Montana State Plan

Under Part B of the
Individuals with Disabilities Education Act

May 2007

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Subpart A--General **Purposes and Applicability** **300.1 Purposes.** The purposes of this part are-- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (b) To ensure that the rights of children with disabilities and their parents are protected; (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and (d) To assess and ensure the effectiveness of efforts to educate children with disabilities.		
300.2 Applicability of this part to State and local agencies. (a) States. This part applies to each State that receives payments under Part B of the Act, as defined in 300.4. (b) Public agencies within the State. The provisions of this part-- (1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including: (i) The State educational agency (SEA). (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA. (iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness). (iv) State and local juvenile and adult correctional facilities; and (2) Are binding on each public agency in the State that provides special education and related services to children with	10.55.805 SPECIAL EDUCATION (1) Each school shall comply with all federal and state laws and regulations addressing special education. (2) Each school shall provide structured support and assistance to regular education teachers in identifying and meeting diverse student needs, and shall provide a framework for considering a full range of alternatives for addressing student needs. (3) Students with disabilities shall be given opportunities to become confident, dignified, and self-sufficient members of society. (4) A student who has successfully completed the goals identified on an individualized education program for high school completion shall be awarded a diploma.	

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disabilities, regardless of whether that agency is receiving funds under Part B of the Act. (c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities-- (1) Referred to or placed in private schools and facilities by that public agency; or (2) Placed in private schools by their parents under the provisions of 300.148.		
Definitions Used in This Part **300.4 Act.** Act means the Individuals with Disabilities Education Act, as amended.	**State Statute** **20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following definitions apply: (1) "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having a disability and who because of the disability needs special education and related services. (2) "Free appropriate public education" means special education and related services that: (a) are provided at public expense under public supervision and direction and without charge; (b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act; (c) include preschool, elementary school, and high school education in Montana; and (d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act. (3) "Related services" means services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education. (4) "Special education" means specially designed	
300.5 Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.		
300.6 Assistive technology service. Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (d) Coordinating and using other therapies, interventions, or		

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services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.	instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education. (5) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.	
300.7 Charter school. Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).		
300.8 Child with a disability. (a) General. (1) Child with a disability means a child evaluated in accordance with 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part. (ii) If, consistent with 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.	<u>10.16.3007 ELIGIBLE STUDENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT</u> (1) To be eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), a student must meet the criteria for one or more of the disability categories listed in ARM 10.16.3010 through 10.16.3022. (2) The disability must adversely affect the student's educational performance such that the student needs special education as defined in 34 CFR 300.39. <u>10.16.3008 ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE</u> (1) "Adversely affect the student's educational performance" means that there is evidence that measures of student performance (e.g., achievement tests, grades, behavioral or developmental assessments, classroom based assessment, observations, progress monitoring, or criterion-referenced tests, etc.) indicate a pattern of educational, developmental, or functional attainment or achievement below the student's age or grade level based on state approved K-12 content standards that can wholly or in part be attributed to the disabling condition.	

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300.8 Child with a disability. . . . (b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in 300.111(b), include a child-- (1) Who is experiencing developmental delays, as defined by the State 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 (2) Who, by reason thereof, needs special education and related services.	10.16.3010 CRITERIA FOR IDENTIFICATION OF A CHILD AGED THREE THROUGH FIVE HAVING A DEVELOPMENTAL DELAY (1) A student may be identified as having a developmental delay if the student is: (a) three, four, or five years old; and (b) functions at a developmental level two or more standard deviations below the norm in any one area of development or 1.5 standard deviations below the norm in two or more of the following areas: (i) cognitive development; (ii) physical development; (iii) communication development; (iv) social and emotional development; or (v) adaptive functioning skills.	
300.8 Child with a disability. . . . (c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:		
300.8 Child with a disability. . . . (1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.	10.16.3011 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM (1) The student may be identified as having autism if documentation supports the existence of a developmental disability that was generally evident before the student was three years of age and if the student has communication difficulties in verbal and nonverbal communication and social interaction. (2) Assessments shall document the presence of significant delays in verbal and nonverbal communication and social interaction. (a) Significant delays in verbal communication are manifested by at least one of the following: (i) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime); (ii) in students with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others.	

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	(b) Significant delays in nonverbal communication are manifested by a marked impairment in the use of multiple nonverbal behaviors such as eye to eye gaze, facial expression, body postures, or gestures to regulate social interaction. (c) Significant delays in social interaction are manifested by at least one of the following: (i) failure to develop peer relationships appropriate to developmental levels; (ii) lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., lack of showing, bringing or pointing out objects of interest); (iii) lack of social or emotional reciprocity; (iv) lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level. (3) Other characteristics often associated with autism may include restricted, repetitive and stereotyped patterns of behavior, interests and activities, as manifested by one or more of the following: (a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus; (b) Apparently inflexible adherence to specific nonfunctional routines or rituals; (c) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements); (d) Persistent preoccupation with parts of objects. (4) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (2) and (3) are met.(5) The student may not be identified as having autism if the student's educational performance is adversely affected primarily because the student has an emotional disturbance.	
300.8 Child with a disability. . . . (2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe	10.16.3013 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAF-BLINDNESS (1) The student may be identified as having deaf-blindness if documentation supports that the student:	

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communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.	(a) Meets the criteria in ARM 10.16.3022 for visual impairment; (b) Meets the criteria in ARM 10.16.3020 for speech-language impairment; (c) Meets the criteria in ARM 10.16.3016 for hearing impairment or in ARM 10.16.3014 for deafness; and (d) Is experiencing severe delays in communication and other developmental and educational skills such that services designed solely for students with deafness or for students with blindness would not meet the student's educational needs.	
300.8 Child with a disability. . . . (3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.	10.16.3014 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAFNESS (1) The student may be identified as having deafness if an audiological report documents that hearing loss is so severe that the student is impaired in processing linguistic information, with or without amplification, to the extent that prevents the auditory channel from being the primary mode of learning speech and language. (2) The student's educational performance is adversely affected as documented by specific examples. The results and analysis of a current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually is required to show an impairment in processing linguistic information prior to identification.	
300.8 Child with a disability. . . . (4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or	10.16.3015 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING EMOTIONAL DISTURBANCE (1) The student may be identified as having emotional disturbance if a condition which includes one or more of the following characteristics is present: (a) An inability to build or maintain satisfactory relationships with peers and teachers; (b) Inappropriate types of behavior or feelings under normal circumstances including behaviors which are psychotic or bizarre in nature or behaviors which are atypical and for which no observable reason exists; (c) A general, pervasive mood of unhappiness or depression including major depression and dysthymia but	

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depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems. (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.	excluding normal grief reactions; (d) A tendency to develop physical symptoms or fears associated with personal or school problems including separation anxiety, avoidant disorder and overanxious disorder; (e) Schizophrenia. (2) For each of the conditions in (1), the condition shall meet the criteria of having been present to a marked degree, over a long period of time and adversely affecting the student's educational performance. (3) The student may be identified as having emotional disturbance when: (a) The student has been observed in more than one setting within the educational environment; and (b) The local educational agency has planned and implemented one or more positive behavioral interventions specific to the individual student. Interventions shall not unnecessarily delay appropriate identification when it can be shown through a student's social or developmental history, compiled directly from the student's parents or from records when the parents are not available, the existence of characteristics that clearly identify emotional disturbance. (4) The student may not be identified as having emotional disturbance if delays in educational performance are primarily due to visual impairment, hearing impairment, orthopedic impairment, cognitive delay, health factors, or limited educational opportunity. (5) Common disciplinary problems may exist in conjunction with emotional disturbance, but cannot be used as the sole criteria for determining the existence of an emotional disturbance. (6) The term emotional disturbance does not apply to students who are socially maladjusted, unless it is determined that they meet the criteria herein for emotional disturbance.	
300.8 Child with a disability. . . . (5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a	<u>10.16.3016 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING HEARING IMPAIRMENT</u> (1) The student may be identified as having a hearing impairment if an audiological report documents that the student has a permanent hearing	

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child's educational performance but that is not included under the definition of deafness in this section.	loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided, or has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to adversely affect educational performance.	
300.8 Child with a disability. . . . (6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.	10.16.3012 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING COGNITIVE DELAY (1) The student may be identified as having cognitive delay if the student has a significantly subaverage general intellectual functioning and corresponding deficits in adaptive behavior and educational performance, especially in the area of application of basic academic skills in daily life activities. (2) "General intellectual functioning" means performance on a standardized intelligence test that measures general cognitive ability rather than one limited facet of ability. (a) "Significantly subaverage general intellectual functioning" is defined as two or more standard deviations below the population mean on a standardized intelligence test. Error in test measurement requires clinical judgment for students who score near two standard deviations below the mean. (b) The presence of subaverage general intellectual functioning must occur during the developmental period defined as the period of time between conception and the 18th birthday. (3) Deficits in adaptive behavior is defined as significant limitations in the student's effectiveness in meeting the standards of personal independence, interpersonal communication, and social responsibility expected for the student's age/grade peers and cultural group as measured by standardized instruments or professionally recognized scales.	
300.8 Child with a disability. . . . (7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated		

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in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.		
300.8 Child with a disability. . . . (8) 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).	10.16.3017 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING ORTHOPEDIC IMPAIRMENT (1) The student may be identified as having orthopedic impairment if: (a) The student is diagnosed by a qualified medical practitioner as having an orthopedic impairment; (b) The impairment is severe; and (c) The impairment adversely affects the student's educational performance. (2) The term orthopedic impairment includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).	
300.8 Child with a disability. . . . (9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that-- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and *(ii)* Adversely affects a child's educational performance.	10.16.3018 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT (1) The student may be identified as having other health impairment if: (a) The student has 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 or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia or Tourette syndrome; and (b) The condition adversely affects the student's educational performance. (2) A medical diagnosis of a chronic or acute health problem is required.	
300.8 Child with a disability. . . . (10) Specific learning disability. (i) General. Specific learning disability means a disorder in	10.16.3019 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY (1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to	

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one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.	the student's age or grade-level based on state approved K-12 content standards: (a) The student does not make sufficient progress to meet age or grade level standards based on state approved K-12 content standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving. (b) Consistent with district procedures, evaluation teams shall use either response to scientific, research based intervention under ARM 10.16.3019A or severe discrepancy under ARM 10.16.3019B when determining whether the student is not making sufficient progress toward age or grade level based on state approved K-12 content standards. (c) The student may not be identified as having a specific learning disability if the student's significantly low rate of progress in meeting age or grade level based on state approved K-12 content standards is primarily the result of a visual, hearing, or motor impairment; cognitive delay; emotional disturbance; environmental or economic disadvantage; cultural factors; or a lack of appropriate instruction. <u>10.16.3019A RESPONSE TO SCIENTIFIC, RESEARCH BASED INTERVENTION IN LEARNING DISABILITY IDENTIFICATION</u> (1) A student may be determined to have a specific learning disability based on an insufficient response to scientific, research based interventions resulting in a low level of academic achievement. Insufficient response to interventions occurs when, despite the implementation of the interventions over a sustained period of time, the student is not achieving adequately based on the student's age or grade level based on state approved K-12 content standards. (a) Scientific, research based interventions are: (i) matched to the specific needs of the student as identified through systematic, data-based processes for examining the presenting problem, including parental input, to identify instructional interventions that have a high likelihood	

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	of success; (ii) focused on changing the instructional strategies or techniques used with the student; and (iii) regularly monitored for student progress and correct implementation via regular and frequent data collection, and analysis and modification of interventions as necessary based on data analysis. (b) In determining the response to scientific, research based interventions, the evaluation team must consider data regarding how appropriately the intervention was delivered by qualified personnel, as well as, data comparing the student's rate of learning and current levels of performance with the student's initial levels of performance. (2) A student may be determined to have a specific learning disability if the student is making sufficient response to scientific, research based interventions and the level of intervention necessary to sustain the response can only be provided through special education services. <u>10.16.3019B SEVERE DISCREPANCY IN LEARNING DISABILITY IDENTIFICATION</u> (1) A student may be determined to have a specific learning disability based on a severe discrepancy between the student's intellectual ability and achievement in one or more of the areas listed in ARM 10.16.3019. (a) A severe discrepancy is defined as a 50 percent or higher probability of a two standard deviation discrepancy between general cognitive ability and achievement in one or more of the areas identified in ARM 10.16.3019 when adjusted for regression to the population mean. (b) Error in test measurement requires judgment for students who score near two standard deviations below the population mean. When exercising this judgment, consideration of additional information, such as classroom performance relative to the student's performance on norm referenced tests, shall be used as the basis for determining the severe discrepancy. (c) Alternatives to norm referenced tests, such as curriculum-based assessments, shall be utilized to determine	

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	severe discrepancy whenever cultural factors, test conditions, size of test item sampling for the student's age, or other factors render standardized assessment results invalid. When utilizing alternative assessment procedures, a determination must still be made that a discrepancy between ability and achievement exists at a level of severity similar in size to the discrepancy that would have otherwise been found in (1)(a). 10.16.3019C DOCUMENTATION REQUIREMENTS IN LEARNING DISABILITY IDENTIFICATION (1) Evaluation teams shall document evaluation team findings under ARM 10.16.3019A or ARM 10.16.3019B and: (a) the student's academic performance in the regular classroom setting through observation. (i) Requirements for documentation of observation may be met by observation of routine classroom instruction and monitoring of the student's performance that was done before the child was referred for an evaluation or have at least one member of the group described in 34 CFR 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 34 CFR 300.300(a), is obtained. (ii) In the case of a student of less than school age or out of school, a team member shall observe the student in an environment appropriate for a student of that age. (b) educationally relevant medical findings, if any, that have been considered; and (c) two or more interventions specific to the individual student. Interventions shall not unnecessarily delay appropriate identification. (2) If the student has been evaluated under ARM 10.16.3019A, documentation must also include: (a) the scientific, research based interventions and instructional strategies used; and (b) the student centered data collected during the implementation of at least two intensive individualized interventions which have been implemented for a sustained period of time.	

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300.8 Child with a disability. . . . (11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.	10.16.3020 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPEECH-LANGUAGE IMPAIRMENT (1) The student may be identified as having a speech-language impairment if the student has a significant deviation in speech such as fluency, articulation or voice, or in the ability to decode or encode oral language which involves phonology, morphology, semantics or pragmatics or a combination thereof. (a) The student has a significant deviation in oral performance if the student's performance on standardized test is two standard deviations below the population mean, or between 1.5 and two standard deviations below the population mean, and there is documented evidence over a six month period prior to the current evaluation of no improvement in the speech-language performance of the student even with regular classroom interventions. (b) For articulation, a significant deviation is consistent articulation errors persisting one year beyond the highest age when 90 percent of the students have acquired the sounds based upon specific developmental norms. (c) If norm referenced procedures are not used, alternative assessment procedures shall substantiate a significant deviation from the norm. (2) The student may be identified as having a speech-language impairment only when documentation of the student's interpersonal communication effectiveness in a variety of educational settings by the teacher, parent, speech-language pathologist, and others as appropriate supports the adverse educational effect of the speech-language impairment or oral communication in a classroom or school setting. (3) The student may not be identified as having a speech-language impairment if the speech or language problems primarily result from environmental or cultural factors.	
300.8 Child with a disability. . . . (12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both,	10.16.3021 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING TRAUMATIC BRAIN INJURY (1) The student may be identified as having traumatic brain injury if the student has an acquired injury to the brain caused by external physical force which adversely affects the student's functional	

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that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.	or psychosocial ability or both and the student's ability to learn or participate in the local educational agency's education program. (2) The term traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psycho-social behavior; physical function; information processing; and speech. (3) The student may not be identified as having a traumatic brain injury if the injury to the brain is congenital, degenerative, or caused by birth trauma.	
300.8 Child with a disability. . . . (13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.	10.16.3022 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT (1) The student may be identified as having a visual impairment if the student has a visual acuity of 20/70 or less in the better eye with correction or field of vision which at its widest diameter subtends an angle of no greater than 20 degrees in the better eye with correction.	
300.9 Consent. Consent means that-- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).		

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300.10 Core academic subjects. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.		
300.11 Day; business day; school day. (a) Day means calendar day unless otherwise indicated as business day or school day. (b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in 300.148(d)(1)(ii)). (c)(1) School day means any day, including a partial day that children are in attendance at school for instructional purposes. (2) School day has the same meaning for all children in school, including children with and without disabilities.		
300.12 Educational service agency. Educational service agency means-- (a) A regional public multiservice agency-- (1) Authorized by State law to develop, manage, and provide services or programs to LEAs; (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; (b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and (c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.		
300.13 Elementary school. Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.		

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300.14 Equipment. Equipment means-- (a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.		
300.15 Evaluation. Evaluation means procedures used in accordance with 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.		
300.16 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting-- (a) Amounts received-- (1) Under Part B of the Act; (2) Under Part A of title I of the ESEA; and (3) Under Parts A and B of title III of the ESEA and; (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)		
300.17 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that-- (a) Are provided at public expense, under public		

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supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 300.320 through 300.324.		
300.18 Highly qualified special education teachers. (a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also-- (1) Include the requirements described in paragraph (b) of this section; and (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section. (b) Requirements for special education teachers in general. (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that-- (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law; (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) The teacher holds at least a bachelor's degree. (2) A teacher will be considered to meet the standard in		

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paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which-- (i) The teacher-- (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching; (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and (ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met. (3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section. (c) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either-- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or (2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an		

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elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State. (d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either-- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c); (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or (3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects. (e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers-– (1) A State may develop a separate HOUSSE for special education teachers; and (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects. (f) Rule of construction. Notwithstanding any other		

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individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part. (g) Applicability of definition to ESEA; and clarification of new special education teacher. (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA. (2) For purposes of 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher. (h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under 300.138.		
300.19 Homeless children. Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.		
300.20 Include. Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.		
300.21 Indian and Indian tribe. (a) Indian means an individual who is a member of an Indian tribe. (b) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any		

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Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.). (c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.		
300.22 Individualized education program. Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 300.320 through 300.324.		
300.23 Individualized education program team. Individualized education program team or IEP Team means a group of individuals described in 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.		
300.24 Individualized family service plan. Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.		
300.25 Infant or toddler with a disability. Infant or toddler with a disability-- (a) Means an individual under three years of age who needs early intervention services because the individual-- (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and (b) May also include, at a State's discretion--		

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(1) At-risk infants and toddlers; and (2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include-- (i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and (ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.		
300.26 Institution of higher education. Institution of higher education-- (a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and (b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.		
300.27 Limited English proficient. Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.		
300.28 Local educational agency. (a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.		

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(b) Educational service agencies and other public institutions or agencies. The term includes-- (1) An educational service agency, as defined in 300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public **nonprofit** charter school that is established as an LEA under State law. (c) BIA funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.		
300.29 Native language. (a) Native language, when used with respect to an individual who is limited English proficient, means the following: (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section. (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).		
300.30 Parent. (a) Parent means-- (1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;		

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(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed in accordance with 300.519 or section 639(a)(5) of the Act. (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.		
300.31 Parent training and information center. Parent training and information center means a center assisted under sections 671 or 672 of the Act.		
300.32 Personally identifiable. Personally identifiable means information that contains-- (a) The name of the child, the child's parent, or other family member; (b) The address of the child; (c) A personal identifier, such as the child's social security number or student number; or (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.		

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300.33 Public agency. Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.		
300.34 Related services. (a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. (b) Exception; services that apply to children with surgically implanted devices, including cochlear implants. (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. (2) Nothing in paragraph (b)(1) of this section— (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE. (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or (iii) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning		

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properly, as required in 300.113(b). (c) Individual related services terms defined. The terms used in this definition are defined as follows: (1) Audiology includes-- (i) Identification of children with hearing loss; (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; (iv) Creation and administration of programs for prevention of hearing loss; (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification. (2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. (3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (4) Interpreting services includes-- (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and (ii) Special interpreting services for children who are deaf-blind. (5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services. (6) Occupational therapy— (i) Means services provided by a qualified occupational		

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therapist; and (ii) Includes-- (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and (C) Preventing, through early intervention, initial or further impairment or loss of function. (7) Orientation and mobility services— (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and (ii) Includes teaching children the following, as appropriate: (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street); (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision; (C) To understand and use remaining vision and distance low vision aids; and (D) Other concepts, techniques, and tools. (8)(i) Parent counseling and training means assisting parents in understanding the special needs of their child; (ii) Providing parents with information about child development; and (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (9) Physical therapy means services provided by a qualified physical therapist. (10) Psychological services includes-- (i) Administering psychological and educational tests, and other assessment procedures; (ii) Interpreting assessment results; (iii) Obtaining, integrating, and interpreting information		

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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. (11) Recreation includes-- (i) Assessment of leisure function; (ii) Therapeutic recreation services; (iii) Recreation programs in schools and community agencies; and (iv) Leisure education. (12) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq. (13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (14) Social work services in schools includes-- (i) Preparing a social or developmental history on a child with a disability; (ii) Group and individual counseling with the child and family; (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and		

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community) that affect the child's adjustment in school; (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and (v) Assisting in developing positive behavioral intervention strategies. (15) Speech-language pathology services includes-- (i) Identification of children with speech or language impairments; (ii) Diagnosis and appraisal of specific speech or language impairments; (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments; (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments. (16) Transportation includes-- (i) Travel to and from school and between schools; (ii) Travel in and around school buildings; 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.		
300.35 Scientifically based research. Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.		
300.36 Secondary school. Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.		
300.37 Services plan. Services plan means a written statement that describes the special education and related services the LEA will provide to a		

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parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 300.132, and is developed and implemented in accordance with 300.137 through 300.139.		
300.38 Secretary. Secretary means the Secretary of Education.		
300.39 Special education. (a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including-- (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education. (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section-- (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (ii) Travel training; and (iii) Vocational education. (b) Individual special education terms defined. The terms in this definition are defined as follows: (1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program. (2) Physical education means-- (i) The development of— (A) Physical and motor fitness; (B) Fundamental motor skills and patterns; and (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and (ii) Includes special physical education, adapted physical education, movement education, and motor development.		

