL (1-866-624-7787).

A parent may file a dispute resolution request with the Maine Department of Education if the parent believes the school administrative unit (SAU) has violated a requirement under the Maine Special Education Regulations. (See Dispute Resolution Section below.)

Parental Participation

As the parent of a child who has or may have a disability, you are entitled to participate in meetings regarding your child's eligibility determination, initial evaluation or reevaluation, educational placement or the provision of early intervention services for your child age birth through 2 years or the provision of a free appropriate public education for your child age 3 through 20 years. If you are an adult student, you have the right to participate in meetings regarding your eligibility determination, initial evaluation or reevaluation, educational placement or the provision of a free appropriate public education.

WRITTEN NOTICE
34 CFR §300.503

Notice

Your school administrative unit (SAU) must give you written notice (provide you certain information in writing), *at least 7 days prior to the date the school administrative unit:*

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of *early intervention services for your child age birth to 2 years, or* a free appropriate public education (FAPE) *to your child age 3 through 20 years;* **or**
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of *early intervention services for your child age birth through 2 years, or a FAPE* to your child *age 3 through 20 years*.

Content of notice

The written notice must:

1. Describe the action *regarding the referral, evaluation, identification, programming or placement* that your SAU proposes or refuses to take;
2. Explain why your SAU is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your SAU used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your SAU is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding *your rights under* Part B of the IDEA, *such as and the Due Process Office of the Maine Department of Education (207-624-6644), the Maine Parent Federation (1-800-870-7746), and Southern Maine Parent Awareness (1-800-564-9696)*
7. Describe any other choices that your child's individualized education program (IEP) Team*, which includes* the parent, considered and the reasons why those choices were rejected;
8. Provide a description of other reasons why your SAU proposed or refused the action.
9. *Include a summary of comments made by the parents, including the parents' description of their child's progress; and*
10. *Names and titles of each member.*

Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; **and**
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your SAU must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that 1 and 2 have been met.

Native Language
34 CFR §300.29

Native language, when used with an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

Electronic Mail
34 CFR §300.505

If your SAU offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a due process *hearing request*.

Parental Consent - Definition
34 CFR §300.9

Consent

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

Parental Consent
34 CFR §300.300

Consent for initial evaluation

Your SAU cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your written consent as described under the heading **Parental Consent.**

Your SAU must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the SAU to start providing special education and related services to your child. If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your SAU may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process *hearing request*, resolution meeting, and impartial due process hearing procedures (unless required to do so or prohibited from doing so under State law). Your SAU will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances, unless State law requires it to pursue the evaluation.

Generally, either parent may grant consent. In the case of divorced parents with shared parental rights and responsibilities either parent may grant consent. However, in the event that one parent grants consent and the other parent refuses, the school administrative unit is obligated to initiate the action for which consent has been granted.

Special rules for initial evaluation of wards of the State

If a child is a ward of the State and is not living with his/her parent —
The SAU does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the SAU cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; **or**
3. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

Ward of the State, as used in the IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; **or**
3. In the custody of a public child welfare agency.

Parental consent for services

Your SAU must obtain your informed written consent before providing special education and related services to your child for the first time.
The SAU must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, your SAU may not use the procedural safeguards (i.e., mediation, *State* complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent and the SAU does not provide your child with the special education and related services for which it sought your consent, your SAU:

1. Is not in violation of the requirement to *provide appropriate services (for a child age birth through 2 years)or* make a free appropriate public education (FAPE) available to your child (*age 3 through 20 years)* for its failure to provide those services to your child; **and**

2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

Parental consent for reevaluations

Your SAU must obtain your informed consent before it reevaluates your child, unless your SAU can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. You did not respond.

If you refuse to consent to your child's reevaluation, the SAU may, but is not required to, pursue your child's reevaluation by using the mediation, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your SAU does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

Documentation of reasonable efforts to obtain parental consent

Your school must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the SAU's attempts in these areas, 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.

Other consent requirements

Your consent is not required before your SAU may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

Revisions to Parental Consent effective December 31, 2008:

§300.300 Parental consent.

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

a. May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
b. Will not be considered to be in violation of the requirement to make FAPE available to the

child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and
c. Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child.

2. If, at any time subsequent to the initial provision of special education and related services, the parent of a child 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 child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;
b. May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
c. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
d. Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services.

