

SUPERINTENDENT OF PUBLIC INSTRUCTION

CHAPTER 16

SPECIAL EDUCATION

Subchapter 1

Responsibilities of the Superintendent of Public Instruction

NOTE: All rules contained in Subchapters 1 through 27 have been either repealed or transferred to Subchapters 30 through 38 to improve organization and to correspond with numerical order of federal regulatory requirements.

- |      |           |  |
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|      | 10.16.103 | Approval of Specific Assessment Funding (REPEALED)   |
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|      | 10.16.109 | Office of Public Instruction Approval of Program Narrative for Special Education and Related Services (REPEALED) |
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## SPECIAL EDUCATION

### Subchapter 37

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### Subchapter 38

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Subchapter 39

Special Education Cooperatives

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- 10.16.3903 Nonparticipating Districts
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## Subchapter 1

## Responsibilities of the Superintendent of Public Instruction

10.16.101 COMPLIANCE WITH BOARD POLICIES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.102 THE APPROVAL OF PROGRAMS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.103 APPROVAL OF SPECIAL ASSESSMENT FUNDING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.104 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR FREE APPROPRIATE PUBLIC EDUCATION (FAPE) (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3121, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.105 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR MONITORING (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3141, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.106 INTERAGENCY AGREEMENTS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3142, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.107 INTERAGENCY COORDINATION FOR PART H, IDEA (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3132, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.108 NOTICE OF AVAILABILITY OF FEDERAL FUNDS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3180, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.109 OFFICE OF PUBLIC INSTRUCTION APPROVAL OF PROGRAM NARRATIVE FOR SPECIAL EDUCATION AND RELATED SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.110 OFFICE OF PUBLIC INSTRUCTION APPROVAL/DISAPPROVAL OF APPLICATIONS FOR FEDERAL FUNDS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3194, 2000 MAR p. 1048, Eff. 7/1/00.)



10.16.111 OFFICE OF PUBLIC INSTRUCTION DISAPPROVAL OF FEDERAL FUNDS: OPPORTUNITY FOR HEARING (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3196, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.112 CONFIDENTIALITY IN CHILD FIND (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.113 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR CHILD COUNT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; TRANS to 10.16.3751, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.114 MISCLASSIFIED CHILDREN (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.115 PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3145, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.116 FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3146, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.117 STATE ADVISORY PANEL (TRANSFERRED) (History: 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3150, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 2

## Definitions

10.16.201 SPECIAL EDUCATION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.202 HANDICAPPED CHILD (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.203 DEAF (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.204 HARD-OF-HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.205 MENTALLY RETARDED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.206 ORTHOPEDICALLY IMPAIRED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.207 OTHER HEALTH IMPAIRED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.208 EMOTIONALLY DISTURBED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.209 SPECIFIC LEARNING DISABILITY (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.210 SPEECH/LANGUAGE IMPAIRED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.211 VISUALLY HANDICAPPED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.212 SUPERINTENDENT OF PUBLIC INSTRUCTION

10.16.212 DEAF-BLIND (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1980 MAR p. 2344, Eff. 8/15/80; REP, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.213 MULTIHANDICAPPED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1980 MAR p. 2344, Eff. 8/15/80; REP, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.214 SPECIAL EDUCATION DEFINITIONS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 3

## Hearing

10.16.301 SCOPE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.302 REQUESTS FOR HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.303 NOTIFICATION OF ACCESS TO INFORMATION AND ASSISTANCE (REPEALED) (History: 20-7-402, MCA, IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.304 CONFERENCE AND INFORMAL DISPOSITION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.305 NOTICE OF HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.306 WITNESSES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.307 EVIDENCE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.308 CONDUCT OF HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.309 TIMELINESS (REPEALED) (History: 20-7-402, MCA, IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.310 PLACEMENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.311 SUPERINTENDENT OF PUBLIC INSTRUCTION

10.16.311 APPEAL TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION (REPEALED) (History: 20-7-402, MCA, IMP, 20-7-403, MCA; NEW, 1977 MAR p. 1102, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