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(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction-- (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. (4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to-- (i) Develop an awareness of the environment in which they live; and (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community). (5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.		
300.40 State. State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.		
300.41 State educational agency. State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.		
300.42 Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular		

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and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 300.114 through 300.116.		
300.43 Transition services. (a) Transition services means a coordinated set of activities for a child with a disability that-- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes-- (i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. (b) 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.		
300.44 Universal design. Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.		
300.45 Ward of the State. (a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--		

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(1) A foster child; (2) A ward of the State; or (3) In the custody of a public child welfare agency. (b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in 300.30.		
Subpart B--State Eligibility **General** **300.100 Eligibility for assistance.** A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in 300.101 through 300.176.	See also 20-7-403, MCA, page 72.	
FAPE Requirements **300.101 Free appropriate public education (FAPE).** (a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 300.530(d). (b) FAPE for children beginning at age 3. (1) Each State must ensure that-- (i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with 300.323(b). (2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin. (c) Children advancing from grade to grade. (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or	See also 20-7-414, MCA, page 112. **State Statute** **20-7-411. Regular classes preferred -- obligation to establish special education program.** (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive environment. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with a disability who is 6 years of age or older and under 19 years of age. (3) The board of trustees of each elementary district shall	

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been retained in a course or grade, and is advancing from grade to grade. (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.	provide or establish and maintain a special education program for each preschool child with a disability who is 3 years of age or older and under 7 years of age. (4) (a) The board of trustees of a school district may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age. (b) Programs established pursuant to subsection (4)(a) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law. (5) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program. (6) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids. 10.16.3121 SUPERINTENDENT OF PUBLIC INSTRUCTION'S RESPONSIBILITY FOR FREE APPROPRIATE PUBLIC EDUCATION (FAPE) (1) The Superintendent of Public Instruction shall ensure that all students with disabilities, ages 3 through 18 inclusive, including students with disabilities who have been suspended or expelled from school, are provided a free appropriate public education (FAPE) in accordance with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C., sections 1401 through 1485) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA), and the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16). (2) The Superintendent of Public Instruction shall ensure that when local educational agencies provide education to students ages 19, 20, or 21, students of the same age with	

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	disabilities are provided FAPE in accordance with IDEA. (3) The Superintendent of Public Instruction shall ensure that all students with disabilities referred to or placed in private schools by a public agency receive the rights and protections under IDEA. (4) If a local educational agency fails to provide FAPE for a student with disabilities in accordance with IDEA, the Superintendent of Public Instruction shall take immediate steps to ensure FAPE is made available to the student with disabilities. (a) The Superintendent of Public Instruction may initiate one or more of the following options to ensure that FAPE is made available for the student with disabilities: (i) provide FAPE directly; (ii) contract for services to provide FAPE; (iii) provide an out-of-district placement in accordance with least restrictive environment regulations of IDEA; (iv) recommend to the Board of Public Education withholding of state education funds; (v) deny in whole or part IDEA-B federal funds; or (vi) recommend to the Board of Public Education a change in accreditation status. (b) Any costs incurred by the Superintendent of Public Instruction to provide FAPE to a student with disabilities due to failure of the local educational agency to provide FAPE, may be recovered from the local educational agency through a reduction in state education funds upon recommendation of the Superintendent of Public Instruction and hearing before the Board of Public Education. <u>10.60.103 IDENTIFICATION OF CHILDREN WITH DISABILITIES</u> (1) In order that a free, appropriate, public education be provided to all children, all persons who can assist in identifying the disability and determine services to meet the needs of a child shall participate in the placement process. (2) Child study teams shall be used to identify children with disabilities, and instructional teams shall be used to plan individual education programs. Parents shall be involved in	

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	the child study team process and shall be included in the development of the individualized education plan. (3) To assure correct identification of disabilities and proper educational placement, children shall have the opportunity for a comprehensive educational evaluation. <u>10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES</u> (1) The local educational agency in which a student with disabilities resides is responsible for ensuring the student with disabilities, age 3 through 18, beginning on the student's third birthday, including students with disabilities who have been suspended or expelled from school, has available a free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C., sections 1401 through 1419) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16). If the student's third birthday occurs in the summer, the individualized education program (IEP) team shall decide whether the student is to receive extended school year services during the summer. The local educational agency shall participate in transition planning conferences arranged by the early intervention provider agency. (2) For the purposes of this rule, "resides" means where the child lives during the school week. (3) When the local educational agency provides education to students ages 19, 20, or 21, students of the same age with disabilities will be provided a free appropriate public education in accordance with IDEA. (4) The local educational agency shall implement procedures for students with disabilities in private elementary and secondary schools and consistent with the requirements of 34 CFR 130 through 148 and state administrative rules. (5) The local educational agency may not require parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202c of the Controlled	

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	Substances Act (21 USC 812c) for a child as a condition to attending school, receiving an evaluation under 34 CFR 300.300 through 300.311, or receiving special education and related services in accordance with the requirements of the Individuals with disabilities Education Act. (6) The local educational agency must conduct routine checking of hearing aides in accordance with the requirements of 34 CFR 300.113. (7) The local educational agency must take all reasonable steps to provide instructional materials in accessible formats to students with disabilities who need those instructional materials at the same time as other children receive instructional materials. (8) Local educational agencies must take measurable steps to recruit, hire, train, and retain qualified personnel to provide special education and related services to students with disabilities.	
300.102 Limitation--exception to FAPE for certain ages. (a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following: (1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages. (2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility-- (A) Were not actually identified as being a child with a disability under 300.8; and (B) Did not have an IEP under Part B of the Act. (ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who-- (A) Had been identified as a child with a disability under 300.8 and had received services in accordance with an IEP, but	**State Statute** **41-5-206. Filing in district court prior to formal proceedings in youth court.** . . . (6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.	Services for students ages 19 through 21 inclusive are permissive in accord with MCA 20-7-411(4)

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who left school prior to their incarceration; or (B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under 300.8. (3)(i) Children with disabilities who have graduated from high school with a regular high school diploma. (ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma. (iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with 300.503. (iv) As used in paragraphs (a)(3)(i) through (a)(3) (iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED). (4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act. (b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by 300.700 (for purposes of making grants to States under this part), is current and accurate.		
Other FAPE Requirements **300.103 FAPE--methods and payments.** (a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement. (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. (c) Consistent with 300.323(c), the State must ensure that	**State Statute** **20-7-420. Residency requirements -- financial responsibility for special education.** (1) Except for a pupil attending a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence. (2) The superintendent of public instruction is financially	

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there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.	responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility. (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed $500,000 during a biennium. (4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4. **State Statute** **20-7-421. Arranging attendance in another district in lieu of a special education program -- tuition.** (1) In accordance with a placement decision made by persons determining an individualized education program for a child with a disability, the trustees may arrange for the attendance	

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	of a child in need of special education and related services in another district within the state of Montana. (2) Tuition and transportation as required under 20-5-323 may be charged as provided in 20-7-420. **State Statute** **20-7-424. No tuition when attending state institution.** Whenever a child is attending a state-funded institution in Montana, the resident district or county is not required to pay tuition to the state institution for the child, but whenever at the recommendation of institution officials the child attends classes conducted by a school within a local district, the district or county where the parents or guardian of the child maintains legal residence shall pay tuition to the district operating the school in accordance with the provisions of 20-5-321 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments must be made for students enrolled in any school district classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments must be approved in accordance with existing transportation payment schedules and must be approved by the county transportation committee and the superintendent of public instruction.	
300.104 Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.	**State Statute** **20-7-422. Out-of-state placement of child with disability -- payment of costs.** (1) In accordance with a placement made by persons determining an individualized education program for a child with a disability, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana. (2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with a disability who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.	

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	(3) Whenever a child with a disability who is in need of special education and related services is placed by a state agency in an out-of-state residential facility, the state agency making the placement shall pay the education costs resulting from the placement. (4) The state agency shall place the child with a disability in a facility that will provide the child with a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4. **State Statute** **20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children.** (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for an eligible child with a disability that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109. (2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility. (3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall: (a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility; (b) negotiate the approval of allowable costs under the	

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	provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance; (c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy; (d) provide funding for allowable costs according to a proration based on average daily membership. (4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or residential treatment facility. (5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education. (6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420: (a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and (b) are not subject to the budget limitations in 20-9-308.	

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	State Statute **20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply: (1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that: (i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the centers for medicare and medicaid services, or other comparable accreditation. (b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment. (2) "Eligible child" means a Montana resident child or youth who is less than 19 years of age and who has an emotional problem that is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems. (3) (a) "Residential treatment facility" means a facility in the state that: (i) provides services for children or youth with emotional disturbances; (ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age; (iii) is licensed by the department of public health and human services; and (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or (v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993. (b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the	

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	primary reason for treatment.	
300.105 Assistive technology. (a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's-- (1) Special education under 300.36; (2) Related services under 300.34; or (3) Supplementary aids and services under 300.38 and 300.114(a)(2)(ii). (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.		
300.106 Extended school year services. (a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section. (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. (3) In implementing the requirements of this section, a public agency may not-- (i) Limit extended school year services to particular categories of disability; or (ii) Unilaterally limit the type, amount, or duration of those services. (b) Definition. As used in this section, the term extended school year services means special education and related services that-- (1) Are provided to a child with a disability-- (i) Beyond the normal school year of the public agency; (ii) In accordance with the child's IEP; and (iii) At no cost to the parents of the child; and		

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(2) Meet the standards of the SEA.		
300.107 Nonacademic services. The State must ensure the following: (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.		
300.108 Physical education. The State must ensure that public agencies in the State comply with the following: (a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. (b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless-- (1) The child is enrolled full time in a separate facility; or (2) The child needs specially designed physical education, as prescribed in the child's IEP. (c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services		

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to be provided through other public or private programs. (d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.		
300.109 Full educational opportunity goal (FEOG). The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.		It is the goal of the OPI that all students with disabilities, birth through 21, have available full educational opportunity. The OPI shall work collaboratively with LEAs and state agencies to achieve this goal. Services to eligible infants and toddlers are provided through Child and Family Service Provider Agencies (CFSPAs) under contract with the Disabilities Services Division of the Department of Public Health and Human Services (DPHHS). The OPI works closely with professional organizations, other state agencies, advocacy groups, and parent support groups to provide a coordinated,

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		comprehensive and seamless system of services to students with disabilities, birth through 18. These same groups will continue to work together in the planning of services for students with disabilities in the 19 through 21 age group. It is the goal of the OPI to achieve full educational opportunity for children with disabilities birth through 21 by the year 2025.
300.110 Program options. The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.		
300.111 Child find. (a) General. (1) The State must have in effect policies and procedures to ensure that-- (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special	See also 20-7-414, MCA, page 112. **State Statute** **20-7-404. Cooperation of state agencies.** The department of public health and human services and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. This section may not be construed to interfere with the purpose and function of these state agencies. <u>10.16.3125 LOCAL EDUCATIONAL AGENCY CHILD FIND</u>	

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education and related services. (b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section: (1) A State that adopts a definition of developmental delay under 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five). (2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction. (3) If an LEA uses the term developmental delay for children described in 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State. (4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part. (c) Other children in child find. Child find also must include-- (1) Children who are suspected of being a child with a disability under 300.8 and in need of special education, even though they are advancing from grade to grade; and (2) Highly mobile children, including migrant children. (d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.	RESPONSIBILITIES (1) Each local educational agency shall establish procedures consistent with the requirements under the Individuals with Disabilities Education Act and state administrative rules to ensure that all students with disabilities living within the boundaries of the local educational agency regardless of the severity of their disability are identified, located, and evaluated including a practical method to determine which students are currently receiving needed special education and related services. (a) The procedures shall include a method to screen and develop criteria for further assessment for children between the ages of birth to 21 including all children in public and private agencies, and children who are highly mobile, migrant, homeless, or wards of the state. (b) At a minimum, the procedures must: (i) name the title of the person responsible for the coordination, implementation, and documentation of the child find procedures; (ii) describe student identification activities including audiological, health, speech/language, and visual screening, and review of data or records for students who have been or are being considered for retention, delayed admittance, long term suspension or expulsion, waiver of learner outcomes (accreditation standards), regular education intervention and progress monitoring procedures and procedures for identification of children who are suspected of being a child with a disability even though they are advancing from grade to grade; (iii) describe the role and responsibilities, if any, of other public or private agencies; (iv) identify the procedures of the local education agency for identification of a student as having a specific learning disability. If a local educational agency adopts procedures to use a response to scientific, research based intervention in learning disability identification, it must identify the subject areas (language arts, math, reading), grades and schools for which such procedures apply; and (v) ensure the collection and use of data are in accordance with the confidentiality requirements of 34 CFR 300.611	

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	through 300.627. (2) The local educational agency must provide parents with public notice of its child find procedures and the procedures it implements to ensure protection of the confidentiality of any personally identifiable information collected, used, or maintained under Part B of IDEA. Confidentiality must comply with the requirements of 34 CFR 300.610 through 300.627. (3) If the student is parentally enrolled in a private elementary or secondary school outside the boundaries of the local educational agency in which the student is living, the local educational agency where the private school is located is responsible for child find activities, evaluations, and provision of services in accordance with the requirements of 34 CFR 300.130 through 300.144. The public elementary school district in whose boundaries the private elementary school is located shall implement the required services in accordance with 34 CFR 300.130 through 300.144 for elementary students. The public high school district in whose boundaries the private secondary school lies, shall implement required services in accordance with 34 CFR 300.130 through 300.144 for high school students. (4) Local educational agencies shall coordinate child find activities for children ages birth through two with early intervention provider agencies.	
300.112 Individualized education programs (IEP). The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with 300.320 through 300.324, except as provided in 300.300(b)(3)(ii).		
300.113 Routine checking of hearing aids and external components of surgically implanted medical devices. (a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (b) External components of surgically implanted medical	See also ARM 10.16.3122(6), page 37.	

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devices. (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly. (2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).		
Least Restrictive Environment (LRE) **300.114 LRE requirements.** (a) General. (1) Except as provided in 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and 300.115 through 300.120. (2) Each public agency must ensure that-- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (b) Additional requirement--State funding mechanism. (1) General. (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and (ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a	See also 20-7-411(1), MCA, page 33. <u>10.16.3803 DEFINITIONS</u> The following definitions apply to rules affecting the funding of special education programs: (1) "Advance reimbursement on special education allowable cost payments" means a loan to a district to offset a severe economic hardship caused by exceptional special education costs to the district. This advance on a district's ensuing fiscal year's special education allowable cost payment must be repaid in the ensuing fiscal year. (2) "Appropriation" means an annual amount set by the Superintendent of Public Instruction for distribution to schools and cooperatives such that: (a) the amount does not exceed legislative appropriation; (b) the sum of amounts that are set for each of the fiscal years of a biennial appropriation total the biennial appropriation; and (c) the amount distributed to schools may be less than the appropriated amount to compensate for additional ANB count. (3) "Average number belonging" or "ANB" means a student count for each school district that is used for school funding purposes. The count is performed according to ARM 10.20.102, et seq. (4) "Certified local match" means the local matching funds that a district is required to contribute toward special education costs to avoid any reversions against its special	

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child with a disability FAPE according to the unique needs of the child, as described in the child's IEP. (2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.	education allowable cost payments. This number is certified by the Superintendent of Public Instruction. (5) "Cooperative" and "special education cooperative" means a full service education cooperative or joint board established under 20-7-451, MCA, to provide special education services. (6) "Cooperative administrative costs" means the costs cooperatives incur for operations, maintenance, travel, support services, recruitment and administration. (7) "Current fiscal year" means the period between July 1 and June 30 during which calculations for the ensuing fiscal year are made. (8) "Eligible district" means a district that has a special education program as defined in ARM 10.16.3810. (9) "Ensuing fiscal year" means the fiscal year for which a calculation is being made. (10) "Instructional block grant" means the portion of the special education allowable cost payment based on statewide special education instructional expenditures and calculated as a per student rate times the number of students per district. (11) "Minimum special education expenditure to avoid reversions" means a district's instructional block grant plus a district's related services block grant plus the district's certified required local match. If the district is a participating member of a cooperative, the related services block grant is not included in the minimum special education expenditure to avoid reversions. (12) "Reimbursement" and "reimbursement for disproportionate costs" mean the portion of the special education allowable cost payment that is calculated based on district's prior special education expenditures to offset disproportionately high special education expenditures. (13) "Related services block grant" means the portion of the special education allowable cost payment based on statewide special education related services expenditures and calculated as a per student rate times the number of students per district. If a district is a special education cooperative member, this portion of the special education allowable cost payment is awarded to the cooperative.	

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	(14) "Special education allowable cost payment" and "allowable cost payment" means the amount of the state special education appropriation distributed to districts or special education cooperatives for special education programs. (15) "Special education allowable cost expenditures" means expenditures for certain allowable costs associated with the provision of special education services to a child with disabilities as defined in 20-7-401, MCA. <u>10.16.3804 GENERAL PRINCIPLES OF SPECIAL EDUCATION FUNDING</u> (1) Legislative appropriations for special education are administered by the superintendent of public instruction. Expenditures of funds received from the legislative appropriations are limited to certain allowable costs associated with the provision of educational services to children with disabilities. The following general provisions apply to these funds: (a) Through the block grant system, districts are allowed flexibility in methods of providing special education programs within allowable cost guidelines. (b) The distribution of the funds is based primarily on ANB and prior fiscal year expenditure reports. (c) Expenditures of the funds are limited to services to students with disabilities ages 3-21. (d) Local district contributions, referred to as local match, are required. (e) Instructional and related services block grants and local matching funds may only be spent for special education allowable costs as approved by the superintendent of public instruction. Instructional block grant funds plus the corresponding local matching funds may be expended for instructional and/or related services. Related services block grant funds plus corresponding local matching funds may be expended for instructional services and/or related services subject to matching requirements for schools that are participating members of a cooperative. (f) Expenditure of special education allowable costs must be reported using specific accounting codes.	