Independent Educational Evaluations
34 CFR §300.502

General

As described below, you have the right to *request* an independent educational evaluation (IEE) of your child *at no cost to you* if you disagree with the evaluation of your child that was obtained by your SAU.

If you request an independent educational evaluation, the SAU must provide you with information about where you may obtain an independent educational evaluation and about the SAU's criteria that apply to independent educational evaluations.

Definitions

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the SAU responsible for the education of your child.

Public expense means that the SAU either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of the IDEA, which allow each State to use whatever State, local, Federal and private sources of support are available in the State to meet the requirements of Part B of the Act.

Parent right to evaluation at public expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your SAU, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense when you disagree with a school evaluation of your child, your SAU must, *within 30 days*, either: (a) File a due process *hearing request* to request a hearing to show that its evaluation of your child is appropriate; or (b) Ensure that an independent educational evaluation is provided at public expense, unless the SAU demonstrates in a hearing that the evaluation of your child that you obtained did not meet the SAU's criteria.
2. If your SAU requests a hearing and the final decision is that your SAU's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the SAU may ask why you object to the evaluation of your child obtained by your SAU. However, your SAU may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process *hearing request* to request a due process hearing to defend the SAU's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your SAU conducts an evaluation of your child with which you disagree.

Parent-initiated evaluations

If you obtain an independent educational evaluation of your child at public expense or you share with the SAU an evaluation of your child that you obtained at private expense:

1. Your SAU must consider the results of the evaluation of your child, if it meets the SAU's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**

2. You or your SAU may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by hearing officers

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

SAU criteria

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the SAU uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation). Except for the criteria described above, a SAU may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Confidentiality of Information

Definitions

34 CFR §300.611

As used under the heading **Confidentiality of Information**:

- Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- Education records means the type of records covered under the definition of ‘‘education records’’ in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- Participating agency means any SAU, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

Personally Identifiable

34 CFR §300.32

Personally identifiable means information that has:

(a) Your child's name, your name as the parent, or the name of another family member;
(b) Your child's address;
(c) A personal identifier, such as your child’s social security number or student number; **or**
(d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Notice to Parents
34 CFR §300.612

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major identification, location, or evaluation activity (also known as "child find"), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity to locate, identify, and evaluate children in need of special education and related services.

Access Rights
34 CFR §300.613

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your SAU under Part B of the IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, or separation and divorce.

Record of Access
34 CFR §300.614

Each participating agency must 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.

Records on More Than One Child
34 CFR §300.615

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

List of Types and Locations of Information
34 CFR §300.616

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

Fees
34 CFR §300.617

Each participating agency may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of the IDEA.

Amendment of Records at Parent's Request
34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.
If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading **Opportunity For a Hearing,** *below.*

Opportunity for a Hearing
34 CFR §300.619

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

Hearing Procedures
34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Result of Hearing
34 CFR §300.620

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; **and**

2. If the participating agency discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

Consent For Disclosure of Personally Identifiable Information
34 CFR §300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Your consent, or consent of an eligible child who has reached *18 years of age (or is emancipated)* under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same SAU you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the SAU where the private school is located and officials in the SAU where you reside.

Safeguards
34 CFR §300.623

Each participating agency must protect the confidentiality of personally identifiable information

at collection, storage, disclosure, and destruction stages.

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

All persons collecting or using personally identifiable information must receive training or instruction regarding your State's policies and procedures regarding confidentiality under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA).

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

Destruction of Information
34 CFR §300.624

Your SAU must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child'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.

Dispute resolution

20-A M.R.S.A. §7202 et seq.

State Complaint Procedures

Difference Between Due Process Hearing and State Complaint Procedures

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process hearings. *Maine uses Part B dispute resolution processes for children served under Part C.* As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a SAU, the State Educational Agency, or any other public agency. Only you or a SAU may file a due process *hearing request* on any matter relating to a

proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of *appropriate services (birth to 2 years) or* a free appropriate public education (FAPE) to a child *(3 through 20 years*.) While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process *hearing request* (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the SAU's request. The State complaint, resolution and due process hearing procedures are described more fully below.

Adoption of State Complaint Procedures
34 CFR §300.151

General

Each State Educational Agency must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities

Remedies for denial of appropriate services

In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; **and**
2. Appropriate future provision of services for all children with disabilities.