## Subchapter 4

## Administrative Appeal

10.16.401 SCOPE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1102, Eff. 7/28/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.402 IMPARTIAL REVIEW (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1102, Eff. 7/28/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.403 TIMELINESS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1102, Eff. 7/28/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.404 COURT ACTION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1102, Eff. 7/28/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.405 PLACEMENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1102, Eff. 7/28/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

## Subchapter 5

## Impartial Hearing Officer

10.16.501 LISTS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1102, Eff. 7/28/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.502 SELECTION FOR ADMINISTRATIVE APPEAL (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1106, Eff. 7/28/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.503 DISQUALIFICATION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1106, Eff. 7/28/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

## Subchapter 6

## Hearing on Applications to the Superintendent of Public Instruction

10.16.601 SCOPE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.602 REQUESTS FOR HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.603 NOTIFICATION OF ACCESS TO INFORMATION AND ASSISTANCE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.604 CONFERENCE AND INFORMAL DISPOSITION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.605 NOTICE OF HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.606 WITNESSES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.607 EVIDENCE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.608 CONDUCT OF HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.609 TIMELINESS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)



## Subchapter 7

## Impartial Hearing Officer

10.16.701 HEARING OFFICER (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.702 COURT ACTION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.703 PLACEMENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1978 MAR p. 1197, Eff. 8/11/78, ARM Pub. 10/31/78; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

## Subchapter 8

## Establishment of Special Education and Compulsory Attendance

10.16.801 ESTABLISHMENT OF SPECIAL EDUCATION PROGRAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1980 MAR p. 3111, Eff. 12/27/80; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.802 ESTABLISHMENT OF INDIVIDUAL DISTRICT SPECIAL EDUCATION PROGRAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3111, Eff. 12/27/80.)

10.16.803 PETITION OF PARENTS FOR ESTABLISHMENT OF SPECIAL EDUCATION PROGRAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.804 COMPULSORY ATTENDANCE (REPEALED) (History: 20-7-402, MCA; IMP, 20-5-102, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

## Subchapter 9

## Parental Notification and Approval

10.16.901 PARENTAL NOTIFICATION OF DISTRICT IDENTIFICATION, LOCATION, REFERRAL, AND SCREENING PROCEDURES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.902 PARENTAL NOTIFICATION AND APPROVAL FOR TESTING, FORMAL EVALUATION AND INTERVIEWING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.903 WRITTEN NOTIFICATION BEFORE CHANGE IN EDUCATION PLACEMENT/PROGRAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.904 PLACEMENT/PROGRAM MAINTAINED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

## Subchapter 10

## School Records and Confidentiality

10.16.1001 SPECIAL EDUCATION REQUIREMENTS (REPEALED)

(History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 282, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1002 STORAGE OF PUPIL RECORDS AND CUSTODY OF ASSESSMENT DATA (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1003 DESTRUCTION OF DATA (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1004 SPECIAL EDUCATION RECORDS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3560, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1005 PARENTAL CONSENT FOR RECORDS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3571, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 11

## Evaluation Procedures

10.16.1101 PROTECTION IN EVALUATION PROCEDURES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1985 MAR p. 110, Eff. 2/1/85; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1997 MAR p. 892, Eff. 5/20/97; REP, 1999 MAR p. 69, Eff. 1/15/99.)

10.16.1102 INDEPENDENT EDUCATIONAL EVALUATION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1103 REVIEW/REEVALUATION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 282, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1999 MAR p. 69, Eff. 1/15/99.)

10.16.1104 SURROGATE PARENTS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3504, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1105 AVERSIVE TREATMENT PROCEDURES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD & TRANS to 10.16.3346, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1106 PROTECTION FROM USE OF DIAGNOSTIC CATEGORY FOR PLACEMENT PURPOSES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; REP, 1999 MAR p. 69, Eff. 1/15/99.)