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	(2) Special education allowable cost expenditures must be reported annually in the trustees' financial summary on forms prescribed and furnished by the superintendent of public instruction. (3) The superintendent of public instruction will use the trustees' financial summary to determine the special education allowable cost payments to districts and cooperatives. 10.16.3810 ELIGIBILITY TO RECEIVE PAYMENT (1) A district is eligible to receive a special education allowable cost payment for the ensuing fiscal year if it has a special education program. A school district has a special education program if it: (a) has a resident student reported on the current fiscal year special education child count; (b) is participating in a cooperative; or (c) has a written agreement with another public school district or cooperative to provide a special education program in the event a student in need of special education enrolls in the district. (2) Any residential treatment facility or children's psychiatric hospital that provides education services under contract with the Superintendent of Public Instruction is not eligible to receive special education allowable cost payments. (3) Nonoperating districts are eligible for reimbursement of disproportionate costs. (4) A cooperative meeting the requirements of 20-7-457, MCA, is eligible to receive the related services block grants for member districts and an additional amount for administrative and travel costs.	
300.115 Continuum of alternative placements. (a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (b) The continuum required in paragraph (a) of this section must-- (1) Include the alternative placements listed in the definition		

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of special education under 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.		
300.116 Placements. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that-- (a) The placement decision-- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions of this subpart, including 300.114 through 300.118; (b) The child's placement-- (1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.		
300.117 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must		

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ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.		
300.118 Children in public or private institutions. Except as provided in 300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).	See also ARM 10.16.3141(1), page 70.	
300.119 Technical assistance and training activities. Each SEA must carry out activities to ensure that teachers and administrators in all public agencies-- (a) Are fully informed about their responsibilities for implementing 300.114; and (b) Are provided with technical assistance and training necessary to assist them in this effort.	See also ARM 10.16.3135, page 82.	
300.120 Monitoring activities. (a) The SEA must carry out activities to ensure that 300.114 is implemented by each public agency. (b) If there is evidence that a public agency makes placements that are inconsistent with 300.114, the SEA must-- (1) Review the public agency's justification for its actions; and (2) Assist in planning and implementing any necessary corrective action.		
Additional Eligibility Requirements **300.121 Procedural safeguards.** (a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of 300.500 through 300.536. (b) Procedural safeguards identified. Children with disabilities and their parents must be afforded the procedural	10.60.102 DUE PROCESS IN SERVICES (1) Special education services shall include the provision of due process to ensure the rights of children with disabilities. The goal of due process is to prevent harm to children, parents and society. Due process shall include protection regarding the following:	

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safeguards identified in paragraph (a) of this section.	(a) identification of disability; (b) development of education program; (c) placement with the education program; and (d) annual review of education program and placement.	
300.122 Evaluation. Children with disabilities must be evaluated in accordance with 300.300 through 300.311 of subpart D of this part.	See also ARM 10.16.3321, page 132.	
300.123 Confidentiality of personally identifiable information. The State must have policies and procedures in effect to ensure that public agencies in the State comply with 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.	See also ARM 10.16.3560, page 201.	
300.124 Transition of children from the Part C program to preschool programs. The State must have in effect policies and procedures to ensure that-- (a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act; (b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with 300.101(b); and (c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.	10.16.3132 INTERAGENCY COORDINATION FOR PART C, IDEA (1) The Superintendent of Public Instruction shall develop and implement interagency agreements with the Department of Public Health and Human Services for the purpose of coordinating on transition matters between Part C and Part B of IDEA. (2) The agreement shall include policies and procedures relating to a smooth and effective transition for those children participating in the early intervention program under Part C of IDEA who will participate in preschool programs assisted under Part B of IDEA, including: (a) determining financial responsibilities of agencies; (b) identifying responsibilities for performing evaluations; (c) developing and implementing educational programs; (d) coordinating communication between agencies; (e) participating in transition planning conferences; and (f) ensuring an individualized education program has been developed and implemented by the student's third birthday.	
300.125-300.128 [Reserved]		

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Children in Private Schools **300.129 State responsibility regarding children in private schools.** The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in 300.130 through 300.148.		
Children With Disabilities Enrolled by Their Parents in Private Schools **300.130 Definition of parentally-placed private school children with disabilities.** Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 300.13 or secondary school in 300.36, other than children with disabilities covered under 300.145 through 300.147.	See also ARM 10.16.3125, page 47, and ARM 10.16.3122, page 36.	
300.131 Child find for parentally-placed private school children with disabilities. (a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and 300.111 and 300.201. (b) Child find design. The child find process must be designed to ensure-- (1) The equitable participation of parentally-placed private school children; and (2) An accurate count of those children. (c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children. (d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations,		

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may not be considered in determining if an LEA has met its obligation under 300.133. (e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with 300.301. (f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.		
300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement. (a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in 300.190 through 300.198. (b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part. (c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under 300.130 through 300.144: (1) The number of children evaluated; (2) The number of children determined to be children with disabilities; and		

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

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LEA, after timely and meaningful consultation with representatives of private schools under 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated). (c) Annual count of the number of parentally-placed private school children with disabilities. (1) Each LEA must-- (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year. (2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year. (d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.		
300.134 Consultation. To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following: (a) Child find. The child find process, including-- (1) How parentally-placed private school children suspected of having a disability can participate equitably; and (2) How parents, teachers, and private school officials will be informed of the process. (b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve		

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parentally-placed private school children with disabilities under 300.133(b), including the determination of how the proportionate share of those funds was calculated. (c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services. (d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of-- (1) The types of services, including direct services and alternate service delivery mechanisms; and (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and (3) How and when those decisions will be made; (e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.		
300.135 Written affirmation. (a) When timely and meaningful consultation, as required by 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. (b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.		
300.136 Compliance. (a) General. A private school official has the right to submit		

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a complaint to the SEA that the LEA-- (1) Did not engage in consultation that was meaningful and timely; or (2) Did not give due consideration to the views of the private school official. (b) Procedure. (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and (2) The LEA must forward the appropriate documentation to the SEA. (3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and (ii) The SEA must forward the appropriate documentation to the Secretary.		
300.137 Equitable services determined. (a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and 300.134(c). (2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities. (c) Services plan for each child served under 300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must-- (1) Initiate and conduct meetings to develop, review, and		

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revise a services plan for the child, in accordance with 300.138(b); and (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.		
300.138 Equitable services provided. (a) General. (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of 300.18. (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. (b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities. (2) The services plan must, to the extent appropriate-- (i) Meet the requirements of 300.320, or for a child ages three through five, meet the requirements of 300.323(b) with respect to the services provided; and (ii) Be developed, reviewed, and revised consistent with 300.321 through 300.324. (c) Provision of equitable services. (1) The provision of services pursuant to this section and 300.139 through 300.143 must be provided:		

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(i) By employees of a public agency; or (ii) Through contract by the public agency with an individual, association, agency, organization, or other entity. (2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.		
300.139 Location of services and transportation. (a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law. (b) Transportation. (1) General. (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation-- (A) From the child's school or the child's home to a site other than the private school; and (B) From the service site to the private school, or to the child's home, depending on the timing of the services. (ii) LEAs are not required to provide transportation from the child's home to the private school. (2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of 300.133.		
300.140 Due process complaints and State complaints. (a) Due process not applicable, except for child find. (1) Except as provided in paragraph (b) of this section, the procedures in 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of 300.132 through 300.139, including the provision of services indicated on the child's services plan. (b) Child find complaints--to be filed with the LEA in which the private school is located.		

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(1) The procedures in 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in 300.131, including the requirements in 300.300 through 300.311. (2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA. (c) State complaints. (1) Any complaint that an SEA or LEA has failed to meet the requirements in 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in 300.151 through 300.153. (2) A complaint filed by a private school official under 300.136(a) must be filed with the SEA in accordance with the procedures in 300.136(b).		
300.141 Requirement that funds not benefit a private school. (a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. (b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting-- (1) The needs of a private school; or (2) The general needs of the students enrolled in the private school.		
300.142 Use of personnel. (a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities-- (1) To the extent necessary to provide services under 300.130 through 300.144 for parentally-placed private school children with disabilities; and (2) If those services are not normally provided by the private school.		

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(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under 300.130 through 300.144 if-- (1) The employee performs the services outside of his or her regular hours of duty; and (2) The employee performs the services under public supervision and control.		
300.143 Separate classes prohibited. An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if— (a) The classes are at the same site; and (b) The classes include children enrolled in public schools and children enrolled in private schools.		
300.144 Property, equipment, and supplies. (a) A public agency must control and administer the funds used to provide special education and related services under 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act. (b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program. (c) The public agency must ensure that the equipment and supplies placed in a private school-- (1) Are used only for Part B purposes; and (2) Can be removed from the private school without remodeling the private school facility. (d) The public agency must remove equipment and supplies from a private school if-- (1) The equipment and supplies are no longer needed for Part B purposes; or (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school		

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facilities.		
Children With Disabilities in Private Schools Placed or Referred by Public Agencies **300.145 Applicability of 300.146 through 300.147.** Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.	See also ARM 10.16.3121, page 34.	
300.146 Responsibility of SEA. Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency-- (a) Is provided special education and related services-- (1) In conformance with an IEP that meets the requirements of 300.320 through 300.325; and (2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for 300.18 and 300.156(c); and *(c)* Has all of the rights of a child with a disability who is served by a public agency.		
300.147 Implementation by SEA. In implementing 300.146, the SEA must-- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; (b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.		

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Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue **300.148 Placement of children by parents when FAPE is at issue.** (a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with 300.131 through 300.144. (b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in 300.504 through 300.520. (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. (d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied-- (1) If-- (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting		

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the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section; (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents. (e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement-- (1) Must not be reduced or denied for failure to provide the notice if-- (i) The school prevented the parents from providing the notice; (ii) The parents had not received notice, pursuant to 300.504, of the notice requirement in paragraph (d)(1) of this section; or (iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if-- (i) The parents are not literate or cannot write in English; or (ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.		
SEA Responsibility for General Supervision and Implementation of Procedural Safeguards **300.149 SEA responsibility for general supervision.** (a) The SEA is responsible for ensuring-- (1) That the requirements of this part are carried out; and	See also 20-7-414, MCA, page 112, and 20-7-435, MCA, page 41.	

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(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)-- (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and (ii) Meets the educational standards of the SEA (including the requirements of this part). (3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met. (b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 300.600 through 300.602 and 300.606 through 300.608. (c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State. (d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.	<u>10.16.3141 SUPERINTENDENT OF PUBLIC INSTRUCTION RESPONSIBILITY FOR MONITORING</u> (1) The Superintendent of Public Instruction shall provide an ongoing and systematic monitoring process consistent with the requirements of 34 CFR 300.600 through 300.602 and 300.606 through 300.608 to ensure compliance with IDEA and its implementing regulations at 34 CFR, part 300, and Montana statutes pertaining to special education at Title 20, chapter 7, part 4, MCA, and implementing administrative rules at ARM Title 10, chapter 16. The procedures shall apply to all educational programs for students with disabilities including those administered by other state agencies and educational programs for students with disabilities referred to or placed in private schools by a public agency. (a) The procedures shall include: (i) review of local educational agency policies, procedures, services, and performance data; (ii) determination of the need for further information, on-site visitation, training, technical assistance, or intervention; (iii) development of strategies to enable the local educational agency to improve services, educational practices, and outcomes for students with disabilities; (iv) Superintendent of Public Instruction review of the performance of each local educational agency on the targets in the state's performance plan in accordance with 34 CFR 300.608 and 300.646; and (v) procedures for identification of noncompliance and its correction including: (A) the local educational agency's response to the findings; (B) written documentation verifying immediate discontinuance of the violation, elimination of any continuing effects of past violations, and prevention of the occurrence of any future violations and the steps taken to address the violation; and (C) verification of compliance by the Superintendent of Public Instruction. (2) If a local educational agency is not meeting the requirements under Part B of IDEA, including the targets in the State Performance Plan, or fails to voluntarily take steps to	

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	correct an identified deficiency or fails to take any of the actions specified in a local educational agency corrective action plan, the Superintendent of Public Instruction shall notify the local educational agency in writing of the actions the Superintendent of Public Instruction intends to take in order to enforce compliance with IDEA and its implementing regulations, and Montana statutes pertaining to special education and implementing administrative rules. (a) The notice shall include a statement of the actions the Superintendent of Public Instruction intends to take, right to a hearing, and consequence of the local educational agency's continued noncompliance on its accreditation status and approval for state and federal funding of special education services. (b) The Superintendent of Public Instruction may initiate one or more of the options under ARM 10.16.3121 and implement the provisions of 34 CFR 300.608 to ensure compliance. **State Statute** **20-7-402. Special education to comply with board policies.** (1) The conduct of special education programs must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies must ensure and include but are not limited to: (a) placement of a child with a disability in the least restrictive environment; (b) due process for a child with a disability, including the appointment of a surrogate parent if necessary; (c) use of an evaluation team to identify a child with a disability and to plan individual education programs; (d) an evaluation process consistent with the requirements of the Individuals With Disabilities Education Act; and (e) other policies needed to ensure a free appropriate public education. (2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
	State Statute **20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by: (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state; (2) administering the policies adopted by the board of public education; (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education; (4) establishing procedures to be used by school district personnel in identifying a child with adisability; (5) preparing appropriate technical assistance documents to assist local districts in implementing special education policies and procedures; (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in identifying the special education needs of children, in planning programs, and in admitting and discharging children from those programs; (7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability; (8) providing technical assistance to district superintendents, principals, teachers, and trustees; (9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons; (10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures; (11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational	

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	program for a child with a disability, including a homeless child with a disability, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state; (12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and (13) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child placed in an in-state residential facility or children's psychiatric hospital.	
300.150 SEA implementation of procedural safeguards. The SEA (and any agency assigned responsibility pursuant to 300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.		
State Complaint Procedures **300.151 Adoption of State complaint procedures.** (a) General. Each SEA must adopt written procedures for-- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 300.153 by-- (i) Providing for the filing of a complaint with the SEA; and (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA	<u>10.16.3660 EARLY ASSISTANCE PROGRAM</u> (1) The Superintendent of Public Instruction shall provide an ongoing and systematic informal dispute resolution process referred to as the "Early Assistance Program." (2) A parent, guardian, adult student, school district, or their representative may request early assistance in any issue related to a student's free appropriate public education. The Early Assistance Program does not require formal, written	

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review the public agency's decision on the complaint; and (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under 300.151 through 300.153. (b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address-- (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and *(2)* Appropriate future provision of services for all children with disabilities.	application; however, request for early assistance may be made in writing to the Superintendent of Public Instruction, Legal Division, P.O. Box 202501, Helena, MT 59620-2501. There is no pre-established procedure that must be followed. (3) The Early Assistance Program focuses on substance -- the quick resolution of problems of mutual concern to all parties. It is not based on the model of an impartial third party resolving a legal dispute between parties with conflicting goals or interests. It is, however, based on the goal of ensuring the delivery of a free appropriate public education. The Early Assistance Program draws on the traditional model of parents and schools working cooperatively to achieve their shared goal of meeting the educational needs of the student with disabilities. (4) As stated in ARM 10.16.3662, immediately following the filing of a formal administrative complaint as referenced in 34 CFR 300.151 through 300.153 (as distinguished from a request for due process), a parent or guardian and the local educational or public agency may agree in writing to allow the Superintendent of Public Instruction, through the Early Assistance Program, 15 business days from the day it receives the written complaint to attempt to resolve the problem through the Early Assistance Program. Pursuant to 34 CFR 300.152(b)(1)(ii), and upon written agreement of the parties, these 15 business days shall not be counted as part of the 60 day complaint resolution timeline. (5) The services offered under this program are available in all circumstances where there is a possibility for resolution. If the Early Assistance Program manager decides that any attempt to mutually resolve the complaint would be futile, the compliance officer shall proceed according to the procedures and timelines set forth in 34 CRF 300.151 through 300.153 and ARM 10.16.3662. <u>10.16.3661 OPPORTUNITY TO PRESENT COMPLAINTS</u> (1) The Superintendent of Public Instruction has established state complaint procedures to comply with 34 CFR 300.151 through 300.153. Individuals or organizations alleging that a Montana local educational or public agency has	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
	failed to provide a student with disabilities a free appropriate public education may use ARM 10.16.3662 to file a complaint.	
300.152 Minimum State complaint procedures. (a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under 300.153 to-- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Provide the public agency with the opportunity to 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; (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains-- (i) Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision. (b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must-- (1) Permit an extension of the time limit under paragraph (a) of this section only if-- (i) Exceptional circumstances exist with respect to a particular complaint; or (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if	10.16.3662 STATE COMPLAINT PROCEDURES (1) An organization or individual may file a written signed complaint that the local educational or public agency is violating the Individuals with Disabilities Education Act (20 U.S.C., sections 1401 through 1485) or its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) or the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16). (2) The complaint must: (a) allege a violation that occurred not more than one year prior to the date that the complaint is received; (b) contain a specific statement of what requirement of a federal or state statute, regulation, or rule that applies to a student with disabilities or special education the local educational or public agency has allegedly violated; and (c) include a statement of facts on which the allegation is based. (3) The complaint must file the complaint with the Compliance Officer, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501 and forward a copy to the local educational or public agency serving the child. The compliance officer may return the complaint for a more complete statement of the issue. The compliance officer may contact the complainant orally or in writing to discuss the details of the complaint. (4) Within ten calendar days of receipt of the final written complaint, the compliance officer shall send written notification to the complainant and the local educational or public agency that a complaint has been filed. (a) The compliance officer shall include a copy of the complaint with the notice to the local educational or public agency. (b) If the complaint addresses matters listed in 34 CFR 300.503(a)(1) and (2) relating to the identification, evaluation,	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
available in the State; and (2) Include procedures for effective implementation of the SEA's final decision, if needed, including-- (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance. (c) Complaints filed under this section and due process hearings under 300.507 and 300.530 through 300.532. (1) If a written complaint is received that is also the subject of a due process hearing under 300.507 or 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section. (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties-- (i) The due process hearing decision is binding on that issue; and (ii) The SEA must inform the complainant to that effect. (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. **300.153 Filing a complaint.** (a) An organization or individual may file a signed written complaint under the procedures described in 300.151 through 300.152. (b) The complaint must include-- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child-- (i) The name and address of the residence of the child;	or educational placement of a student with a disability, or the provision of a free appropriate public education to the student, the compliance officer shall inform the complainant of the right to request a due process hearing under 34 CFR 300.507 and ARM 10.16.3507 through 10.16.3523. (c) The written notice shall inform the local educational or public agency and the complainant that the compliance officer will contact both parties to notify them of the availability of the Early Assistance Program as set forth in ARM 10.16.3660. (5) If the local educational or public agency and the complainant are successful in resolving the dispute within 15 business days, the complaint will be dismissed. If the dispute is not resolved through the Early Assistance Program process, the compliance officer shall immediately request the local educational or public agency to prepare and submit its written response to the complaint within ten calendar days of receiving the notice that the Early Assistance Program has been unsuccessful. An extension may be granted to the local educational or public agency by the compliance officer based on reasonable necessity. The local educational or public agency shall send its response to the compliance officer and a copy to the complainant. (6) Upon receipt of the local educational or public agency's response, the compliance officer shall begin an appropriate investigation. (7) The complainant will have ten calendar days to submit to the compliance officer additional information, either orally or in writing, about the allegations in the complaint and the local educational or public agency's written response to the complaint. (8) During the investigation neither the complainant nor the local educational or public agency or others representing either party shall contact the compliance officer without notifying the other party. Following an appropriate investigation, the compliance officer shall review all relevant information and make an independent determination as to whether the local educational or public agency is violating a requirement of federal or state statute, regulation, or rule concerning the provision of a free appropriate public education	

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(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. (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 300.151. (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.	to a student with disabilities. The compliance officer shall write a final report within 60 days of receipt of the complaint unless an extension of the 60 day period is required by exceptional circumstances which exist with respect to the particular complaint or the timeline was modified during the Early Assistance Program process. (9) The final report will address each allegation in the complaint and state findings of fact and legal conclusions, if required. The written decision will contain the reasons for the compliance officer's decision. If the compliance officer concludes that an allegation is true and that corrective action is required to comply with federal or state law, the compliance officer will order the corrective action and shall include timelines for implementation of such action. The Superintendent of Public Instruction will provide technical assistance at the request of the local educational or public agency. The complaint, investigative records, and the final report shall be filed in a confidential file retained by the compliance officer. (10) At any time during this process, if the compliance officer determines that the complaint has been resolved and compliance is achieved, the compliance officer shall inform the complainant and the local educational or public agency of that fact in writing. (11) If within 60 days of issuance of the final report, the local educational or public agency has not implemented the corrective action required by the final report, the Superintendent of Public Instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include: (a) recommending to the Board of Public Education withholding state education funds; (b) denial in whole or part IDEA, Part B federal funds; or (c) recommending to the Board of Public Education a change in accreditation status. (12) If the local educational or public agency alleges that the compliance officer has violated a state or federal special education statute, regulation, or rule in ordering the corrective action required by the final report, the Superintendent of	

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	Public Instruction shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401, and the Montana Administrative Procedure Act, 2-4-601 through 2-4-711, MCA, prior to implementing sanctions.	
Methods of Ensuring Services **300.154 Methods of ensuring services.** (a) Establishing responsibility for services. The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following: (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP). (2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies. (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism. (4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this	10.16.3142 INTERAGENCY AGREEMENTS (1) The Superintendent of Public Instruction shall develop and implement interagency agreements with the Board of Public Education, Departments of Public Health and Human Services and Corrections for the purpose of describing the role that each of these agencies plays in providing for special education or related services. (2) The interagency agreement shall define the financial responsibility of each agency for providing a free appropriate public education and establish procedures for resolving interagency disputes among parties to the agreement and establish procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements. (3) The interagency agreement shall designate the rules, regulations and educational standards applicable to educational services administered by other public agencies and the monitoring role of the Superintendent of Public Instruction.	

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section. (b) Obligation of noneducational public agencies. (1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 300.5 relating to assistive technology devices, 300.6 relating to assistive technology services, 300.34 relating to related services, 300.41 relating to supplementary aids and services, and 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section. (ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. (2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section. (c) Special rule. The requirements of paragraph (a) of this section may be met through-- (1) State statute or regulation; (2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or (3) Other appropriate written methods as determined by the		

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Chief Executive Officer of the State or designee of that officer and approved by the Secretary. (d) Children with disabilities who are covered by public benefits or insurance. (1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section. (2) With regard to services required to provide FAPE to an eligible child under this part, the public agency-- (i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act; (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay; (iii) May not use a child's benefits under a public benefits or insurance program if that use would-- (A) Decrease available lifetime coverage or any other insured benefit; (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school; (C) Increase premiums or lead to the discontinuation of benefits or insurance; or (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and (iv)(A) Must obtain parental consent, consistent with 300.9, each time that access to public benefits or insurance is sought; and (B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (e) Children with disabilities who are covered by private		

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insurance. (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with 300.9. (2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must-- (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and (ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (f) Use of Part B funds. (1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service. (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts). (g) Proceeds from public benefits or insurance or private insurance. (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. (2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 300.163 and 300.203. (h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396		

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through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.		
Additional Eligibility Requirements **300.155 Hearings relating to LEA eligibility.** The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).		
300.156 Personnel qualifications. (a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that-- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and (2) Ensure that related services personnel who deliver services in their discipline or profession-- (i) Meet the requirements of paragraph (b)(1) of this section; and (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities. (c) Qualifications for special education teachers. The	<u>10.16.3135 COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT</u> (1) The Superintendent of Public Instruction shall establish procedures for the development and conduct of a comprehensive system of personnel development. The procedures shall include: (a) Analysis of state and local needs for professional development for personnel to serve students with disabilities that includes at a minimum: (i) identification of preservice and professional development training needs to address personnel shortages and requirements for provision of qualified personnel; (ii) review of the Annual Performance Report results in collaboration with the state Special Education Advisory Panel to identify statewide training needs to improve outcomes for students with disabilities consistent with the State Performance Plan; (iii) implementation of a statewide needs assessment to identify specific professional development needs of special education and related services personnel conducted at least every third year. (b) Implementation of a regionalized structure for the implementation of professional development which helps to ensure personnel have the skills and knowledge to improve academic achievement and functional performance of students, and enables personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate instruction on the use of adaptive and instructional software.	