Minimum State Complaint Procedures
34 CFR §300.152

Time limit; minimum procedures

Each State Educational Agency must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the SAU or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;

4. Review all relevant information and make an independent determination as to whether the SAU or other public agency is violating a requirement of Part B of the IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for the State Educational Agency's final decision.

Time extension; final decision; implementation

The State Educational Agency's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) the parent and the SAU or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
2. Include procedures for effective implementation of the State Educational Agency's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described below under the heading **Filing a Due Process Hearing Request,** or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside the State complaint, or any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the SAU), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a SAU's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

Filing a Complaint
34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.
The State complaint must include:

1. A statement that a SAU or other public agency has violated a requirement of Part B of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations regarding a specific child:
   (a) The name of the child and address of the residence of the child;

(b) The name of the school the child is attending;
(c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;

(d) A description of the nature of the problem of the child, including facts relating to the problem; **and**

(e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading **Adoption of State Complaint Procedures,** *unless a longer period is reasonable because the complainant is requesting compensatory services for a violation that allegedly occurred not more than two years prior to the date that the written complaint is received by the Department of Education.*
The party filing the State complaint must forward a copy of the complaint to the SAU or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

The SEA, under 34 CFR 300.537, may determine the State enforcement mechanisms for resolution session agreements and mediation agreements.

Due Process H*earing* Procedures

Filing a Due Process *Hearing Request*
34 CFR §300.507

General

You or the SAU may file a due process *hearing request* on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of *appropriate services for your child age birth through 2 years or* a free appropriate public education (FAPE) to your child *age 3 through 20 years*.

The due process *hearing request* must allege a violation that happened not more than two years before you or the SAU knew or should have known about the alleged action that forms the basis of the due process *hearing request*.

The above timeline does not apply to you if you could not file a due process *hearing request* within the timeline because:

1. The SAU specifically misrepresented that it had resolved the issues identified in the *hearing request;* **or**
2. The SAU withheld information from you that it was required to provide you under Part B of the IDEA.

Information for parents

The SAU must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the SAU file a due process *hearing request*.

Due Process *Hearing* Request
34 CFR §300.508

General

In order to request a hearing, you or the SAU (or your attorney or the SAU's attorney) must submit a due process *hearing request* to the other party. That *hearing request* must contain all of the content listed below and must be kept confidential.
You or the SAU, whichever one filed the *hearing request*, must also provide the State Educational Agency with a copy of the *hearing request*.

Content of the *hearing request*

The due process *hearing request* must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to you or the SAU at the time.

Notice required before a hearing on a due process *hearing request*

You or the SAU may not have a due process hearing until you or the SAU (or your attorney or the SAU's attorney), files a due process *hearing request* that includes the information listed above.

Sufficiency of *hearing request*

In order for a due process *hearing request* to go forward, it must be considered sufficient. The due process *hearing request* will be considered sufficient (to have met the content requirements above) unless the party receiving the due process *hearing request* (you or the SAU) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the *hearing request*, that the receiving party believes that the due process *hearing request* does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the SAU) considers a due process *hearing request* insufficient, the hearing officer must decide if the due process *hearing request* meets the requirements listed above, and notify you and the SAU in writing immediately.

Hearing request amendment

You or the SAU may make changes to the *hearing request* only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process *hearing request* through a resolution meeting, described below; **or**
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the SAU) makes changes to the due process *hearing request*, the timelines for the resolution meeting (within 15 calendar days of receiving the *hearing request*) and the time period for resolution (within 30 calendar days of receiving the *request*) start again on the date the amended *hearing request* is filed.

Local educational agency (LEA) or SAU response to a due process hearing request

If the SAU has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process *hearing request*, the SAU must, within 10 calendar days of receiving the due process *hearing request*, send to you a response that includes:

1. An explanation of why the SAU proposed or refused to take the action raised in the due process *hearing request*;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the SAU used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to the SAU's proposed or refused action.

Providing the information in items 1-4 above does not prevent the SAU from asserting that your due process *hearing request* was insufficient.

Other party response to a due process hearing request

Except as stated under the sub-heading immediately above, **Local educational agency (LEA) or SAU response to a due process hearing request**, the party receiving a due process *hearing request* must, within 10 calendar days of receiving the *request*, send the other party a response that specifically addresses the issues in the *due process hearing request*.