10.16.1107 INFORMAL NEGOTIATIONS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1108 OPPORTUNITY TO PRESENT COMPLAINTS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3661, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1109 CIVIL ACTION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 282, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.1110 STATE COMPLAINT PROCEDURES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1984 MAR p. 817, Eff. 5/18/84; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3662, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1111 ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1985 MAR p. 110, Eff. 2/1/85; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1112 REFERRAL (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3320, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1113 COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3321, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1114 COMPOSITION OF A CHILD STUDY TEAM (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3322, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1115 CRITERIA FOR IDENTIFICATION OF A CHILD WITH DISABILITIES AGES 3-5 (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3010, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1116 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING COGNITIVE DELAY (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3012, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1117 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAF-BLINDNESS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3013, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1118 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAFNESS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3014, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1119 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING HEARING IMPAIRMENT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3016, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1120 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING ORTHOPEDIC IMPAIRMENT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3017, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1121 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING MULTIPLE DISABILITIES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 1999 MAR p. 69, Eff. 1/15/99.)

10.16.1122 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3019, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1123 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPEECH-LANGUAGE IMPAIRMENT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; TRANS to 10.16.3020, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1124 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3022, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1125 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3011, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1126 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING EMOTIONAL DISTURBANCE (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3015, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1127 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT (TRANSFERRED) (History: 20-7-402, MCA; IMP, Sec. 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3018, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1128 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING TRAUMATIC BRAIN INJURY (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS to 10.16.3021, 2000 MAR p. 1048, Eff. 7/1/00.)



## Subchapter 12

## Discovering the Handicapped and the Child Study Team

10.16.1201 LOCAL EDUCATIONAL AGENCY CHILD FIND RESPONSIBILITIES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3125, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1202 CHILD STUDY TEAM PROCESS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1669, Eff. 11/11/83; AMD, 1985 MAR p. 110, Eff. 2/1/85; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1203 EVALUATION BY THE CHILD STUDY TEAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1669, Eff. 11/11/83; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1204 COMPOSITION OF A CORE CHILD STUDY TEAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 2415, Eff. 8/13/93.)

10.16.1205 COMPOSITION OF SPECIFIC CHILD STUDY TEAMS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1985 MAR p. 110, Eff. 2/1/85; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1206 RECORD OF CHILD STUDY TEAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1207 CONTENT OF INDIVIDUALIZED EDUCATION PROGRAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1208 RECORD OF INDIVIDUALIZED EDUCATION PROGRAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1209 PERIODIC REVIEW OF INDIVIDUALIZED EDUCATION PROGRAM (REPEALED) (History: 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1210 DURATION OF PLACEMENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.1211 STUDENT TRANSFERS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.1212 PROMOTION OF STUDENTS FROM ELEMENTARY TO SECONDARY PROGRAMS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1213 PARENTAL INVOLVEMENT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3129, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 13

## Service Areas for the Handicapped

10.16.1301 LEAST RESTRICTIVE ENVIRONMENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-411, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1302 RESOURCE INSTRUCTION AND SERVICE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1303 CASELOAD OF A RESOURCE SERVICE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; AMD, 1983 MAR p. 1668, Eff. 11/11/83; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1304 ADDING RESOURCE SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; AMD, 1983 MAR p. 1668, Eff. 11/11/83; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1305 CONTINUUM OF SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; AMD, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1306 ITINERANT RESOURCE SPEECH AND HEARING SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; AMD, 1983 MAR p. 1668, Eff. 11/11/83; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1307 SELF-CONTAINED INSTRUCTION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1308 SPECIAL EDUCATION IN HOME, HOSPITAL OR INDIVIDUALIZED SETTINGS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1309 CONTRACTED SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, 20-7-422, 20-7-423, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1310 PLACEMENT BY THE LOCAL EDUCATIONAL AGENCY (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1311 RESPONSIBILITIES FOR OUT-OF-DISTRICT SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, 20-7-422, 20-7-423, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1668, Eff. 11/11/83; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1312 ELIGIBLE TUITION CATEGORIES (REPEALED) (History: 20-5-305, 20-5-312, 20-5-323, MCA; IMP, 20-5-305, 20-5-312, 20-5-323, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; AMD, 1992 MAR p. 1365, Eff. 6/26/92; REP, 1994 MAR p. 1824, Eff. 7/8/94.)