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qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA. (d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities. (e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.	(c) A detailed structure for personnel planning that focuses on preservice and in-service education needs and that describes procedures for: (i) acquiring, reviewing, and disseminating to general and special education teachers, paraprofessional personnel (e.g., teacher aides and instructional assistants), administrators, and related service providers significant information about evidence based research practices proven effective through research or demonstration; (ii) providing technical assistance to local educational agencies, educational cooperatives, state operated programs, and private programs serving state agency placed students with disabilities; and (iii) identifying state, local, and regional resources which will assist in meeting the state's personnel preparation needs. (2) The Superintendent of Public Instruction shall appoint a comprehensive system of personnel development council to ensure that public and private institutions of higher education and other agencies and organizations having an interest in the preparation of personnel for the education of students with disabilities have an opportunity to participate fully in the development, review, and annual updating of the state comprehensive system of personnel development. The council shall: (a) develop a long-range personnel development plan and evaluate effectiveness of state personnel training activities in meeting the plan and make recommendations for in-service, preservice and technical assistance programs on an annual basis; (b) establish procedures to ensure collaboration and coordination of Office of Public Instruction and local educational agency efforts in the utilization of current technology and training techniques in meeting the personnel development needs and use of appropriate networks, linkages, and databases; and (c) report on recommendations regarding personnel preparation to the Superintendent of Public Instruction and the State Special Education Advisory Panel.	

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	10.16.3136 SPECIAL EDUCATION PROFESSIONAL STAFF QUALIFICATIONS (1) Special education teachers and related service personnel must hold licenses consistent with state licensing or educator licensing requirements for the subjects they teach and the services they provide. (a) Supervisors of special education teaching personnel must have a Class 3 administrator's certificate with a principal's endorsement or a supervisor's endorsement in special education. (2) All special education and related services for students with disabilities shall be provided under the direction of qualified personnel. (3) Each local educational agency must require that each administrator which provides or supervises the provision of special education and related services to students with disabilities, obtains specific skills which enable the administrator to deal effectively with students with disabilities. These skills may be obtained through formal training or in-service training. (4) Each local educational agency must require that each teacher who implements education services to students with disabilities, obtains specific skills which enable the teacher to deal effectively with students with disabilities under the teacher's supervision. These skills may be obtained through formal training or in-service training or consultation. (5) Paraprofessional personnel (e.g., teacher aide or instructional assistant) shall meet current Board of Public Education accreditation standards under ARM 10.55.715. 10.55.717 ASSIGNMENT OF PERSONS PROVIDING INSTRUCTION TO BRAILLE STUDENTS (1) No certified or classified employee of a school district, cooperative, or any contracted service provider shall be assigned to provide instruction of Braille to a student or produce Braille materials who has not demonstrated competency in “contracted” (grade two) standard literary Braille code by: (a) successful completion of the National Literary Braille Competency Test; or (b) successful completion of the Braille competencytest	

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	developed by Portland State University (Braille Literacy Usage Exam); or (c) successful completion of Library of Congress transcriber's certificate; or (d) successful completion of a program, for teaching visually impaired students, from an accredited college or university. (2) The employing agency (school district and/or cooperative) is responsible for monitoring appropriate assignment of personnel under (1). (3) Any person under (1) shall have two years, from the date that the individual has been initially assigned to provide instruction in Braille or to produce Braille materials, to successfully pass the testing requirements. (4) A person who has met the requirements of (1) shall maintain their facility with "contracted" (grade two) standard literary Braille code through continuing education opportunities. (5) For the purposes of (4), an approved provider of continuing education may include any entity approved by the Montana Office of Public Instruction and/or the Montana Board of Education. (6) Individuals who seek to remain eligible to work with visually impaired students are responsible for documenting completion of continuing education. Such individuals will provide a copy of their documentation to their employing school district. (7) If a paraprofessional, who has not successfully met the requirements found in (1), is assigned to work with a student who has a visual impairment, the paraprofessional will be supervised by the district's special education teacher in collaboration with a teacher of the visually impaired who holds a credential from an accredited university. In addition, the assigned paraprofessional and the school district shall meet the requirements contained in (1) within two years of the date a student with a visual impairment has been identified as in need of Braille instruction and/or materials. <u>10.55.715 INSTRUCTIONAL AIDES: QUALIFICATIONS</u>	

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	AND SUPERVISION (1) Instructional aides need not be certified; however, the following supervision is required: (a) Instructional aides assigned due to classroom size or diversity shall be under the direct supervision of a certified teacher. This means that the aide shall be supervised by a certified teacher who is responsible for instruction and assessment of students. The supervising teacher shall be available while the aide is fulfilling his/her responsibilities and shall not be simultaneously assigned to another teaching duty or preparation time. (b) Instructional aides assigned to assist students with special education needs shall be under the supervision of the teacher or other professional designated as primarily responsible for instructional planning for the student. The designated professional has the responsibility to provide regularly scheduled communication and direction to the instructional aide and not to delegate any activity to the instructional aide that requires professional skill, knowledge and judgment. (c) Instructional aides assigned to assist students in gaining specialized knowledge not generally available from a properly endorsed teacher shall be supervised by a teacher certified at the proper level. The supervising teacher is responsible for instruction and assessment of students and shall not be simultaneously assigned to another teaching duty or preparation time.	
300.157 Performance goals and indicators. The State must-- (a) Have in effect established goals for the performance of children with disabilities in the State that-- (1) Promote the purposes of this part, as stated in 300.1; (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311; (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and (4) Are consistent, to the extent appropriate, with any other	10.56.101 STUDENT ASSESSMENT (1) By the authority of 20-2-121(12), MCA, the board of public education adopts rules for state-level assessment in the public schools and those private schools seeking accreditation. (2) The board recognizes that the primary purpose of assessment is to serve learning. Classroom assessment is the primary means through which assessment impacts instruction and learning for individuals. State-level and large-scale assessment affect learning through assisting policy decisions and assuring program quality for all students. To meet both classroom and state-level needs, state-level assessments will provide information about the proficiency	The OPI has a State Performance Plan and reports annually on its performance. The State Performance Plan and Annual Performance Report are available on the OPI web site at www.opi.mt.gov/speced.

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
goals and academic standards for children established by the State; (b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.	level of student achievement relative to established content standards, as well as the status of Montana's schools in relation to other groups of students, states, and nations. The school and district responsibilities for assessment are identified in ARM 10.55.603. (3) In order to obtain state-level achievement information, all accredited schools shall annually administer a single system of state-level assessments approved by the board. (a) State-level assessments shall be administered to all students in grades four, eight and eleven in reading, communication arts, mathematics, science, and social studies. For planning purposes, state-level assessments shall be given during a week in the spring of the year, identified by the office of public instruction a year prior to the assessment date. (b) All state-level assessment results shall be provided to the office of public instruction and school districts in a format specified by the office of public instruction and approved by the board of public education. (4) State-level assessment results are a part of each student's permanent records as described in ARM 10.55.2002. (5) The office of public instruction shall provide a report of the results to the board, the legislature, and the public. Schools are encouraged to compare their results with the state results and share state-level assessment information with parents and local communities. (6) The superintendent of public instruction is authorized to make available the reported student assessment data in compliance with confidentiality requirements of federal and state law. State-level assessment results released to the public shall be accompanied by a clear statement of the purposes of the assessments, subject areas assessed, level of measurement of the content standards, and the percent of students who participated in the assessments. The release shall include additional information to provide a fair and useful context for assessment reporting (e.g., dropout rates, mobility rates, poverty levels, district size) that will assist districts to examine their educational programs to assure effectiveness. (7) All students shall participate in the state-level	

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	assessments. Students with disabilities or limited English proficiency (LEP) shall participate using the approved assessments, unless it is determined that a student's progress toward the content standards cannot be adequately measured with the approved assessments even when provided accommodations. (a) For students with disabilities, the individualized education program (IEP) teams have the authority to specify accommodations to be provided, as defined in (8), for participation by the student in the state-level assessments. (i) When an IEP team determines that an accommodation for a student's disability would still not allow for adequate measurement of the student's progress toward the content standards, the IEP team may waive using the approved state-level assessments by providing alternate assessments that are appropriate to determine the student's progress toward the content standards. (b) For students who have been identified by a team of educators as LEP, those teams have the authority to specify accommodations to be provided, as defined in (8), for participation by the student in the state-level assessments. (i) When the team of educators determines that an accommodation for an LEP student who has had fewer than three years of instruction in English would still not allow for adequate measurement of the student's progress toward the content standards, the team of educators may waive using the approved state-level assessments by providing alternate assessments that are appropriate to determine the student's progress toward the content standards. (c) The office of public instruction shall provide guidance to schools concerning alternate state-level assessments. (8) Accommodations allow students to demonstrate competence in subject matter so that state-level assessment results accurately reflect the students' achievement levels rather than limited English language development or impaired sensory or manual skills, except where those skills are the factors which the assessment purports to measure. (a) Accommodation for state-level assessment purposes is defined as modifications similar to those used to support and	

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	accommodate the student in the instructional setting. (b) Accommodations may include, but are not limited to extended time, small group administration, facilitator reading directions, native language support, student responding orally, or using required assistive technology. (c) The office of public instruction shall provide guidance to schools concerning appropriate accommodations.	
300.158-300.161 [Reserved]		
300.162 Supplementation of State, local, and other Federal funds. (a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part. (b) Prohibition against commingling. (1) Funds paid to a State under this part must not be commingled with State funds. (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).) (c) State-level nonsupplanting. (1) Except as provided in 300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds. (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under 300.164.		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.163 Maintenance of State financial support. (a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. (b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement. (c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that-- (1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or (2) The State meets the standard in 300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act. (d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.		
300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds. (a) Except as provided under 300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related		

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services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under 300.704(a) and (b) without regard to the prohibition on supplanting other funds. (b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under 300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State. (c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes-- (1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State; (2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail-- (i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and (ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include-- (A) The State's procedures under 300.111 for ensuring that all eligible children are identified, located and evaluated; (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part; (C) The State's complaint procedures under 300.151 through 300.153; and (D) The State's hearing procedures under 300.511 through 300.516 and 300.530 through 300.536; (3) A summary of all State and Federal monitoring reports, and State complaint decisions (see 300.151 through 300.153) and hearing decisions (see 300.511 through 300.516 and		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and (4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under 300.167. (d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues: (1) Whether FAPE is currently available to all eligible children with disabilities in the State. (2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver. (e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver. (f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and 300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section. (g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.		

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300.165 Public participation. (a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).		
300.166 Rule of construction. In complying with 300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.		
State Advisory Panel **300.167 State advisory panel.** The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.	10.16.3150 STATE ADVISORY PANEL (1) The Superintendent of Public Instruction shall establish and maintain the State Advisory Panel in accordance with 34 CFR 300.167 through 300.169.	
300.168 Membership. (a) General. The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including-- (1) Parents of children with disabilities (ages birth through 26); (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that		

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prepare special education and related services personnel; (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 et seq.); (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (8) Representatives of private schools and public charter schools; (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; (10) A representative from the State child welfare agency responsible for foster care; and (11) Representatives from the State juvenile and adult corrections agencies. (b) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).		
300.169 Duties. The advisory panel must-- (a) Advise the SEA of unmet needs within the State in the education of children with disabilities; (b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities; (c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act; (d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and (e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.		

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Other Provisions Required for State Eligibility **300.170 Suspension and expulsion rates.** (a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities-- (1) Among LEAs in the State; or (2) Compared to the rates for nondisabled children within those agencies. (b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.		
300.171 Annual description of use of Part B funds. (a) In order to receive a grant in any fiscal year a State must annually describe-- (1) How amounts retained for State administration and State-level activities under 300.704 will be used to meet the requirements of this part; and (2) How those amounts will be allocated among the activities described in 300.704 to meet State priorities based on input from LEAs. (b) If a State's plans for use of its funds under 300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section. (c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.		
300.172 Access to instructional materials. (a) General. The State must-- (1) Adopt the National Instructional Materials Accessibility	10.16.3172 ACCESS TO INSTRUCTIONAL MATERIALS (1) The Superintendent of Public Instruction shall adopt the National Instructional Materials Accessibility Standard	

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Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19,2006 (71 FR 41084); and (2) Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC. (b) Rights and responsibilities of SEA. (1) Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC. (2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. (c) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must-- (1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter	(NIMAS). **State Statute** **20-7-602. Textbook selection and adoption.** (1) Textbooks must be selected by the district superintendent or by the school principal if there is no district superintendent. The selections are subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent. (2) In selecting textbooks, the district shall ensure that the materials are made available to each blind or visually impaired child in a timely manner in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq. **State Statute** **20-7-470. Blind persons' literacy rights and education -- short title.** Sections 20-7-470 through 20-7-475 may be cited as the "Blind Persons' Literacy Rights and Education Act". **State Statute** **20-7-471. Blind persons' literacy rights and education -- definitions.** As used in 20-7-470 through 20-7-475, unless the context requires otherwise, the following definitions apply: (1) "Blind or visually impaired child" means an individual who is eligible for special education services and who: (a) has a visual acuity of 20/70 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees; or (b) has a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in subsection (1)(a). (2) "Braille" means the system of reading and writing through touch, commonly known as standard English Braille. (3) "Individualized education program" means a written	

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into a written contract with the publisher of the print instructional materials to-- (i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or (ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (d) Assistive technology. In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs. (e) Definitions. (1) In this section and 300.210-- (i) Blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a; (ii) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the Act; (iii) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the Act; (iv) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the Act. (2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.	statement developed for a student eligible for special education services pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1401(11). **State Statute** **20-7-472. Individualized education program for child with blindness.** The individualized education program for each blind or visually impaired child must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq. **State Statute** **20-7-473. Standards of competency and instruction -- Braille reading and writing.** Instruction in Braille reading and writing must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq. **State Statute** **20-7-474. Instructional materials and Braille equipment -- Braille equipment loan program.** The Montana school for the deaf and blind shall establish a Braille electronic equipment loan program that may be used by a school district to provide Braille equipment as specified in a student's individualized education program. The equipment must be loaned on a temporary basis to a school district, but the district is responsible for purchasing like equipment required by the student's individualized education program. **State Statute** **20-7-475. Blind persons' literacy rights and education -- personnel training.** The board of public education shall establish standards to ensure that individuals who provide Braille instruction are appropriately trained and supervised.	
300.173 Overidentification and disproportionality. The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate		

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overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 300.8.		
300.174 Prohibition on mandatory medication. (a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under 300.300 through 300.311, or receiving services under this part. (b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under 300.111 (related to child find).	See also ARM 10.16.3122(5), page 36.	
300.175 SEA as provider of FAPE or direct services. If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency-- (a) Must comply with any additional requirements of 300.201 and 300.202 and 300.206 through 300.226 as if the agency were an LEA; and (b) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to 300.202(b) (relating to excess costs).		
300.176 Exception for prior State plans. (a) General. If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of 300.100, including any policies and procedures filed under Part B of the Act as in effect before, December 3, 2004, the Secretary considers the State to		

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have met the requirement for purposes of receiving a grant under Part B of the Act. (b) Modifications made by a State. (1) Subject to paragraph (b)(2) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary. (2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan. (c) Modifications required by the Secretary. The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if-- (1) After December 3, 2004, the provisions of the Act or the regulations in this part are amended; (2) There is a new interpretation of this Act by a Federal court or a State's highest court; or (3) There is an official finding of noncompliance with Federal law or regulations.		
300.177 States' sovereign immunity. (a) General. A State that accepts funds under this part waives its immunity under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this part. (b) Remedies. In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against a public entity other than a State. (c) Effective date. Paragraphs (a) and (b) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.		
Department Procedures **300.178 Determination by the Secretary that a State is eligible to receive a grant.**		

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If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.		
300.179 Notice and hearing before determining that a State is not eligible to receive a grant. (a) General. (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State-- (i) With reasonable notice; and (ii) With an opportunity for a hearing. (2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the SEA by certified mail with return receipt requested. (b) Content of notice. In the written notice described in paragraph (a)(2) of this section, the Secretary-- (1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible; (2) May describe possible options for resolving the issues; (3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and (4) Provides the SEA with information about the hearing procedures that will be followed.		
300.180 Hearing official or panel. (a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing. (b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.		
300.181 Hearing procedures. (a) As used in 300.179 through 300.184 the term party or		

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parties means the following: (1) An SEA that requests a hearing regarding the proposed disapproval of the State's eligibility under this part. (2) The Department official who administers the program of financial assistance under this part. (3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel. (b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties. (c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Hearing Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following: (1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case. (2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties. (3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties. (4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as-- (i) Narrowing and clarifying issues; (ii) Assisting the parties in reaching agreements and stipulations; (iii) Clarifying the positions of the parties; (iv) Determining whether an evidentiary hearing or oral argument should be held; and (v) Setting dates for-- (A) The exchange of written documents;		

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(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing; (C) Further proceedings before the Hearing Official or Hearing Panel (including an evidentiary hearing or oral argument, if either is scheduled); (D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or (E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel. (5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call. (6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (b)(4) of this section. (7) Following a prehearing or other conference the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties. (d) The Hearing Official or Hearing Panel may require parties to state their positions and to provide all or part of the evidence in writing. (e) The Hearing Official or Hearing Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories. (f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel. (g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings. (h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings. (i) The Hearing Official or Hearing Panel may examine witnesses. (j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents. (k) The Hearing Official or Hearing Panel may refuse to		

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consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown. (l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity. (m)(1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties. (2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel. (n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel-- (1) An opportunity to present witnesses on the party's behalf; and (2) An opportunity to cross-examine witnesses either orally or with written questions. (o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious. (p)(1) The Hearing Official or Hearing Panel-- (i) Arranges for the preparation of a transcript of each hearing; (ii) Retains the original transcript as part of the record of the hearing; and (iii) Provides one copy of the transcript to each party. (2) Additional copies of the transcript are available on request and with payment of the reproduction fee. (q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.		

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300.182 Initial decision; final decision. (a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under 300.179 including any amendments to or further clarifications of the issues, under 300.181(c)(7). (b) The initial decision of a Hearing Panel is made by a majority of Panel members. (c) The Hearing Official or Hearing Panel mails, by certified mail with return receipt requested, a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary. (d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Hearing Panel within 15 days of the date the party receives the Panel's decision. (e) The Hearing Official or Hearing Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Hearing Panel within seven days of the date the party receives the initial comments and recommendations. (f) The Hearing Official or Hearing Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision. (g) The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments and recommendations, the Secretary informs the Hearing Official or Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification. (h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing Panel if the Secretary finds that it is clearly erroneous.		