Model Forms
34 CFR §300.509

The State Educational Agency must develop model forms to help you file a due process *hearing request* and a State complaint. However, your State or the SAU may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process *hearing request* or a State complaint.

Mediation
34 CFR §300.506

General

The SAU must make mediation available to allow you and the SAU to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process *hearing request*. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you have filed a due process *hearing request* to request a due process hearing as described under the heading **Filing a Due Process Hearing Request.**

Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the SAU's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The SAU may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. 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; **and**
2. Who would explain the benefits and encourage the use of the mediation process to you.

The State must have a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The State Educational Agency must select mediators on a random, rotational, or other impartial basis. The State is responsible for the cost of the mediation process, including the costs of meetings. Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the SAU.

If you and the SAU resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
2. Is signed by both you and a representative of the SAU who has the authority to bind the SAU.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States. *(See Section XVI(3)(B)(9)of this rule)*
Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

Impartiality of mediator

The mediator:

1. May not be an employee of the State Educational Agency or the SAU that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a SAU or State agency solely because he or she is paid by the agency or SAU to serve as a mediator.

An attorney may represent a school administrative unit in a mediation only when an attorney represents the parents. An attorney representing a parent shall provide the superintendent of the school administrative unit and the Due Process Office of the Maine Department of Education with at least 7 days written notice prior to the mediation that they will be representing the parent at the mediation. Parties may consult with their attorneys prior to and after engaging in mediation.

If both parties agree, the parties may sign a waiver of the 7-day written notice of attendance of the parent's attorney in mediation. A copy of the signed waiver must be provided to the Department of Education Due Process Office.

If the parent does not choose to participate in mediation the parent may be contacted by a due process consultant form the Maine Department of Education who will discuss with the parent the benefits of mediation. If the parent would like to request a mediation or would like more information about mediation, the parent may contact the , Due Process Office of the Maine Department of Education at 624-6644.

The Child's Placement *Status During Pendency of Appeals("Stay Put")*

34 CFR §300.518

Except as provided below under the heading **PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES,** *during the pendency of a mediation or State complaint investigation request, or* once a due process *hearing request* is sent to the other party, , and while waiting for the decision of any impartial due process hearing or court proceeding, your child must remain in his or her current educational placement unless you and the State or SAU agree otherwise,

If the due process *hearing request* involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process *hearing request* involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the SAU is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the SAU must provide those special education and related services that are not in dispute (those which you and the SAU both agree upon).

Resolution Process
34 CFR §300.510

Resolution meeting

Within 15 calendar days of receiving notice of your due process *hearing request*, and before the due process hearing begins, the SAU must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process *hearing request*. The meeting:

1. Must include a representative of the SAU who has decision-making authority on behalf of the SAU; **and**
2. May not include an attorney of the SAU unless you are accompanied by an attorney.

You and the SAU determine the relevant members of the IEP Team to attend the meeting.
The purpose of the meeting is for you to discuss your due process *hearing request*, and the facts that form the basis of the *hearing request*, so that the SAU has the opportunity to resolve the dispute.
The resolution meeting is not necessary if:

1. You and the SAU agree in writing to waive the meeting; **or**
2. You and the SAU agree to use the mediation process, as described under the heading **Mediation**.

Resolution period

If the SAU has not resolved the due process *hearing request* to your satisfaction within 30 calendar days of the receipt of the *hearing request* (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the SAU have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the SAU is not able to obtain your participation in the resolution meeting, the SAU may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process *hearing request*. Documentation of such efforts must include a record of the SAU's 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 you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the SAU fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process *hearing request* **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-calendar-day resolution period

If you and the SAU agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.
After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the SAU agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.
If you and the SAU agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the SAU withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written settlement agreement

If a resolution to the dispute is reached at the resolution meeting, you and the SAU must enter into a legally binding agreement that is:

1. Signed by you and a representative of the SAU who has the authority to bind the SAU; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States. (See Section XVI(11)(F))

Agreement review period

If you and the SAU enter into an agreement as a result of a resolution meeting, either party (you or the SAU) may void the agreement within 3 business days of the time that both you and the SAU signed the agreement.

Hearings on Due Process *Hearing Requests*

Impartial Due Process Hearing
34 CFR §300.511

General

Whenever a due process *hearing request* is filed, you or the SAU involved in the dispute must have an opportunity for an impartial due process hearing, as described in the **Due Process Hearing Request** and **Resolution Process** sections.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the State Educational Agency or the SAU that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each SAU must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of due process hearing

The party (you or the SAU) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process *hearing request*, unless the other party agrees.