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(i) The Secretary conducts the review based on the initial decision, the written record, the transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments. (j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings. (k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed.		
300.183 Filing requirements. (a) Any written submission by a party under 300.179 through 300.184 must be filed by hand delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages. (b) The filing date under paragraph (a) of this section is the date the document is-- (1) Hand-delivered; (2) Mailed; or (3) Sent by facsimile transmission. (c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department. (d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Hearing Panel, as applicable, may require the filing of a follow-up hard copy by hand delivery or by mail within a reasonable period of time. (e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.		
300.184 Judicial review. If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under section 612 of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the		

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clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary's decision was based, as provided in 28 U.S.C. 2112.		
300.185 [Reserved]		
300.186 Assistance under other Federal programs. Part B of the Act may not be construed to permit a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of FAPE for children with disabilities in the State.		
By-pass for Children in Private Schools **300.190 By-pass--general.** (a) If, on December 2, 1983, the date of enactment of the Education of the Handicapped Act Amendments of 1983, an SEA was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by section 612(a)(10)(A) of the Act, or if the Secretary determines that an SEA, LEA, or other public agency has substantially failed or is unwilling to provide for such equitable participation then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to these children through arrangements which shall be subject to the requirements of section 612(a)(10)(A) of the Act. (b) The Secretary waives the requirement of section 612(a)(10)(A) of the Act and of 300.131 through 300.144 if the Secretary implements a by-pass.		
Sec. 300.191 Provisions for services under a by-pass. (a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State, and as appropriate, LEA or other public agency officials to consider matters such as-- (1) Any prohibition imposed by State law that results in the need for a by-pass; and		

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(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass. (b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State, LEA or other public agency in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and Sec. Sec. 300.131 through 300.144 by providing services through one or more agreements with appropriate parties. (c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying-- (1) A per child amount determined by dividing the total amount received by the State under Part B of the Act for the fiscal year by the number of children with disabilities served in the prior year as reported to the Secretary under section 618 of the Act; by (2) The number of private school children with disabilities (as defined in Sec. Sec. 300.8(a) and 300.130) in the State, LEA or other public agency, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities. (d) The Secretary deducts from the State's allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.		
300.192 Notice of intent to implement a by-pass. (a) Before taking any final action to implement a by-pass, the Secretary provides the SEA and, as appropriate, LEA or other public agency with written notice. (b) In the written notice, the Secretary-- (1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA and, as appropriate, LEA or		

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other public agency to respond; and (2) Advises the SEA and, as appropriate, LEA or other public agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented. (c) The Secretary sends the notice to the SEA and, as appropriate, LEA or other public agency by certified mail with return receipt requested.		
300.193 Request to show cause. An SEA, LEA or other public agency in receipt of a notice under 300.192 that seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time period in the written notice in 300.192(b)(2).		
300.194 Show cause hearing. (a) If a show cause hearing is requested, the Secretary-- (1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing; (2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing; and (3) Notifies the SEA, LEA or other public agency, and representatives of private schools that they may be represented by legal counsel and submit oral or written evidence and arguments at the hearing. (b) At the show cause hearing, the designee considers matters such as-- (1) The necessity for implementing a by-pass; (2) Possible factual errors in the written notice of intent to implement a by-pass; and (3) The objections raised by public and private school representatives. (c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of		

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the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order. (d) The designee has no authority to require or conduct discovery. (e) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity. (f) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing. (g) Within 10 days after the hearing, the designee-- (1) Indicates that a decision will be issued on the basis of the existing record; or (2) Requests further information from the SEA, LEA, other public agency, representatives of private schools or Department officials.		
300.195 Decision. (a) The designee who conducts the show cause hearing-- (1) Within 120 days after the record of a show cause hearing is closed, issues a written decision that includes a statement of findings; and (2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested. (b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 30 days of the date the party receives the designee's decision. (c) The Secretary adopts, reverses, or modifies the designee's decision and notifies all parties to the show cause hearing of the Secretary's final action. That notice is sent by certified mail with return receipt requested.		
300.196 Filing requirements. (a) Any written submission under 300.194 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages. (b) The filing date under paragraph (a) of this section is the		

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date the document is-- (1) Hand-delivered; (2) Mailed; or (3) Sent by facsimile transmission. (c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department. (d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time. (e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission. (f) A party must show a proof of mailing to establish the filing date under paragraph (b)(2) of this section as provided in 34 CFR 75.102(d).		
300.197 Judicial review. If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3)(B) through (D) of the Act.		
300.198 Continuation of a by-pass. The Secretary continues a by-pass until the Secretary determines that the SEA, LEA or other public agency will meet the requirements for providing services to private school children.		
State Administration **300.199 State administration.** (a) Rulemaking. Each State that receives funds under Part B of the Act must-- (1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part; (2) Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-		

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imposed requirement that is not required by Part B of the Act and Federal regulations; and (3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act. (b) Support and facilitation. State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.		
Subpart C- Local Educational Agency Eligibility **300.200 Condition of assistance.** An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in 300.201 through 300.213.	10.16.3180 NOTICE OF AVAILABILITY OF FEDERAL FUNDS (1) The Superintendent of Public Instruction shall annually provide written notice of the availability of federal funds under IDEA. (2) The notice shall include: (a) procedures for applicants to follow in completing and submitting application for federal funds under IDEA; (b) amount of the federal funds and the period during which the local educational agency may obligate funds; (c) goals and objectives for use of the funds; (d) description of state and federal requirements to which the local educational agency must comply to receive funds; (e) Superintendent of Public Instruction's procedure for approving applications; (f) requirements for project reports; (g) a statement of a local educational agency's obligation to make the application and any evaluations, periodic program plans, or reports required by the Superintendent of Public Instruction for this project available for public inspection; and (h) an application form and an offer of technical assistance from the Superintendent of Public Instruction.	
300.201 Consistency with State policies. The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State	10.16.3220 PROGRAM NARRATIVE (1) Each local educational agency or education cooperative must have on file with the Superintendent of Public Instruction a written program narrative that describes policies and procedures	

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policies and procedures established under 300.101 through 300.163, and 300.165 through 300.174.	used for the provision of special education and related services within the local educational agency or education cooperative. The policies, procedures, and services in the narrative shall be consistent with state policies and address the requirements of 34 CFR 300.101 through 300.163 and 34 CFR 300.165 through 174. (2) If a local educational agency participates in an education cooperative under 20-7-451 and 20-7-457, MCA, the local educational agency must submit a single program narrative through the cooperative. **State Statute** **20-7-414. Determination of children in need and type of special education needed**. (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education, in accordance with 20-7-411, to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district. (2) The trustees of a school district shall establish and implement policies and procedures for the conduct of special education that are consistent with the Individuals With Disabilities Education Act and with state laws and rules of the board of public education and the superintendent of public instruction.	
300.202 Use of amounts. a) General. Amounts provided to the LEA under Part B of the Act-- (1) Must be expended in accordance with the applicable provisions of this part; (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and (3) Must be used to supplement State, local, and other		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
Federal funds and not to supplant those funds. (b) Excess cost requirement. (1) General. (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section. (ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children. (2)(i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used. (ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in 300.16. That amount may not include capital outlay or debt service. (3) If two or more LEAs jointly establish eligibility in accordance with 300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in 300.16 in those agencies for elementary or secondary school students, as the case may be.		
300.203 Maintenance of effort. (a) General. Except as provided in 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. (b) Standard. (1) Except as provided in paragraph (b)(2) of this section,		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available: (i) Local funds only. (ii) The combination of State and local funds. (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section. (3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.		
300.204 Exception to maintenance of effort. Notwithstanding the restriction in 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following: (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel. (b) A decrease in the enrollment of children with disabilities. (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child-- (1) Has left the jurisdiction of the agency;		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or (3) No longer needs the program of special education. (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities. (e) The assumption of cost by the high cost fund operated by the SEA under 300.704(c).		
300.205 Adjustment to local fiscal efforts in certain fiscal years. a) Amounts in excess. Notwithstanding 300.202(a)(2) and (b) and 300.203(a), and except as provided in paragraph (d) of this section and 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by 300.203(a) by not more than 50 percent of the amount of that excess. (b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities. (c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must *prohibit* the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year. (d) Special rule. The amount of funds expended by an LEA for early intervening services under 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.206 Schoolwide programs under title I of the ESEA. (a) General. Notwithstanding the provisions of 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed-- (1)(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by (ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by (2) The number of children with disabilities participating in the schoolwide program. (b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions: (1) The funds must be considered as Federal Part B funds for purposes of the calculations required by 300.202(a)(2) and (a)(3). (2) The funds may be used without regard to the requirements of 300.202(a)(1). (c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools-- (1) Receive services in accordance with a properly developed IEP; and 2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.		
300.207 Personnel development. The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of 300.156 (related to personnel qualifications) and section 2122 of the ESEA.		
300.208 Permissive use of funds. (a) Uses. Notwithstanding 300.202, 300.203(a), and		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities: (1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services. (2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with 300.226. (3) High cost special education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services. (b) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.		
300.209 Treatment of charter schools and their students. (a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part. (b) Charter schools that are public schools of the LEA. (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must-– (i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
(ii) Provide funds under Part B of the Act to those charter schools-- (A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and (B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law. (2) If the public charter school is a school of an LEA that receives funding under 300.705 and includes other public schools-- (i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and (ii) The LEA must meet the requirements of paragraph (b)(1) of this section. (c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 300.28, that receives funding under 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity. (d) Public charter schools that are not an LEA or a school that is part of an LEA. (1) If the public charter school is not an LEA receiving funding under 300.705, or a school that is part of an LEA receiving funding under 300.705, the SEA is responsible for ensuring that the requirements of this part are met. (2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with 300.149.		
300.210 Purchase of instructional materials. (a) General. Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA	See also ARM 10.16.3172, page 95.	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
under 300.172. (b) Rights of LEA. (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC. (2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timelymanner. (3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.		
300.211 Information for SEA. The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.		
300.212 Public information. The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.		
300.213 Records regarding migratory children with disabilities. The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.		
300.214-300.219 [Reserved]		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.220 Exception for prior local plans. (a) General. If an LEA or a State agency described in 300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of 300.200, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act. (b) Modification made by an LEA or State agency. Subject to paragraph (c) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until the LEA or State agency submits to the SEA the modifications that the LEA or State agency determines are necessary. (c) Modifications required by the SEA. The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with Part B of the Act or State law, if-- (1) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended; (2) There is a new interpretation of an applicable provision of the Act by Federal or State courts; or (3) There is an official finding of noncompliance with Federal or State law or regulations.	10.16.3181 LOCAL EDUCATIONAL AGENCY FEDERAL FUNDS APPLICATIONS (1) In order to receive federal funds under IDEA, a local educational agency shall annually submit an application to the Superintendent of Public Instruction in accordance with application instructions and within announced timelines. (a) A local educational agency may submit a single district application if it has: (i) an entitlement of $7500 or more; and (ii) established, satisfactory to the Superintendent of Public Instruction, special education and related services which provide a free appropriate public education to students with disabilities. (b) A local educational agency that participates in an education cooperative under 20-7-451 and 20-7-457, MCA, shall submit one consolidated application through the cooperative. (c) A local educational agency that generates an entitlement of less than $7500 or that is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities shall participate in one consolidated application with other local educational agencies. (2) A consolidated application must meet the same requirements as a single district application. (a) If the cooperative interlocal agreement does not specifically delegate the power to apply for IDEA funds on behalf of the participating local educational agency to a prime applicant, each participating local educational agency must delegate to the prime applicant the authority to apply for IDEA funds. (3) If a local educational agency makes a significant amendment to its application, the local educational agency shall follow the procedures for submitting an original application under IDEA. The Superintendent of Public Instruction shall follow the same review and approval procedures as required for an original application.	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.221 Notification of LEA or State agency in case of ineligibility. If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must-- (a) Notify the LEA or State agency of that determination; and (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.	<u>10.16.3194 SUPERINTENDENT OF PUBLIC INSTRUCTION NOTIFICATION TO LOCAL EDUCATIONAL AGENCY OF INELIGIBILITY TO RECEIVE FUNDS UNDER PART B</u> (1) Local educational agency federal funds applications shall be consistent with state and federal regulations and be completed according to application instructions and timelines as stated in notice of availability of federal funds. (2) The Superintendent of Public Instruction's approval procedures shall include: (a) consideration of a local educational agency's response to program monitoring and the early assistance program as defined in ARM 10.16.3660, complaint investigation or due process hearing decisions which are adverse to the local educational agency; (b) consideration of any previous Superintendent of Public Instruction or Board of Public Education decisions resulting in withholding of funds; (c) determination of maintenance of fiscal effort; and (d) consideration of an approved program narrative. (3) The Superintendent of Public Instruction shall provide written notice of approval of the application and federal funds award which shall include: (a) amount of the funds approved; (b) the period during which the local educational agency may obligate funds; and (c) statement of federal requirements which apply to the use of the funds. (4) If an LEA is determined to be not eligible for receipt of Part B funds for failure to comply with any of the requirements under Part B and implementing federal and state regulations, the Superintendent of Public Instruction will not withhold funds without first providing reasonable notice and an opportunity for a hearing in accordance with 34 CFR 300.155. (5) If a local educational agency or education cooperative makes a significant amendment to its application for federal funds, the local educational agency or education cooperative shall follow the procedures for submitting the original application.	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.222 LEA and State agency compliance. (a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in 300.201 through 300.213, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement. (b) Notice requirement. Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency. (c) Consideration. In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under 300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.		
300.223 Joint establishment of eligibility. (a) General. An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities. (b) Charter school exception. An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute. (c) Amount of payments. If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under 300.705 if the agencies were eligible for those payments.	See also ARM 10.16.3181, page 120.	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.224 Requirements for establishing eligibility. (a) Requirements for LEAs in general. LEAs that establish joint eligibility under this section must-- (1) Adopt policies and procedures that are consistent with the State's policies and procedures under 300.101 through 300.163, and 300.165 through 300.174; and (2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act. (b) Requirements for educational service agencies in general. If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act-- (1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and (2) Must be carried out only by that educational service agency. (c) Additional requirement. Notwithstanding any other provision of 300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by 300.112.		
300.225 [Reserved]		
300.226 Early intervening services. (a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D for examples of how 300.205(d), regarding local maintenance of effort, and 300.226(a) affect one another.)		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include-- (1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and (2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction. (c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability. (d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on-- (1) The number of children served under this section who received early intervening services; and (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period. (e) Coordination with ESEA. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.		
300.227 Direct services by the SEA. (a) General. (1) An SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA determines that the		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
LEA or State agency-- (i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act; (ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part; (iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or (iv) Has one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children. (2) SEA administrative procedures. (i) In meeting the requirements in paragraph (a)(1) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements. (ii) The excess cost requirements of 300.202(b) do not apply to the SEA. (b) Manner and location of education and services. The SEA may provide special education and related services under paragraph (a) of this section in the manner and at the locations (including regional or State centers) as the SEA considers appropriate. The education and services must be provided in accordance with this part.		
300.228 State agency eligibility. Any State agency that desires to receive a subgrant for any fiscal year under 300.705 must demonstrate to the satisfaction of the SEA that-- (a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and (b) The agency meets the other conditions of this subpart that apply to LEAs.		
300.229 Disciplinary information. (a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the	**State Statute** **20-1-213. Transfer of school records.** (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.	regulations at 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request. (2) If records cannot be forwarded within 5 days, the local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred. (3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees. (4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related. (5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student. (6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
	education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement. (7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility. (8) As used in this section, "local educational agency" means a public school district or a state-funded school.	
300.230 SEA flexibility. (a) Adjustment to State fiscal effort in certain fiscal years. For any fiscal year for which the allotment received by a State under 300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding 300.162 through 300.163 (related to State-level nonsupplanting and maintenance of effort), and 300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess. (b) Prohibition. Notwithstanding paragraph (a) of this section, if the Secretary determines that an SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under 300.603, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section. (c) Education activities. If an SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs. (d) Report. For each fiscal year for which an SEA exercises		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
the authority under paragraph (a) of this section, the SEA must report to the Secretary-- (1) The amount of expenditures reduced pursuant to that paragraph; and (2) The activities that were funded pursuant to paragraph (c) of this section. (e) Limitation. (1) Notwithstanding paragraph (a) of this section, an SEA may not reduce the level of expenditures described in paragraph (a) of this section if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under Part B of the Act and State funds received from the SEA. (2) If an SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under 300.205 by more than the reduction in the State funds they receive.		
Subpart D--Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements **Parental Consent** **300.300 Parental consent.** (a) Parental consent for initial evaluation. (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 300.8 must, after providing notice consistent with 300.503 and 300.504, obtain informed consent, consistent with 300.9, from the parent of the child before conducting the evaluation. (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services. (iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a	<u>10.16.3505 PARENTAL CONSENT</u> (1) The local educational agency shall implement parental consent procedures as described in 34 CFR 300.300 and consistent with this rule. (2) Written parental consent for initial and annual placement of a student with disabilities in special education and related services shall be obtained by the local educational or public agency prior to the placement. (a) The local educational agency shall maintain written documentation of the date of parental consent for initial or annual placement. (b) If the parents and local educational agency cannot agree on the IEP but can agree on certain IEP services or	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
disability. (2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if-- (i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child; (ii) The rights of the parents of the child have been terminated in accordance with State law; or (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. (3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under 300.506 or the due process procedures under 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent. (ii) The public agency does not violate its obligation under 300.111 and 300.301 through 300.311 if it declines to pursue the evaluation. (b) Parental consent for services. (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. (2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. (3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this	interim placement, the student's new IEP would be implemented in the areas of agreement and the student's last agreed-upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. (c) When parental consent for annual placement has not been obtained and has not been specifically refused, the local educational agency shall informally attempt to obtain consent from the parent. (i) If parental consent cannot be obtained within a reasonable time, the local educational agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice. (ii) If no response from the parent is obtained, the local educational agency shall provide the student special education and related services according to the student's IEP without parental consent subject to the parent's right to an impartial due process hearing under ARM 10.16.3507 through 10.16.3523. (d) When parental consent for annual placement is refused, the local educational agency shall informally attempt to obtain consent from the parent. If, after exhausting informal attempts, the local educational agency is unable to obtain consent or resolve the disagreement, the local educational agency shall: (i) provide the parent written notice as required by 34 CFR 300.503; and (ii) if the local educational agency believes its proposed annual placement is necessary to ensure a free appropriate public education, it shall file a request for special education due process hearing in accordance with ARM 10.16.3507 through 10.16.3523, or take other action necessary to ensure that a parent's refusal to consent does not result in a failure to provide the student with a free appropriate public education.	

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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. (4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency-- (i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and (ii) Is not required to convene an IEP Team meeting or develop an IEP under 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent. (c) Parental consent for reevaluations. (1) Subject to paragraph (c)(2) of this section, each public agency-- (i) Must obtain informed parental consent, in accordance with 300.300(a)(1), prior to conducting any reevaluation of a child with a disability. (ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section. (iii) The public agency does not violate its obligation under 300.111 and 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation. (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that-- (i) It made reasonable efforts to obtain such consent; and (ii) The child's parent has failed to respond. (d) Other consent requirements. (1) Parental consent is not required before—- (i) Reviewing existing data as part of an evaluation or a reevaluation; or		

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(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. (2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE. (3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part. (4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and (ii) The public agency is not required to consider the child as eligible for services under 300.132 through 300.144. (5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in 300.322(d).		
Evaluations and Reevaluations **300.301 Initial evaluations.** (a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part. (b) Request for initial evaluation. Consistent with the consent requirements in 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with adisability.	10.16.3320 REQUEST FOR INITIAL EVALUATION (1) In accordance with 34 CFR 300.301(b) either a parent or a public agency, as defined in 34 CFR 300.33, may initiate a request for an initial evaluation. (2) A local educational agency shall establish procedures for requesting an initial evaluation which include methods for collecting information to determine whether a comprehensive educational evaluation is necessary and the types of evaluations warranted.	

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(c) Procedures for initial evaluation. The initial evaluation-- (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and (2) Must consist of procedures-- (i) To determine if the child is a child with a disability under 300.8; and (ii) To determine the educational needs of the child. (d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if-- (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 300.8. (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.	(a) When the request for initial evaluation is made by an LEA, the request must include a statement of the reasons for the request, including documentation of regular education interventions for students enrolled in school, and the signature of the person making the request. (b) When the request for initial evaluation is made by a parent, the request must include a statement of the reasons for the request and the signature of the person making the request. (c) All requests shall document the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree that the student needs special education and related services. (d) If a comprehensive educational evaluation in accordance with 34 CFR 300.301 through 300.311 is warranted, the local educational agency shall obtain consent of the parent before conducting a comprehensive educational evaluation. (3) If the local educational agency does not suspect that the child has a disability and denies the request for an initial evaluation, the local educational agency must provide written notice to the parents, consistent with 34 CFR 300.503(b) of the Individuals with Disabilities Education Act. The parent may challenge such a refusal by requesting a due process hearing.	
300.302 Screening for instructional purposes is not evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.		
300.303 Reevaluations. (a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 300.304 through 300.311-- (1) If the public agency determines that the educational or related services needs, including improved academic	10.16.3321 COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS AND REEVALUATIONS (1) An evaluation of the student must be conducted in accordance with the requirements of 34 CFR 300.301 through 300.311 and 34 CFR 300.321. (2) For initial evaluations, the evaluation report must	

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achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation. (b) Limitation. A reevaluation conducted under paragraph (a) of this section-- (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.	include the information necessary to address criteria established in ARM 10.16.3010 through 10.16.3022. (3) The evaluation report shall include statements of implications for educational planning in terms understandable to all team members. (4) The evaluation report shall include a statement as to why the student needs special education and related services. (5) All evaluation reports will identify a disability category or categories for each student. (6) For an initial evaluation only, the following additional team members are required when a student is being evaluated in the specified category of disability: (a) emotional disturbance, traumatic brain injury specific learning disability, or cognitive delay requires a school psychologist; (b) speech-language impairment, deaf/blindness, traumatic brain injury requires a speech-language pathologist; (c) autism requires a school psychologist and speech-language pathologist; and (d) deafness or hearing impairment requires a speech-language pathologist or audiologist.	
300.304 Evaluation procedures. (a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with 300.503, that describes any evaluation procedures the agency proposes to conduct. (b) Conduct of evaluation. In conducting the evaluation, the public agency must-- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining-- (i) Whether the child is a child with a disability under 300.8; and (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);		

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(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (c) Other evaluation procedures. Each public agency must ensure that-- (1) Assessments and other evaluation materials used to assess a child under this part— (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (iii) Are used for the purposes for which the assessments or measures are valid and reliable; (iv) Are administered by trained and knowledgeable personnel; and (v) Are administered in accordance with any instructions provided by the producer of the assessments. (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence,		

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academic performance, communicative status, and motor abilities; (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 300.301(d)(2) and (e), to ensure prompt completion of full evaluations. (6) In evaluating each child with a disability under 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.		
300.305 Additional requirements for evaluations and reevaluations. (a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must-- (1) Review existing evaluation data on the child, including— (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine-- (i)(A) Whether the child is a child with a disability, as defined in 300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and		

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related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. (b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting. (c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section. (d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—- (i) That determination and the reasons for the determination; and (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents. (e) Evaluations before change in eligibility. (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with 300.304 through 300.311 before determining that the child is no longer a child with a disability. (2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary		

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school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law. (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.		
300.306 Determination of eligibility. (a) General. Upon completion of the administration of assessments and other evaluation measures-- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. (b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part-- (1) If the determinant factor for that determination is-- (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); (ii) Lack of appropriate instruction in math; or (iii) Limited English proficiency; and (2) If the child does not otherwise meet the eligibility criteria under 300.8(a). (c) Procedures for determining eligibility and educational need. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 300.8, and the educational needs of the child, each public agency must-- (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and		

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(ii) Ensure that information obtained from all of these sources is documented and carefully considered. (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with 300.320 through 300.324.		
Additional Procedures for Identifying Children With Specific Learning Disabilities **300.307 Specific learning disabilities.** (a) General. A State must adopt, consistent with 300.309, criteria for determining whether a child has a specific learning disability as defined in 300.8(c)(10). In addition, the criteria adopted by the State-- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in 300.8(c)(10); (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in 300.8(c)(10). (b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.	See also ARM 10.16.3019, ARM 10.16.3019A, ARM 10.16.3019B, and ARM 10.16.3019C, pages 9 through 12.	
300.308 Additional group members. The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in 300.8, must be made by the child's parents and a team of qualified professionals, which must include— (a)(1) The child's regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and		

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(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.		
300.309 Determining the existence of a specific learning disability. (a) The group described in 300.306 may determine that a child has a specific learning disability, as defined in 300.8(c)(10), if-- (1) The child does not achieve adequately for the child's age or 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: (i) Oral expression. (ii) Listening comprehension. (iii) Written expression. (iv) Basic reading skill. (v) Reading fluency skills. (vi) Reading comprehension. (vii) Mathematics calculation. (viii) Mathematics problem solving. (2)(i) 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 (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or (ii) 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; and (3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of-- (i) A visual, hearing, or motor disability; (ii) Mental retardation;		

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(iii) Emotional disturbance; (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency. (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 300.304 through 300.306-- (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents. (c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 300.306(a)(1)-- (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for an evaluation.		
300.310 Observation. (a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. (b) The group described in 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to-- (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance		

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that was done before the child was referred for an evaluation; or (2) Have at least one member of the group described in 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 300.300(a), is obtained. (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.		
300.311 Specific documentation for the eligibility determination. (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 300.306(a)(2), must contain a statement of-- (1) Whether the child has a specific learning disability; (2) The basis for making the determination, including an assurance that the determination has been made in accordance with 300.306(c)(1); (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning; (4) The educationally relevant medical findings, if any; (5) Whether-- (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with 300.309(a)(1); and (ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with 300.309(a)(2)(i); or (B) 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); (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the	See also ARM 10.16.3019C, page 12.	

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child's achievement level; and (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention-– (i) The instructional strategies used and the student-centered data collected; and (ii) The documentation that the child's parents were notified about-- (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the child's rate of learning; and (C) The parents' right to request an evaluation. (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.		
Individualized Education Programs **300.320 Definition of individualized education program.** (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 300.320 through 300.324, and that must include-- (1) A statement of the child's present levels of academic achievement and functional performance, including-- (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; (2)(i) A statement of measurable annual goals, including academic and functional goals designed to-- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child's other educational needs that result from the child's disability;	<u>10.16.3340 INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT DECISIONS</u> (1) Local educational agencies shall develop, implement, review, and revise individualized education programs (IEP) in accordance with 34 CFR 300.320 through 300.328. (2) IEP teams shall make placement decisions in accordance with least restrictive environment provisions at 34 CFR 300.114 through 300.118. <u>10.16.3341 RESIDENTIAL PLACEMENT BY PUBLIC AGENCY OTHER THAN LOCAL EDUCATIONAL AGENCY</u> (1) If a student with disabilities has been placed in a residential treatment facility or children's psychiatric hospital according to 20-7-435, MCA, the residential treatment facility or hospital shall initiate action to develop, review, or revise the student's individualized education program and, if necessary, to evaluate and identify a student with a disability in accordance with the requirements of IDEA. (2) The facility or hospital shall notify a representative of the student's resident local educational agency of the student's placement at the facility or hospital and request the	

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(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; (3) A description of-- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child-- (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section; (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--	participation of the resident LEA in meetings as required by IDEA. If the representative of the resident LEA cannot attend the meetings, the representative shall use other methods to ensure participation by the resident LEA. (3) The facility or hospital shall notify the parents of their right to participate in any decision about the student's individualized education program and agree to any proposed changes in the program before those changes are implemented. (4) In the event that the residential facility as defined in 20-7-436, MCA, or children's psychiatric hospital is unable or unwilling to provide an appropriate education as required under the IDEA, the local educational agency in which the facility is located is responsible for ensuring that a student placed in a residential treatment facility or children's psychiatric hospital receives FAPE under IDEA. The Superintendent of Public Instruction is responsible for ensuring compliance with IDEA. <u>10.16.3324 EXTENDED SCHOOL YEAR SERVICES</u> (1) Local educational agencies shall provide extended school year services in accordance with 34 CFR 300.106. (2) IEP teams shall use recoupment and regression as the criteria for determining eligibility for extended school year services. In the absence of the opportunity to collect data to determine regression, the IEP team may conclude that ESY services are necessary based on observations and other information that suggest regression and difficulty with recoupment may occur. (3) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 34 CFR 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.	

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(A) The child cannot participate in the regular assessment; and (B) The particular alternate assessment selected is appropriate for the child; and (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications. (b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include-- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals. (c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under 300.520. (d) Construction. Nothing in this section shall be construed to require-- (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.		
300.321 IEP Team. (a) General. The public agency must ensure that the IEP Team for each child with a disability includes-- (1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);		

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(3) Not less than one special education teacher of the child, or where appropriate, not less then one special education provider of the child; (4) A representative of the public agency who-- (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) Whenever appropriate, the child with a disability. (b) Transition services participants. (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under 300.320(b). (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered. (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. (c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be		

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made by the party (parents or public agency) who invited the individual to be a member of the IEP Team. (d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied. (e) IEP Team attendance. (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. (2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if-- (i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting. (f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.		
300.322 Parent participation. (a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including-- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and		

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(2) Scheduling the meeting at a mutually agreed on time and place. (b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must-- (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act). (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must-- (i) Indicate-- (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with 300.320(b); and (B) That the agency will invite the student; and (ii) Identify any other agency that will be invited to send a representative. (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 300.328 (related to alternative means of meeting participation). (d) Conducting an IEP 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-- (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		

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responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. (e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.		
300.323 When IEPs must be in effect. (a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in 300.320. (b) IEP or IFSP for children aged three through five. (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is-- (i) Consistent with State policy; and (ii) Agreed to by the agency and the child's parents. (2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must-- (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and (ii) If the parents choose an IFSP, obtain written informed consent from the parents. (c) Initial IEPs; provision of services. Each public agency must ensure that--		

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(1) 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 (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. (d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that-- (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of-- (i) His or her specific responsibilities related to implementing the child's IEP; and (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. (e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either-- (1) Adopts the child's IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in 300.320 through 300.324. (f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from		

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the previous public agency), until the new public agency-- (1) Conducts an evaluation pursuant to 300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 300.320 through 300.324. (g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section-- (1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and (2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.		
Development of IEP **300.324 Development, review, and revision of IEP.** (a) Development of IEP. (1) General. In developing each child's IEP, the IEP Team must consider-- (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child. (2) Consideration of special factors. The IEP Team must-- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate	10.16.3345 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PROMOTION OF STUDENTS WITH DISABILITIES (1) The local educational agency shall have procedures to ensure continuation of a free appropriate public education for students with disabilities when promoting the student from preschool to elementary school and from elementary school to junior high or middle school and from junior high or middle school to high school. (2) Whenever a student with disabilities is receiving special education and related services in a non-graded program and the student is age 14 on or before September 10th of the school year, the responsibility for ensuring a free appropriate public education changes from the elementary local educational agency to the high school local educational agency. (3) Chronological age and physical development should be strong factors in the decision to move a student from the junior high or middle school to the high school. Consideration also	

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to the child's IEP; (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and (v) Consider whether the child needs assistive technology devices and services. (3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of-- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with 300.320(a)(4). (4) Agreement. (i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes. (5) Consolidation of IEP Team meetings. To the extent	must be given to the least restrictive environment principle in planning for promotion. (4) A student with disabilities shall be promoted or retained according to local educational agency criteria unless waived in the student's IEP. (5) A student with disabilities who has completed a prescribed course of studies shall be eligible for graduation from high school. (a) A student who has successfully completed the goals on the IEP shall have completed a prescribed course of study. (b) Documentation of completion of the annual goals shall be included in the periodic review of the IEP. <u>10.16.3346 AVERSIVE TREATMENT PROCEDURES</u> (1) Positive behavioral interventions based on the results of a functional behavioral assessment shall serve as the foundation for any program utilizing aversive procedures to address the behavioral needs of students. Aversive treatment procedures may be appropriate for an individual student who exhibits behaviors which pose a risk of physical harm to the student or others, or a risk of significant damage to property, or significantly disruptive or dangerous behaviors which cannot be modified solely through the use of positive behavioral interventions. Aversive treatment procedures must be designed to address the behavioral needs of an individual student, be approved by the IEP team, and may not be used as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions. (2) Aversive treatment procedures are defined as: (a) physical restraint, other than as provided in 20-4-302, MCA, when the IEP team has determined that the frequency, intensity or duration of the restraint warrants an aversive treatment procedure; and (b) isolation time-out which results in the removal of a student to an isolation room under the following conditions: (i) the student is alone in the isolation room during the period of isolation; (ii) the student is prevented from exiting the isolation room during the period of isolation;	

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possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child. (6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. (b) Review and revision of IEPs. (1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team-- (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address-- (A) Any lack of expected progress toward the annual goals described in 300.320(a)(2), and in the general education curriculum, if appropriate; (B) The results of any reevaluation conducted under 300.303; (C) Information about the child provided to, or by, the parents, as described under 300.305(a)(2); (D) The child's anticipated needs; or (E) Other matters. (2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section. (3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child. (c) Failure to meet transition objectives. (1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the	(iii) the door to the isolation room remains closed during the period of isolation; and (iv) the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation. (3) Any student in isolation timeout must be under the direct constant visual observation of a designated staff person throughout the entire period of isolation. (4) The following procedures are prohibited: (a) any procedure solely intended to cause physical pain; (b) isolation in a locked room or mechanical restraint, except in residential treatment facilities and psychiatric hospitals as defined in 20-7-436, MCA, when prescribed by a physician as part of a treatment plan and when implemented in compliance with relevant federal and state law; (c) the withholding of a meal for a period of greater than one hour from its scheduled starting time; (d) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation; and (e) mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device which is not intended for medical reasons. (5) Exclusion time-out is not considered an aversive treatment procedure. Exclusion time-out is defined as any removal of a student from a regularly scheduled activity for disciplinary purposes that does not result in placing the student in an isolation room under all of the conditions described in (2)(b). (6) IEPs may include the use of aversive treatment procedures only when: (a) subsequent to a functional behavioral assessment, a series of no less than two written positive behavioral intervention strategies, which were designed to target the behavior to be changed, were previously implemented; (b) the IEP team includes a person trained and knowledgeable about best practices in the application of positive behavioral interventions, aversive treatment	

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child set out in the IEP. (2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency. (d) Children with disabilities in adult prisons. (1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons: (i) The requirements contained in section 612(a)(16) of the Act and 300.320(a)(6) (relating to participation of children with disabilities in general assessments). (ii) The requirements in 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release. (2) Modifications of IEP or placement. (i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. (ii) The requirements of 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.	procedures and nonaversive alternatives for de-escalation of behaviors; and (c) a written behavioral intervention plan using aversive treatment procedures is developed and incorporated as a part of the IEP. (7) A behavioral intervention plan using aversive treatment procedures shall: (a) include a statement describing no less than two positive behavioral intervention strategies previously attempted and the results of these interventions, as described in (6)(a); (b) describe the target behavior(s) that will be consequented with the use of the aversive treatment procedure(s); (c) include short-term objective(s) with measurable criteria stating the expected change in the target behavior(s); (d) provide a written description of the aversive treatment procedure(s); (e) specify a time limit for the use of the aversive treatment procedure for any one instance; (f) include data collection procedures for recording each application of the aversive treatment(s); (g) state when the IEP team will meet to review the ongoing use, modification or termination of the aversive procedure; (h) designate an individual responsible for ongoing review and analysis of the data on the target behavior; (i) state how the student's parents will be regularly informed of the progress toward the short-term objectives in the IEP at a frequency no less than is required in 34 CFR 300.347; and (j) state whether any standard school disciplinary measures are waived. (8) When an aversive treatment plan is incorporated in the IEP, the parents must be informed that their consent to the IEP includes consent for the aversive treatment plan. Failure to obtain consent is subject to due process proceedings under ARM 10.16.3507 through 10.16.3523.	

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300.325 Private school placements by public agencies. (a) Developing IEPs. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with 300.320 and 300.324. (2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (b) Reviewing and revising IEPs. (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency. (2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative-- (i) Are involved in any decision about the child's IEP; and (ii) Agree to any proposed changes in the IEP before those changes are implemented. (c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.		
300.326 [Reserved]		
300.327 Educational placements. Consistent with 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.		
300.328 Alternative means of meeting participation. When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and		

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status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.		
Subpart E--Procedural Safeguards **Due Process Procedures for Parents and Children** **300.500 Responsibility of SEA and other public agencies.** Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of 300.500 through 300.536.	10.16.3501 PROCEDURAL SAFEGUARDS (1) Each local educational agency shall implement procedural safeguards consistent with the requirements of 34 CFR 300.500 through 300.536.	
300.501 Opportunity to examine records; parent participation in meetings. (a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of 300.613 through 300.621, an opportunity to inspect and review all education records with respect to-- (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. (b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to-- (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child. (2) Each public agency must provide notice consistent with 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section. (3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.		

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(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.		
300.502 Independent educational evaluation. (a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section. (3) For the purposes of this subpart-- (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 300.103.		

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(b) Parent right to evaluation at public expense. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either-- (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. (c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation-- (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.		

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(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense. (e) Agency criteria. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.		
300.503 Prior notice by the public agency; content of notice. (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency-- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (b) Content of notice. The notice required under paragraph (a) of this section must include-- (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability		

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have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal. (c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be-- (i) Written in language understandable to the general public; and (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure-- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (ii) That the parent understands the content of the notice; and (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.		
300.504 Procedural safeguards notice. (a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents-- (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under 300.151 through 300.153 and upon receipt of the first due process complaint under 300.507 in a school year;		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
(3) In accordance with the discipline procedures in 300.530(h); and (4) Upon request by a parent. (b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists. (c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under 300.148, 300.151 through 300.153, 300.300, 300.502 through 300.503, 300.505 through 300.518, 300.520, 300.530 through 300.536 and 300.610 through 300.625 relating to-- (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent; (4) Access to education records; (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including-- (i) The time period in which to file a complaint; (ii) The opportunity for the agency to resolve the complaint; and (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; (6) The availability of mediation; (7) The child's placement during the pendency of any due process complaint; (8) Procedures for students who are subject to placement in an interim alternative educational setting; (9) Requirements for unilateral placement by parents of children in private schools at public expense; (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals (if applicable in the State); (12) Civil actions, including the time period in which to file those actions; and		

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(13) Attorneys' fees. (d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of 300.503(c).		
300.505 Electronic mail. A parent of a child with a disability may elect to receive notices required by 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.		
300.506 Mediation. (a) General. Each public agency 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 complaint, to resolve disputes through a mediation process. (b) Requirements. The procedures must meet the following requirements: (1) The procedures must ensure that the mediation process-- (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party-- (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents. (3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations	<u>10.16.3506 VOLUNTARY MEDIATION</u> (1) Upon receipt by mail of a written request for mediation signed by all parties to a special education controversy as defined in 34 CFR 300.506, prior to, during, or after a request for a due process hearing under ARM 10.16.3507, the Superintendent of Public Instruction shall appoint an impartial mediator. (2) The parties may mutually agree to any qualified mediator whose name is included on the list maintained by the Superintendent of Public Instruction. If the parties agree to a mediator, the name of the mediator will be included in the request for mediation. (3) If the request for mediation does not include the name of a qualified mediator, the process for selection is as follows: (a) The Superintendent of Public Instruction shall mail to each party the names of three mediators from its list of qualified mediators knowledgeable in special education laws and regulations. (b) Upon receipt of the list of names, the parties shall have three business days to review the list, prioritize their selection, and return the list to the Superintendent of Public Instruction. (c) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree, the Superintendent of Public Instruction shall appoint a mediator from the names sent to the parties. (4) The mediator shall schedule a mediation session in a timely manner, but no later than 30 days from the date of receipt of the request for mediation at the office of the Superintendent of Public Instruction.	

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relating to the provision of special education and related services. (ii) 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-- (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and (ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency. (7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part. (c) Impartiality of mediator. (1) An individual who serves as a mediator under this part-- (i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and (ii) Must not have a personal or professional interest that conflicts with the person's objectivity. (2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under 300.228 solely because he or she is paid by the agency to serve as a mediator.		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.507 Filing a due process complaint. (a) General. (1) A parent or a public agency may file a due process complaint on any of the matters described in 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in 300.511(f) apply to the timeline in this section. (b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if-- (1) The parent requests the information; or (2) The parent or the agency files a due process complaint under this section.	10.16.3507 SCOPE OF RULES (1) These rules govern the procedure for conducting all due process hearings concerning and arising from the education of students with disabilities in this state. All rules promulgated by former state superintendents of public instruction with regard to special education due process hearings contrary to these rules are hereby repealed.	
300.508 Due process complaint. (a) General. (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). (2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA. (b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include-- (1) The name of the child; (2) The address of the residence of the child; (3) The name of the school the child is attending; (4) In the case of a homeless child or youth (within the meaning of 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	10.16.3508 INITIATING SPECIAL EDUCATION DUE PROCESS (1) A request for an impartial due process hearing involving the education or possible identification of a student with disabilities shall be made in writing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501. (2) The Superintendent of Public Instruction shall develop a model form to assist parents in filing a request for due process. The request shall include: (a) the name of the student; (b) the address of the residence of the student; (c) the name of the school the student attends; (d) in the case of a homeless child or youth, available contact information for the child or youth; (e) a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and	

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attending; (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) A proposed resolution of the problem to the extent known and available to the party at the time. (c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section. (d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section. (2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination. (3) A party may amend its due process complaint only if-- (i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to 300.510; or (ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins. (4) If a party files an amended due process complaint, the timelines for the resolution meeting in 300.510(a) and the time period to resolve in 300.510(b) begin again with the filing of the amended due process complaint. (e) LEA response to a due process complaint. (1) If the LEA has not sent a prior written notice under 300.503 to the parent regarding the subject matter contained in	(f) a proposed resolution of the problem to the extent known and available to the complainant at the time. (3) Upon receipt, the Superintendent of Public Instruction shall mail a copy to the other party. (4) The due process request must be deemed sufficient unless the party receiving the request notifies the hearing officer and the other party in writing within 15 days of receipt of request that the receiving party believes the due process request does not meet the requirements in (2). In this event, the Superintendent of Public Instruction will implement procedures in accordance with 34 CFR 300.508(d).	

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the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes-- (i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) A description of the other factors that are relevant to the agency's proposed or refused action. (2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate. (f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.		
300.509 Model forms. (a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms. (b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in 300.508(b) for filing a due process complaint, or the requirements in 300.153(b) for filing a State complaint.		
300.510 Resolution process. (a) Resolution meeting.	10.16.3508A RESOLUTION PROCESS (1) Within 15 days of receipt of notice of the parents' due process request, the	

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(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that-- (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney. (2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if-- (i) The parent and the LEA agree in writing to waive the meeting; or (ii) The parent and the LEA agree to use the mediation process described in 300.506. (4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting. (b) Resolution period. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under 300.515 begins at the expiration of this 30-day period. (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. (4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in	local educational agency must convene a resolution meeting in accordance with 34 CFR 300.510.	