Timeline for requesting a hearing

You or the SAU must request an impartial hearing on a due process *hearing request* within two years of the date you or the SAU knew or should have known about the issue addressed in the *hearing request*.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process *hearing request* because:

1. The SAU specifically misrepresented that it had resolved the problem or issue that you are raising in your *hearing request*; **or**
2. The SAU withheld information from you that it was required to provide to you under Part B of the IDEA.

Hearing Rights
34 CFR §300.512

General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and require 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 your option, electronic, word-for-word record of the hearing; **and**
5. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional disclosure of information

At least five business days prior to a due process hearing, you and the SAU must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the SAU intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental rights at hearings

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Hearing Decisions
34 CFR §300.513

Decision of hearing officer

A hearing officer's decision on whether your child *(age birth through 2 years)* received *appropriate services or (age 3 through 20 years) received* a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that your child did not receive *appropriate services or* FAPE only if the procedural inadequacies:

1. Interfered with your child's right to *appropriate services or* a free appropriate public education;
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of *appropriate services or* a free appropriate public education (FAPE) to your child; **or**
3. Caused a deprivation of an educational benefit.

Final Decision Notice
Every decision made at the conclusion of a proceeding subject to this rule shall be in writing and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision. .

Construction clause

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a SAU to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process *hearing request* on an issue separate from a due process *hearing request* already filed.

Findings and decision to advisory panel and general public

The State Educational Agency or the SAU, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; **and**
2. Make those findings and decisions available to the public.

Appeals

Finality of Decision; Appeal
34 CFR §300.514

Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) *must be in writing and* is final, except that any party involved in the hearing (you or the SAU) may appeal the decision by bringing a civil action, as described below.

Timelines and Convenience of Hearings and Reviews
34 CFR §300.515

The State Educational Agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings **or**, as described under the sub-heading **Adjustments to the 30-calendar-day resolution period,** not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

Civil Actions, Including the Time Period in Which to File Those Actions
34 CFR §300.516

General

Any party (you or the SAU) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

If the parent has any questions regarding this requirement, they should be directed to the Due Process Office of the Maine Department of Education at 624-6650.

Time limitation

The party (you or the SAU) bringing the action shall have *90 day from the receipt* of the decision of the hearing officer to file a civil action.

Additional procedures

In any civil action, the court:

A. Receives the records of the administrative proceedings;

B. Hears additional evidence at your request or at the SAU's request; **and**

C. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Jurisdiction of district courts

The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

Rule of construction

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process *hearing request*, resolution meeting, and impartial due process hearing procedures) before going directly into court.

Attorneys' Fees
34 CFR §300.517

General

In any action or proceeding brought under Part B of the IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or SAU, to be paid by your attorney, if the attorney: (a) filed a *due process hearing request* or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**
In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or

SAU, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:
   a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
   b. The offer is not accepted within 10 calendar days; **and**
   c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

   Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.
3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

   A resolution meeting, as described under the heading **Resolution meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. 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 similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**

4. The attorney representing you did not provide to the SAU the appropriate information in the due process request notice as described under the heading **Due Process Hearing Request**.

However, the court may not reduce fees if the court finds that the State or SAU unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

Procedures When Disciplining Children with Disabilities

Authority of School Personnel 34 CFR §300.530

Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (which must be determined by the child's individualized education program (IEP) Team), another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see **Change of Placement Because of Disciplinary Removals** for the definition, below).

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the SAU must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see **Manifestation determination**, below) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. The child's IEP Team determines the interim alternative educational setting for such services.

Services

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.
A SAU is only required to provide services to a child with a disability who has been removed from his or her current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed.

A child with a disability who is removed from the child's current placement for **more than 10 school days** must:

1. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
If the removal is a change of placement (see definition below), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

Manifestation determination

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the SAU, the parent, and relevant members of the IEP Team (as determined by the parent and the SAU) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. If the conduct in question was the direct result of the SAU's failure to implement the child's IEP.

If the SAU, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the SAU, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the SAU's failure to implement the IEP, the SAU must take immediate action to remedy those deficiencies.