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300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. (5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in 300.515(a) starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting; (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. (d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is-- (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, 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. (e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.		
300.511 Impartial due process hearing. (a) General. Whenever a due process complaint is received under 300.507 or 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due	10.16.3509 SPECIAL EDUCATION DUE PROCESS HEARING PROCEDURES (1) Upon receipt by mail of a written request for a due process hearing involving a special education controversy, the superintendent of public instruction	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
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 or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA. (c) Impartial hearing officer. (1) At a minimum, a hearing officer-- (i) Must not be-- (A) An employee of the SEA or the LEA that is involved in the education or care of the child; or (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing; (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts; (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. (2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. (3) 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 complaint filed under 300.508(b), unless the other party agrees otherwise. (e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency	shall: (a) Promptly advise the district administration and parent, legal guardian or surrogate parent of the request for due process hearing; and (b) Appoint an impartial hearing officer to conduct a due process hearing. (i) The superintendent of public instruction shall maintain a list of individuals who are qualified to serve as impartial hearing officers. (ii) Selection of impartial hearing officer: (A) Upon receiving a request for hearing, the superintendent of public instruction shall mail to each party a list of the names of five proposed impartial hearing officers together with a summary of their qualifications. (B) Each party shall have five business days following receipt of the list of names to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the superintendent of public instruction. Requests for more information about proposed impartial hearing officers must be directed to the superintendent of public instruction. Unless good cause is shown, this request for more information does not extend the five business day response time. (This five business days is counted as part of the 45-day period allowed for the issuance of the final order in a due process hearing. See ARM 10.16.3523.) (C) If the parties arrive at a mutually agreeable choice, the superintendent of public instruction shall make the appointment from the ranking. (D) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon an impartial hearing officer, the superintendent of public instruction shall make the appointment from the names ranked by the parties. (2) An impartial hearing officer may at any point withdraw from consideration or from service in any hearing in which the impartial hearing officer believes a personal or professional bias or interest on any of the issues to be decided in the hearing exists which might conflict with the impartial hearing officer's objectivity. Such written request to withdraw shall be	

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knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law. (f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to-- (1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent. **300.512 Hearing rights.** (a) General. Any party to a hearing conducted pursuant to 300.507 through 300.513 or 300.530 through 300.534, or an appeal conducted pursuant to 300.514, has the right to-- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; (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	directed to the superintendent of public instruction. Any subsequent appointment of an impartial hearing officer shall be conducted as provided above. <u>10.16.3510 NOTICE OF HEARING</u> (1) The impartial hearing officer shall, within five business days of completion of the resolution process, conduct a prehearing conference pursuant to ARM 10.16.3512. The impartial hearing officer shall inform the parties of all future proceedings in this matter. The notice of hearing shall include: (a) a statement of the time, place, and nature of the hearing; (b) a schedule for discovery, prehearing motions and post-hearing legal briefs and/or proposed findings of fact, conclusions of law and order; (c) references to the specific statutes and rules involved available at that time; (d) a provision advising the parties of their right to be represented by counsel at the hearing; (e) a provision informing the parent of any free or low-cost legal and other relevant services available in the area; and (f) a statement of issues and matters to be discussed at the hearing. (2) The notice of hearing shall be sent by certified mail to any party not represented by counsel. Any party represented by counsel shall be served by regular mail addressed to the attorney representing the party. (3) If the impartial hearing officer does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, a party or impartial hearing officer may later demand a more detailed account of the issues and matters to be discussed. (a) The notice of hearing as well as all communications conducted in the hearing shall be written in language understandable to the general public and in the native language of the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication is not written language, the impartial hearing officer shall direct the notice to be translated orally or by other means to the	

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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.	parent in his/her native language or other means of communication. (4) The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the hearing officer as stipulated by the parties or upon motion of a party showing reasonable necessity for the continuance. In determining whether to grant a request for continuance or approve a stipulation for continuance, the hearing officer shall consider the potential negative impact on the student who is the subject of the hearing. <u>10.16.3511 CONFERENCE AND INFORMAL DISPOSITION</u> (1) The impartial hearing officer may informally confer with the parties to the request for impartial due process hearing for the purpose of attempting informal disposition of any special education controversy. (2) This conference of informal disposition may occur at any time prior to the issuing of the final findings of fact, conclusions of law and order of the impartial hearing officer. The parties may informally confer to resolve the special education controversy by stipulation, agreed settlement, consent order, or default. To be effective, any agreement made at such conference must be reduced to writing and signed by all parties. An agreed resolution shall end the proceedings upon formal action of the hearing officer unless a party to the hearing appeals the decision under ARM 10.16.3523. <u>10.16.3512 IMPARTIAL HEARING OFFICER'S PREHEARING - FORMULATING ISSUES</u> (1) The impartial hearing officer shall schedule a prehearing conference to: (a) identify and clarify the issues; (b) determine the necessity or desirability of amendments to the request for impartial due process hearing; (c) obtain, if possible, admissions of fact and documents which will avoid unnecessary proof; (d) set discovery and prehearing schedule, including schedule for identification of expert witnesses; (e) determine if the parent wants an audio record of the	

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	hearing and/or the findings of facts and decision; and (f) consider such other matters as may aid in the disposition of the action. (2) The impartial hearing officer shall make an order which recites the action taken at the conference, any amendment to the request for impartial due process hearing, the agreements made by the parties as to any of the matters considered, and which limits the issues for the hearing to those not disposed of by admissions or agreements of the parties. Such order when entered will control the subsequent course of action, unless modified at the hearing to prevent manifest injustice. The impartial hearing officer, in his/her discretion, may establish by rule a prehearing calendar on which actions may be placed for consideration as provided above. (3) Individual privacy. The impartial hearing officer shall provide for provisions to ensure the privacy of matters before him/her as is required by law. Parents maintain the right to waive their right of and privacy in the hearing and to have the hearing be open to the public. The impartial hearing officer shall also provide or allow an opportunity for the student with disabilities to be present at the hearing upon request of the parent, guardian, surrogate parent or the student with disabilities who is the subject of the hearing. (4) Location of hearing. The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named school district is located. <u>10.16.3513 DISCOVERY</u> (1) The impartial hearing officer may compel, limit or conduct discovery prior to the hearing and/or prehearing conference pursuant to ARM 10.16.3514 through 10.16.3516. <u>10.16.3514 DISCOVERY METHODS</u> (1) Parties may obtain discovery by one or more of the following methods: (a) depositions upon oral examination or written questions; (b) written questions; (c) production of documents (or things or permission) to	

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	enter upon land or property; (d) request for admissions. (2) Any evidence to be introduced at the hearing or on file shall be disclosed to the opposing party at least five business days before the hearing or the evidence will not be admitted. 10.16.3515 SCOPE OF DISCOVERY (1) Unless otherwise limited by order of the impartial hearing officer, the scope and limitation of discovery shall be as set forth in Montana Rules of Civil Procedure, Rule 26 found in Title 25, chapter 20, MCA, except that answers to written discovery requests shall be served on the other party within 20 days after service of the request. 10.16.3517 SEQUENCE AND TIMING OF DISCOVERY (1) The impartial hearing officer shall provide reasonable discovery on the relevant issues for the hearing and shall establish a calendar so that discovery does not delay the hearing. A request for discovery must be made within 15 days of filing the request for impartial due process hearing. 10.16.3518 AVAILABILITY OF CROSS-EXAMINATION OR PARTICIPATION IN THE HEARING (1) The right to examine, cross-examine or to participate as a party in this action shall be limited to the attorneys, the lay advocates with special knowledge or training with respect to students with disabilities who accompany and advise a particular party named in the matter, the particular parties named in the matter, and the impartial hearing officer. 10.16.3519 EX-PARTE CONSULTATIONS (1) The impartial hearing officer, after the issuance of the notice of hearing, shall not communicate with any party in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate. 10.16.3520 POWERS OF THE IMPARTIAL HEARING OFFICER (1) The impartial hearing officer may: (a) administer oaths;	

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	(b) issue subpoenas; (c) provide for the taking of testimony by depositions; (d) set the time and place of the hearing and direct parties to appear and confer to consider simplifications of the issues by consent of the parties involved; (e) fix the time for filing of briefs or other documents; (f) request the submission of proposed findings of facts and conclusions of law at the conclusion of the hearing. (2) The impartial hearing officer shall be bound by common law and the Montana Rules of Evidence. All evidence and objections to evidence shall be noted in the record: (a) any part of the evidence may be received in written form; (b) documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the impartial hearing officer's specialized knowledge. <u>10.16.3521 HEARING</u> (1) The hearing will be conducted before the impartial hearing officer in the following order: (a) statement and evidence of the petitioner or other party in support of its action; (b) statement and evidence of the respondent in support of its action; (c) rebuttal testimony; (d) closing arguments beginning with petitioner and ending with respondent. (2) The order of procedure may be changed by order of the impartial hearing officer upon a showing of good cause. (3) Each party shall have the right to conduct cross-examinations for a full and true disclosure of the facts, including the right to cross-examine the authority of any document prepared by or on behalf of or for the use of all parties and offered into evidence. All testimony shall be given under oath or affirmation.	

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	10.16.3522 RECORD (1) The record in the impartial due process hearing shall include: (a) all pleadings, motions, intermediate ruling; (b) all evidence received plus a stenographic record of oral proceeding; (c) a statement of matters officially noticed; (d) questions and offers of proof, objections and proceedings thereon; (e) proposed findings and exceptions; (f) findings of fact, conclusions of law and order by the impartial hearing officer. (2) Any party to a hearing has the right to obtain an audio record of the hearing. A verbatim record of the impartial due process hearing shall be taken by a certified court reporter and, upon request of either party to the hearing, transcribed. The superintendent of public instruction will pay costs associated with the transcription of the record taken by the court reporter.	
300.513 Hearing decisions. (a) Decision of hearing officer on the provision of FAPE. (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether 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-- (i) Impeded the child's right to a FAPE; (ii) 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 (iii) Caused a deprivation of educational benefit. (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under 300.500 through 300.536. (b) Construction clause. Nothing in 300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA	10.16.3523 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing within 45 days of the Superintendent of Public Instruction's receipt of the request for hearing unless an extension of time has been granted by the impartial hearing officer. The impartial hearing officer may grant a request by either party for a specific extension of the 45-day period allowed for rendering a final order. The hearing officer shall mail, or personally deliver, a written copy of the findings of fact, conclusions of law and order to each of the parties and to the Superintendent of Public Instruction. The hearing officer shall also mail or deliver the record as defined in ARM 10.16.3522 to the Superintendent of Public Instruction. (2) In the event the impartial hearing officer has granted a written request from a party to extend the 45-day period in which to render a final decision, the impartial hearing officer shall notify the Superintendent of Public Instruction when the	

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under 300.514(b), if a State level appeal is available. (c) Separate request for a due process hearing. Nothing in 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (d) Findings and decision to advisory panel and general public. The 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. **300.514 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 the provisions of paragraph (b) of this section and 300.516. (b) Appeal of decisions; impartial review. (1) If the hearing required by 300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA. (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must-- (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.512 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties. (c) Findings and decision to advisory panel and general	decision is due. In the event the decision is not rendered within 90 days from the date the request for impartial due process hearing was filed with the Superintendent of Public Instruction, the Superintendent of Public Instruction may remove the impartial hearing officer and appoint another impartial hearing officer. (3) The impartial hearing officer may order reimbursement for parents for the unilateral placement of their child if the school district's placement is determined to be inappropriate and the parent's placement is deemed appropriate. (4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed. (5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may bring a civil action under 34 CFR 300.516. (6) The Superintendent of Public Instruction shall only be responsible for paying administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and stenographic services. The parties involved shall each be responsible for any legal or other fees that occur. (7) Every party to a controversy shall comply with these rules of procedure. Failure of one party to do what is required and which substantially prejudices the proceedings may necessitate a request by the impartial hearing officer of a court order for compliance. (8) In the event that parents of a student with disabilities prevail, a court of competent jurisdiction, in its discretion, may award reasonable attorney's fees as part of the costs to the parents. The awarding of attorney's fees is subject to the limitations found under 34 CFR 300.517. (9) The Superintendent of Public Instruction, after deleting any personally identifiable information, shall transmit those findings and decisions to the state special education advisory panel and make those findings and decisions available to the public.	

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public. The SEA, after deleting any personally identifiable information, must-- (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under 300.167; and (2) Make those findings and decisions available to the public. (d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under 300.516.		
300.515 Timelines and convenience of hearings and reviews. (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under 300.510(b), or the adjusted time periods described in 300.510(c)-- (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties. (b) The SEA must ensure that not later than 30 days after the receipt of a request for a review-- (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties. (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party. (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.		
300.516 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 complaint notice requesting a due process hearing under 300.507 or 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States		

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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, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law. (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.		
300.517 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-- (i) The prevailing party who is the parent of a child with a disability; (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate		

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after the litigation clearly became frivolous, unreasonable, or without foundation; or (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005. (b) Prohibition on use of funds. (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under 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 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)(i) 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-- (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; (B) The offer is not accepted within 10 days; and (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the		

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parents than the offer of settlement. (ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in 300.506. (iii) A meeting conducted pursuant to 300.510 shall not be considered-- (A) A meeting convened as a result of an administrative hearing or judicial action; or (B) An administrative hearing or judicial action for purposes of this section. (3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. (4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that-- (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or (iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with 300.508. (5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.		

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300.518 Child's status during proceedings. (a) Except as provided in 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency. (d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.		
300.519 Surrogate parents. (a) General. Each public agency must ensure that the rights of a child are protected when-- (1) No parent (as defined in 300.30) can be identified; (2) The public agency, after reasonable efforts, cannot locate a parent; (3) The child is a ward of the State under the laws of that State; or (4) The child is an unaccompanied homeless youth as	**State Statute** **20-7-461. Appointment and termination of appointment of surrogate parent.** (1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. Within 10 days of determining that a child is in need	

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defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)). (b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method-- (1) For determining whether a child needs a surrogate parent; and (2) For assigning a surrogate parent to the child. (c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section. (d) Criteria for selection of surrogate parents. (1) The public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies must ensure that a person selected as a surrogate parent-- (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child; (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and (iii) Has knowledge and skills that ensure adequate representation of the child. (e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. (f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.	of a surrogate parent, the school district or its designee or the governing authority of an institution or its designee shall nominate a surrogate parent and deliver the appropriate documentation to the youth court. (2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency that is providing educational services to the child. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child. (3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 20 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent. If the youth court fails to act within 20 days, the individual nominated is the surrogate parent for the child. (4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when: (a) a child's parents are identified; (b) the location of the parents is discovered; (c) the child is no longer a ward of the state; or (d) the surrogate parent wishes to discontinue the appointment.	

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(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to-- (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. (h) SEA responsibility. The SEA 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.	**State Statute** **20-7-462. Responsibilities of surrogate parent.** A person assigned as a surrogate parent shall represent the child with a disability in all decisionmaking processes concerning the child's education by: (1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs; (2) complying with state and federal law as to the confidentiality of all records and information to which he is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child; (3) becoming familiar with the educational evaluation and placement for the child and by giving his approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and such other programs as may be available; and (4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever such assistance is in the best interest of the child. **State Statute** **20-7-463. Surrogate parent -- immunity from liability -- reimbursement.** (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by him in his capacity as a surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner. (2) A surrogate parent has the same protection and immunity in professional communications as a teacher. (3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of his duties, as prescribed by rules adopted by the superintendent of public instruction. <u>10.16.3504 SURROGATE PARENTS</u> Procedures for the appointment of a surrogate parent shall comply with 20-7-461	

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	through 20-7-463, MCA, 34 CFR 300.30, and 34 CFR 300.519. (2) A foster parent meeting the requirements of 34 CFR 300.30(a)(2) may act as a parent under Part B of IDEA if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and the foster parent: (a) is willing to make the educational decisions required of parents under IDEA; and (b) has no interest that would conflict with the interests of the student. (3) The local educational agency shall petition a court of competent jurisdiction for termination of the surrogate parent appointment when the student's parents are identified, the whereabouts of the parents are discovered, the student is no longer a ward of the state, or the surrogate parent wishes to discontinue her or his appointment.	
300.520 Transfer of parental rights at age of majority. (a) General. 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. (b) Special rule. 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	10.16.3502 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY (1) When a student with disabilities reaches the age of 18, parental rights under IDEA will transfer to the student in accordance with 34 CFR 300.520 and 34 CFR 300.320(c).	

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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.		
300.521-300.529 [Reserved]		
Discipline Procedures **300.530 Authority of school personnel.** (a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the 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,	**State Statute** **20-5-202. Suspension and expulsion.** (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is a disciplinary action available only to the trustees. (2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act. (3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school. (4) Nothing in this section prevents a school district from: (a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional	

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except as provided in paragraph (d) of this section. (d) Services. (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must-- (i) Continue to receive educational services, as provided in 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) Receive, 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 LEA, the parent, and relevant	activities sanctioned by the district; or (b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting.	

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members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine-- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must-- (1) Either-– (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. (g) Special circumstances. 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--		

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(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. (h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 300.504. (i) Definitions. For purposes of this section, the following definitions apply: (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.		
300.531 Determination of setting. The child's IEP Team determines the interim alternative educational setting for services under 300.530(c), (d)(5), and (g). (a) General. The parent of a child with a disability who disagrees with any decision regarding placement under		

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300.530 and 300.531, or the manifestation determination under 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 300.507 and 300.508(a) and (b). (b) Authority of hearing officer. (1) A hearing officer under 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may-- (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 300.530 or that the child's behavior was a manifestation of the child's disability; or (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. (c) Expedited due process hearing. (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 300.507 and 300.508(a) through (c) and 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section. (2) The SEA or LEA 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 LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this		

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section, or agree to use the mediation process described in 300.506–- (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. (4) 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. (5) The decisions on expedited due process hearings are appealable consistent with 300.514.		
300.532 Appeal. (a) General. The parent of a child with a disability who disagrees with any decision regarding placement under 300.530 and 300.531, or the manifestation determination under 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 300.507 and 300.508(a) and (b). (b) Authority of hearing officer. (1) A hearing officer under 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may-- (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 300.530 or that the child's behavior was a manifestation of the child's disability; or (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child	<u>10.16.3528A EXPEDITED DUE PROCESS HEARING RESOLUTION PROCESS</u> (1) Upon receipt of a request for expedited due process hearing, the local educational agency must convene a resolution meeting in accordance with 34 CFR 300.532(c)(2) and (3). <u>10.16.3528 INITIATING EXPEDITED DUE PROCESS HEARING</u> (1) An expedited due process hearing under 34 CFR 300.532 may be initiated by submitting a written request for a hearing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501. (2) The written request for expedited hearing shall include: (a) date of the manifestation determination and evidence of a behavioral assessment plan; (b) general statement of the problem; (c) name of the school district or public agency, including the name and telephone number of the contact person; (d) name of the parent and contact phone number; (e) student's name; and (f) tentative date(s) that the parties have agreed to hold the expedited hearing. (3) A facsimile of the request may be submitted, but the original signed request must be received within three business	

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is substantially likely to result in injury to the child or to others. (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. (c) Expedited due process hearing. (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 300.507 and 300.508(a) through (c) and 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section. (2) The SEA or LEA 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 LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in 300.506–- (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. (4) 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. (5) The decisions on expedited due process hearings are appealable consistent with 300.514. **300.533 Placement during appeals.** When an appeal under 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the	days. The facsimile number may be requested by calling the Office of Public Instruction. <u>10.16.3529 SELECTION OF EXPEDITED DUE PROCESS HEARING OFFICER</u> (1) The Superintendent of Public Instruction shall maintain a list of due process hearing officers who have successfully completed at least one regular due process hearing under IDEA and have indicated a willingness to accept appointment to conduct an expedited due process hearing. (2) The Superintendent of Public Instruction shall appoint a due process hearing officer from the list without input from the parties involved in the hearing. <u>10.16.3530 EXPEDITED HEARING</u> (1) Upon appointment, the hearing officer shall: (a) contact the parties to schedule a prehearing telephone conference; (b) set the date, time and place of the expedited hearing; and (c) advise the parties of their right to be represented by counsel. (2) The hearing officer may compel or limit discovery. (3) The hearing officer shall prepare an order identifying the issues and matters to be decided. (4) Evidence to be introduced at the hearing shall be disclosed to the opposing party at least two business days before the hearing or the evidence will not be admitted, unless the hearing officer decides otherwise. (5) The hearing shall be conducted in accordance with ARM 10.16.3519 through 10.16.3522. <u>10.16.3531 FINAL DECISION IN EXPEDITED DUE PROCESS HEARING</u> (1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the expedited hearing as soon as possible and not later than ten days after the conclusion of the expedited hearing. An extension may be requested; however, the	

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hearing officer or until the expiration of the time period specified in 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.	extension cannot exceed an additional five days. (2) If the parent requests an audio record of the hearing and/or a copy of the findings of fact and decision at the prehearing conference, the due process hearing officer shall provide such a copy to the Superintendent of Public Instruction and the parties. (3) The hearing officer shall mail or deliver the record as defined in ARM 10.16.3522 to the Superintendent of Public Instruction. (4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed. (5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may begin a civil action under 34 CFR 300.516.	
300.534 Protections for children not determined eligible for special education and related services. (a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred-- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) The parent of the child requested an evaluation of the child pursuant to 300.300 through 300.311; or (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special		

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education of the agency or to other supervisory personnel of the agency. (c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if-- (1) The parent of the child-- (i) Has not allowed an evaluation of the child pursuant to 300.300 through 300.311; or (ii) Has refused services under this part; or (2) The child has been evaluated in accordance with 300.300 through 300.311 and determined to not be a child with a disability under this part. (d) Conditions that apply if no basis of knowledge. (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section. (2)(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 300.530, the evaluation must be conducted in an expedited manner. (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of 300.530 through 300.536 and section 612(a)(1)(A) of the Act.		
300.535 Referral to and action by law enforcement and judicial authorities. (a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a		

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disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. (b) Transmittal of records. (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.		
300.536 Change of placement because of disciplinary removals. (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-- (i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) 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.	See also 20-5-202, MCA, page 184.	