Determination that behavior was a manifestation of the child's disability

If the SAU, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the SAU had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading **Special circumstances**, the SAU must return the child to the placement from which the child was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

Special circumstances

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the child:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a SAU;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a SAU; **or**
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a SAU.

Definitions

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

Serious bodily injury has the meaning given the term ''serious bodily injury'' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code: *Bodily injury that involves a*

substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

Weapon has the meaning given the term ''dangerous weapon'' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code: *A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.*

Notification
On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the SAU must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

Change of Placement Because of Disciplinary Removals
34 CFR §300.536

A removal of a child with a disability from the child's current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. The child has been subjected to a series of removals that constitute a pattern because:
   a. The series of removals total more than 10 school days in a school year;
   b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
   c. Of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another; **and**

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the SAU and, if challenged, is subject to review through due process and judicial proceedings.

Determination of Setting
34 CFR § 300.531

The individualized education program (IEP) Team must determine the interim alternative educational setting for removals that are **changes of placement**, and removals under the headings **Additional authority** and **Special circumstances**, above.

Appeal
34 CFR § 300.532

General

The parent of a child with a disability may file a due process *hearing request* (see above) to request a due process hearing if he or she disagrees with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

The SAU may file a due process *hearing request* (see above) to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Authority of hearing officer

A hearing officer that meets the requirements described under the sub-heading **Impartial Hearing Officer** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading **Authority of School Personnel**, or that the child's behavior was a manifestation of the child's disability; **or**
2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated, if the SAU believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.
Whenever a parent or a SAU files a due process *hearing request* to request such a hearing, a hearing must be held that meets the requirements described under the heading **Due Process Hearing Requests** except as follows:

1. The State Educational Agency must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless the parents and the SAU agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process *hearing request*. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process *hearing request*.

3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see **Appeals**, above).

Placement During Appeals
34 CFR §300.533

When, as described above, the parent or SAU has filed a due process *hearing request* related to disciplinary matters, the child must (unless the parent and the State Educational Agency or SAU agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading **Authority of School Personnel**, whichever occurs first.

Protections for Children Not Yet Eligible for Special Education and Related Services
34 CFR §300.534

General

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the SAU had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

Basis of knowledge for disciplinary matters

A SAU must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;
2. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; **or**
3. The child's teacher, or other SAU personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the SAU's director of special education or to other supervisory personnel of the SAU.

Exception

A SAU would not be deemed to have such knowledge if:

1. The child's parent has not allowed an evaluation of the child or refused special education services; **or**

2. The child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, a SAU does not have knowledge that a child is a child with a disability, as described above under the sub-headings **Basis of knowledge for disciplinary matters** and **Exception**, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the SAU, and information provided by the parents, the SAU must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities 34 CFR §300.535

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Transmittal of records

If a SAU reports a crime committed by a child with a disability, the SAU:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense

General

34 CFR §300.148

Part B of the IDEA does not require a SAU to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the SAU made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the SAU where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

Reimbursement for private school placement

If your child previously received special education and related services under the authority of a SAU, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the SAU, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the State Educational Agency and SAUs.

Limitation on reimbursement

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the SAU to provide FAPE to your child, including stating your concerns and your intent to enroll your 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 your removal of your child from the public school, you did not give written notice to the SAU of that information;
2. If, prior to your removal of your child from the public school, the SAU provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your

responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**

2. May, in the discretion of the court or a hearing officer, not be reduced or denied for the parents' failure to provide the required notice if: (a) The parent is not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to the child.

Surrogate parents
34 CFR § 300.519

General. (a)

Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.30) can be identified;
(2) The public agency, after reasonable efforts, cannot locate a parent;
(3) The child is a ward of the State under the laws of that State; or
(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

Duties of public agency (b)

The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and
(2) For assigning a surrogate parent to the child.

Wards of the State. (c)

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

Criteria for selection of surrogate parents (d)

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
(iii) Has knowledge and skills that ensure adequate representation of the child.

Non-employee requirement; compensation (e)

A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an

employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

Unaccompanied homeless youth (f)

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

Surrogate parent responsibilities (g)
The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and
(2) The provision of FAPE to the child.

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

Transfer of parental rights at age of majority. 34 CFR § 300.520

General (a)
A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and
(ii) All rights accorded to parents under Part B of the Act transfer to the child;
(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

Special rule (b)
A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.