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300.537 State enforcement mechanisms. Notwithstanding 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.		
300.538–300.599 [Reserved]		
Subpart F—-Monitoring, Enforcement, Confidentiality, and Program Information **Monitoring, Technical Assistance, and Enforcement** **300.600 State monitoring and enforcement.** (a) The State must monitor the implementation of this part, enforce this part in accordance with 300.604(a)(1) and (a)(3), (b)(2)(i) and (b)(2)(v), and (c)(2), and annually report on performance under this part. (b) The primary focus of the State's monitoring activities must be on-- (1) Improving educational results and functional outcomes for all children with disabilities; and (2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities. (c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans. (d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to	See also ARM 10.16.3141, page 70.	

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adequately measure performance in those areas: (1) Provision of FAPE in the least restrictive environment. (2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in 300.43 and in 20 U.S.C. 1437(a)(9). (3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.		
300.601 State performance plans and data collection. (a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation. (1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act. (2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary. (3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 300.600(d). (b) Data collection. (1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans. (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan. (3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.		

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300.602 State use of targets and reporting. (a) General. Each State must use the targets established in the State's performance plan under 300.601 and the priority areas described in 300.600(d) to analyze the performance of each LEA. (b) Public reporting and privacy. (1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must-- (A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan; and (B) Make the State's performance plan available through public means, including by posting on the Web site of the SEA, distribution to the media, and distribution through public agencies. (ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained. (2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan. (3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.		
300.603 Secretary's review and determination regarding State performance. (a) Review. The Secretary annually reviews the State's performance report submitted pursuant to 300.602(b)(2). (b) Determination. (1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public		

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information made available, the Secretary determines if the State-- (i) Meets the requirements and purposes of Part B of the Act; (ii) Needs assistance in implementing the requirements of Part B of the Act; (iii) Needs intervention in implementing the requirements of Part B of the Act; or (iv) Needs substantial intervention in implementing the requirements of Part B of the Act. (2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations. (ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.		
300.604 Enforcement. (a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions: (1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include-- (i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of		

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time; (ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research; (iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance. (2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance. (3) Identifies the State as a high-risk grantee and impose special conditions on the State's grant under Part B of the Act. (b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply: (1) The Secretary may take any of the actions described in paragraph (a) of this section. (2) The Secretary takes one or more of the following actions: (i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year. (ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year. (iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.		

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(iv) Seeks to recover funds under section 452 of GEPA. (v) Withholds, in whole or in part, any further payments to the State under Part B of the Act. (vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice. (c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions: (1) Recovers funds under section 452 of GEPA. (2) Withholds, in whole or in part, any further payments to the State under Part B of the Act. (3) Refers the case to the Office of the Inspector General at the Department of Education. (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice. (d) Report to Congress. The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.		
300.605 Withholding funds. (a) Opportunity for hearing. Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in 300.180 through 300.183. (b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not		

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be suspended. (c) Nature of withholding. (1) If the Secretary determines that it is appropriate to withhold further payments under 300.604(b)(2) or (c)(2), the Secretary may determine-- (i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under 300.603(b)(1); or (ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under 300.603(b)(1). (2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified-- (i) Payments to the State under Part B of the Act must be withheld in whole or in part; and (ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under 300.603(b)(1), as the case may be.		
300.606 Public attention. Any State that has received notice under 300.603(b)(1)(ii) through (iv) must, by means of a public notice, take such measures as may be necessary to notify the public within the State of the pendency of an action taken pursuant to 300.604.		
300.607 Divided State agency responsibility. For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to 300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that-- (a) Any reduction or withholding of payments to the State under 300.604 must be proportionate to the total funds allotted		

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under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and (b) Any withholding of funds under 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act.		
300.608 State enforcement. (a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under 300.203 for any fiscal year. (b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.		
300.609 Rule of construction. Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, 80, and 81 to monitor and enforce the requirements of the Act, including the imposition of special conditions under 34 CFR 80.12.		
Confidentiality of Information **300.610 Confidentiality.** The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with 300.611 through 300.627.	10.16.3560 SPECIAL EDUCATION RECORDS (1) School records and confidentiality of information must follow the provisions under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR, part 99, and must follow the provisions established for special education under IDEA and its implementing regulations at 34 CFR 500.610 through 500.626. (2) The special education record shall include access log, request for initial evaluation, permission for evaluation, summaries of assessments, test protocols, and other information that are not subject to sole possession	

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	requirements of FERPA, evaluation reports, individualized education programs, and reports of the student's progress toward meeting annual goals of the individualized education program.	
300.611 Definitions. As used in 300.611 through 300.625-- (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (b) Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)). (c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.		
300.612 Notice to parents. (a) The SEA must give notice that is adequate to fully inform parents about the requirements of 300.123, including-- (1) A description of the extent that the notice is given in the native languages of the various population groups in the State; (2) A description of the 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 FERPA and implementing regulations in 34 CFR part 99. (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
to notify parents throughout the State of the activity.		
300.613 Access rights. (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to 300.507 or 300.530 through 300.532, or resolution session pursuant to 300.510, and in no case more than 45 days after the request has been made. (b) The right to inspect and review education records under this section includes-- (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) The right to have a representative of the parent inspect and review the records. (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.		
300.614 Record of access. Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.		
300.615 Records on more than one child. If any education record includes information on more than one child, the parents of those children have the right to inspect		

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and review only the information relating to their child or to be informed of that specific information.		
300.616 List of types and locations of information. Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.		
300.617 Fees. (a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. (b) A participating agency may not charge a fee to search for or to retrieve information under this part.		
300.618 Amendment of records at parent's request. (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under 300.619.		
300.619 Opportunity for a hearing. The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.		
300.620 Result of hearing. (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing. (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (c) Any explanation placed in the records of the child under this section must-- (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.		
300.621 Hearing procedures. A hearing held under 300.619 must be conducted according to the procedures in 34 CFR 99.22.		
300.622 Consent. (a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99. (b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part. (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 300.321(b)(3). (3) If a child is enrolled, or is going to enroll in a private	10.16.3571 PARENTAL CONSENT FOR RECORDS (1) Parental consent for disclosure of records shall comply with 34 CFR 300.622. (2) In the event that parents refuse to consent to disclosure of records, the local educational agency may request an impartial due process hearing in accordance with ARM 10.16.3507 through 10.16.3523 to resolve the controversy.	

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.		
300.623 Safeguards. (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under 300.123 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.		
300.624 Destruction of information. (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.		
300.625 Children's rights. (a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.		

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(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18. (c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with 300.520, the rights regarding educational records in 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.		
300.626 Enforcement. The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with 300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met.		
300.627 Department use of personally identifiable information. If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.		
Reports--Program Information **300.640 Annual report of children served--report requirement.** (a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary. (b) The SEA must submit the report on forms provided by the Secretary.		

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300.641 Annual report of children served--information required in the report. (a) For purposes of the annual report required by section 618 of the Act and 300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year. (b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count. (c) The SEA may not report a child under more than one disability category. (d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure: (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness." (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."	10.16.3143 SPECIAL EDUCATION DATA COLLECTION AND REPORTING (1) The Superintendent of Public Instruction shall annually: (a) collect and report valid and reliable data consistent with the requirements of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR 300.601 through 300.602 and 34 CFR 300.640 through 300.646; (b) publicly report data as required under the IDEA in a manner that does not result in disclosure of data identifiable to individual children and consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA); and (c) conduct validation checks and an analysis of data submitted by the local educational agencies to ensure validity as well as to determine if local educational agencies met performance targets established in the State Performance Plan. (2) The local educational agency shall annually: (a) electronically report required data to the Superintendent of Public Instruction using electronic data collection and management systems in accordance with established instructions and timelines; (b) ensure data collected and reported is valid and accurate; and (c) review performance data relative to state performance targets in the State Performance Plan for purposes of identifying areas in need of improvement.	
300.642 Data reporting. (a) Protection of personally identifiable data. The data described in section 618(a) of the Act and in 300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children. (b) Sampling. The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling.		
300.643 Annual report of children served--certification. The SEA must include in its report a certification signed by		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
an authorized official of the agency that the information provided under 300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.		
300.644 Annual report of children served--criteria for counting children. The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that-- (a) Provides them with both special education and related services that meet State standards; (b) Provides them only with special education, if a related service is not required, that meets State standards; or (c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under 300.132 through 300.144.		
300.645 Annual report of children served--other responsibilities of the SEA. In addition to meeting the other requirements of 300.640 through 300.644, the SEA must-- (a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; (b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with 300.640(a); (c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made; (d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under 300.640 through 300.644; and (e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.		

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300.646 Disproportionality. (a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to-- (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; (2) The placement in particular educational settings of these children; and (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions. (b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must-- (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act. (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.		
Subpart G--Authorization, Allotment, Use of Funds, and Authorization of Appropriations **Allotments, Grants, and Use of Funds**		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
300.700 Grants to States. (a) Purpose of grants. The Secretary makes grants to States, outlying areas, and freely associated States (as defined in 300.717), and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act. (b) Maximum amount. The maximum amount of the grant a State may receive under section 611 of the Act is-- (1) For fiscal years 2005 and 2006-- (i) The number of children with disabilities in the State who are receiving special education and related services-- (A) Aged three through five, if the State is eligible for a grant under section 619 of the Act; and (B) Aged 6 through 21; multiplied by-- (ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in 300.717); and (2) For fiscal year 2007 and subsequent fiscal years-- (i) The number of children with disabilities in the 2004–2005 school year in the State who received special education and related services-- (A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and (B) Aged 6 through 21; multiplied by (ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in 300.717); (iii) Adjusted by the rate of annual change in the sum of-- (A) Eighty-five (85) percent of the State's population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and (B) Fifteen (15) percent of the State's population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty.		
300.701 Outlying areas, freely associated States, and the Secretary of the Interior. (a) Outlying areas and freely associated States.		

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(1) Funds reserved. From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves not more than one percent, which must be used-- (i) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and (ii) To provide each freely associated State a grant in the amount that the freely associated State received for fiscal year 2003 under Part B of the Act, but only if the freely associated State-- (A) Meets the applicable requirements of Part B of the Act that apply to States. (B) Meets the requirements in paragraph (a)(2) of this section. (2) Application. Any freely associated State that wishes to receive funds under Part B of the Act must include, in its application for assistance-- (i) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act. (ii) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities; (iii) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and (iv) Such other information and assurances as the Secretary may require. (3) Special rule. The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to the outlying areas or to the freely associated States under Part B of the Act. (b) Secretary of the Interior. From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with 300.707 through 300.716.		

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300.702 Technical assistance. (a) In general. The Secretary may reserve not more than one-half of one percent of the amounts appropriated under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(i) of the Act. (b) Maximum amount. The maximum amount the Secretary may reserve under paragraph (a) of this section for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.		
300.703 Allocations to States. (a) General. After reserving funds for technical assistance under 300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under 300.701 (a) and (b) for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section. (b) Special rule for use of fiscal year 1999 amount. If a State received any funds under section 611 of the Act for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children. (c) Increase in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows: (1) Allocation of increase. (i) General. Except as provided in paragraph (c)(2) ofthis section, the Secretary allocates for the fiscalyear-- (A) To each State the amount the State received under this		

Federal Regulations (34 CFR 300)	Montana Administrative Rules (ARM) and/or State Statutes	Policies and Procedures
section for fiscal year 1999; (B) Eighty-five (85) percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and (C) Fifteen (15) percent of those remaining funds to States on the basis of the States' relative populations of children described in paragraph (c)(1)(i)(B) of this section who are living in poverty. (ii) Data. For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary. (2) Limitations. Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following: (i) Preceding year allocation. No State's allocation maybe less than its allocation under section 611 of the Act for the preceding fiscal year. (ii) Minimum. No State's allocation may be less thanthe greatest of-- (A) The sum of-- (1) The amount the State received under section 611 of the Act for fiscal year 1999; and (2) One third of one percent of the amount by which the amount appropriated under section 611(i) of the Act for the fiscal year exceeds the amount appropriated for section 611 of the Act for fiscal year 1999; (B) The sum of-- (1) The amount the State received under section 611 of the Act for the preceding fiscal year; and (2) That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the Act from the preceding fiscal year exceeds 1.5 percent; or (C) The sum of-- (1) The amount the State received under section 611 of the Act for the preceding fiscal year; and (2) That amount multiplied by 90 percent of the percentage		

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increase in the amount appropriated for section 611 of the Act from the preceding fiscal year. (iii) Maximum. Notwithstanding paragraph (c)(2)(ii) of this section, no State's allocation under paragraph (a) of this section may exceed the sum of-- (A) The amount the State received under section 611 of the Act for the preceding fiscal year; and (B) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 611 of the Act from the preceding fiscal year. (3) Ratable reduction. If the amount available for allocations to States under paragraph (c) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (c)(2)(i) of this section. (d) Decrease in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows: (1) Amounts greater than fiscal year 1999 allocations. If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of-- (i) 1999 amount. The amount the State received under section 611 of the Act for fiscal year 1999; and (ii) Remaining funds. An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the Act for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States. (2) Amounts equal to or less than fiscal year 1999 allocations. (i) General. If the amount available for allocations under paragraph (a) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999. (ii) Ratable reduction. If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section,		

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those allocations are ratably reduced.		
300.704 State-level activities. (a) State administration. (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities-- (i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or $800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and (ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under 300.701(a) for the fiscal year or $35,000, whichever is greater. (2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts-- (i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004; and (ii) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current. (4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part. (b) Other State-level activities. (1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows: (i) If the amount that the State sets aside for State		

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administration under paragraph (a) of this section is greater than $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section: (A) For fiscal years 2005 and 2006, 10 percent of the State's allocation under 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under 300.703 adjusted cumulatively for inflation. (ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section-- (A) For fiscal years 2005 and 2006, nine percent of the State's allocation under 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation. (iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section: (A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under 300.703 adjusted cumulatively for inflation. (iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section: (A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under 300.703 adjusted cumulatively for inflation. (2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban		

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Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities: (i) For monitoring, enforcement, and complaint investigation; and (ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel; (4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities: (i) For support and direct services, including technical assistance, personnel preparation, and professional development and training; (ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process; (iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities; (iv) To improve the use of technology in the classroom by children with disabilities to enhance learning; (v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities; (vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities; (vii) To assist LEAs in meeting personnel shortages; (viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities; (ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;		

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(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and (xi) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA. (c) Local educational agency high cost fund. (1) In general-- (i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section-- (A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and (B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section. (ii) For purposes of paragraph (c) of this section, local educational agency includes a charter school that is an LEA, or a consortium of LEAs. (2)(i) A State must not use any of the funds the State		

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reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs. (ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs. (3)(i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must-- (A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum-- (1) Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and (2) Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State; (B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA; (C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of 300.114 through 300.118; (D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph(c)(3)(i)(B) of this section; (E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and (F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be		

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used. (ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site. (4)(i) Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section. (ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined necessary, consistent with 300.114, to implement a child's IEP. (iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section. (5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child. (6) Nothing in paragraph (c) of this section-- (i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or (ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability. (7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later		

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than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) of this section. (8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act. (9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under 300.705 during their final year ofavailability. (d) Inapplicability of certain prohibitions. A State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to-- (1) The prohibition on commingling of funds in 300.162(b). (2) The prohibition on supplanting other funds in 300.162(c). (e) Special rule for increasing funds. A State may use funds the State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph(b)(4)(i), (iii), (vii), or (viii) of this section. (f) Flexibility in using funds for Part C. Any State eligibleto receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, 300.705(c), or 300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until the children enter, or are eligible		

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under State law to enter, kindergarten, or elementary school as appropriate.		
300.705 Subgrants to LEAs. (a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. (b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under 300.703, each State shall allocate funds as follows: (1) Base payments. The State first must award each **LEA** described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect. (2) Base payment adjustments. For any fiscal year after 1999-- (i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under 300.703(b), currently provided special education by each of the LEAs; (ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and (iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under 300.703(b), currently provided special		

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education by each affected LEA. (3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must-- (i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and (ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA. (c) Reallocation of funds. If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs.		
300.706 [Reserved]		
Subpart H--Preschool Grants for Children with Disabilities **300.800 In general.** The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act-- (a) To children with disabilities aged three through five years; and (b) At a State's discretion, to two-year-old children with disabilities who will turn three during the school year.		
300.801-300.802 [Reserved]		
300.803 Definition of State. As used in this subpart, State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto		

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Rico.		
300.804 Eligibility. A State is eligible for a grant under section 619 of the Act if the State-- (a) Is eligible under section 612 of the Act to receive a grant under Part B of the Act; and (b) Makes FAPE available to all children with disabilities, aged three through five, residing in the State.		
300.805 [Reserved]		
300.806 Eligibility for financial assistance. No State or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the State is eligible to receive a grant under section 619(b) of the Act.		
300.807 Allocations to States. The Secretary allocates the amount made available to carry out section 619 of the Act for a fiscal year among the States in accordance with 300.808 through 300.810.		
300.808 Increase in funds. If the amount available for allocation to States under 300.807 for a fiscal year is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows: (a) Except as provided in 300.809, the Secretary-- (1) Allocates to each State the amount the State received under section 619 of the Act for fiscal year 1997; (2) Allocates 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged three through five; and (3) Allocates 15 percent of those remaining funds to States on the basis of the States' relative populations of all children		

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aged three through five who are living in poverty. (b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.		
300.809 Limitations. (a) Notwithstanding 300.808, allocations under that section are subject to the following: (1) No State's allocation may be less than its allocation under section 619 of the Act for the preceding fiscal year. (2) No State's allocation may be less than the greatest of-- (i) The sum of-- (A) The amount the State received under section 619 of the Act for fiscal year 1997; and (B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act for the fiscal year exceeds the amount appropriated for section 619 of the Act for fiscal year 1997; (ii) The sum of-- (A) The amount the State received under section 619 of the Act for the preceding fiscal year; and (B) That amount multiplied by the percentage by which the increase in the funds appropriated under section 619 of the Act from the preceding fiscal year exceeds 1.5 percent; or (iii) The sum of-- (A) The amount the State received under section 619 of the Act for the preceding fiscal year; and (B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year. (b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under 300.808 may exceed the sum of-- (1) The amount the State received under section 619 of the Act for the preceding fiscal year; and (2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year. (c) If the amount available for allocation to States under		

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300.808 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (a)(1) of this section.		
300.810 Decrease in funds. If the amount available for allocations to States under 300.807 for a fiscal year is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows: (a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of-- (1) The amount the State received under section 619 of the Act for fiscal year 1997; and (2) An amount that bears the same relation to any remaining funds as the increase the State received under section 619 of the Act for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States. (b) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State is allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.		
300.811 [Reserved]		
300.812 Reservation for State activities. (a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with 300.813 and 300.814. (b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of-- (1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or (2) The rate of inflation, as measured by the percentage		

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increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.		
300.813 State administration. (a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), a State may use not more than 20 percent of the maximum amount the State may reserve under 300.812 for any fiscal year. (b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act.		
300.814 Other State-level activities. Each State must use any funds the State reserves under 300.812 and does not use for administration under 300.813-- (a) For support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than three or older than five as long as those services also benefit children with disabilities aged three through five; (b) For direct services for children eligible for services under section 619 of the Act; (c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the Act; (d) To supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than one percent of the amount received by the State under section 619 of the Act for a fiscal year; (e) To provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services		

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under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten; or (f) At the State's discretion, to continue service coordination or case management for families who receive services under Part C of the Act, consistent with 300.814(e).		
300.815 Subgrants to LEAs. Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds that the State does not reserve under 300.812 to LEAs in the State that have established their eligibility under section 613 of the Act.		
300.816 Allocations to LEAs. (a) Base payments. The State must first award each LEA described in 300.815 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect. (b) Base payment adjustments. For fiscal year 1998 and beyond-- (1) If a new LEA is created, the State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the LEAs; (2) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and (3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three through five changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA. (c) Allocation of remaining funds. After making allocations		

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under paragraph (a) of this section, the State must-- (1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and (2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA. (d) Use of best data. For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.		
300.817 Reallocation of LEA funds. If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas the other LEAs serve.		
300.818 Part C of the Act inapplicable. Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under section 619 of the Act.		