10.16.1313 TUITION CALCULATION (REPEALED) (History: 20-5-305, 20-5-312, MCA; IMP, 20-5-305, 20-5-312, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; REP, 1992 MAR p. 1365, Eff. 6/26/92.)

10.16.1314 SPECIAL EDUCATION TUITION RATES (TRANSFERRED) (History: 20-5-323, MCA; IMP, 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-306, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; AMD, 1990 MAR p. 717, Eff. 4/13/90; AMD, 1992 MAR p. 211, Eff. 2/14/92; AMD, 1992 MAR p. 1365, Eff. 6/26/92; AMD, 1994 MAR p. 1824, Eff. 7/8/94; AMD, 1998 MAR p. 1719, Eff. 6/26/98; AMD & TRANS to 10.16.3818, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1315 CONTESTED CASES (TRANSFERRED) (History: 20-3-107, MCA; IMP, 20-3-210, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; TRANS to 10.16.3819, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 14

## Hearings Before the Trustees of a School District

10.16.1401 SCOPE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1402 REQUEST FOR HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1403 ACCESS TO INFORMATION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1404 CONFERENCE AND INFORMAL DISPOSITION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1405 NOTICE OF HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1406 WITNESSES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1407 PLACEMENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1408 HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1409 DECISION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1410 APPEAL FROM DECISION OF THE BOARD (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 326, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

## Subchapter 15

## Hearings Before the County Superintendent

10.16.1501 SCOPE (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1502 NOTICE OF HEARING (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1503 CONSULTATIONS (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1504 CONFERENCE AND INFORMAL DISPOSITION (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1505 CONDUCT OF THE HEARING (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1506 WITNESSES (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1507 RECESSES (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1508 EVIDENCE (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1509 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1510 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1511 SUPERINTENDENT OF PUBLIC INSTRUCTION

10.16.1511 RECORD OF HEARING (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1512 APPEAL (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

10.16.1513 APPEALS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 328, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)

Subchapter 16

Sample Forms

10.16.1601 SAMPLE (REPEALED) (History: 20-3-107, 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 332, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1980 MAR p. 3113, Eff. 12/27/80.)



## Subchapter 17

## Staff Development

10.16.1701 SPECIAL EDUCATION TEACHERS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1702 TEACHERS OF HOMEBOUND AND/OR HOSPITALIZED STUDENTS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1703 SPEECH PATHOLOGISTS AND AUDIOLOGISTS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1704 SCHOOL PSYCHOLOGISTS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1705 SUPERVISORS OF SPECIAL EDUCATION TEACHERS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1992 MAR p. 1360, Eff. 6/26/92; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1706 SOCIAL WORKERS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1707 COUNSELORS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1708 NURSES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1709 SUPERINTENDENT OF PUBLIC INSTRUCTION

10.16.1709 PHYSICAL THERAPISTS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1710 OCCUPATIONAL THERAPISTS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1711 VOCATIONAL EDUCATION INSTRUCTORS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1712 TEACHER AIDES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1713 SPECIAL EDUCATION PROFESSIONAL STAFF QUALIFICATIONS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3136, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 18

Caseload for Auxiliary and Supportive Personnel  
Serving Special Education Programs

10.16.1801 AUXILIARY PERSONNEL (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 323, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1802 SPEECH PATHOLOGIST (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 323, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.1803 AUDIOLOGIST (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 323, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.1804 SCHOOL PSYCHOLOGIST (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 323, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1805 SUPERVISOR OF SPECIAL EDUCATION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1980 MAR p. 2397, Eff. 8/15/80; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1806 SOCIAL WORKERS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1807 COUNSELOR (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.1808 OTHER (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; REP, 1995 MAR p. 356, Eff. 3/17/95.)

## Subchapter 19

## Budget and Program Applications

10.16.1901 SUBMISSION DATES AND APPROVAL TIMELINES

(REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.1902 PROGRAM NARRATIVE (TRANSFERRED) (History: 20-7-402,

MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3220, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.1903 PROGRAM UNITS (REPEALED) (History: 20-7-402, MCA;

IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.1904 EVALUATION (REPEALED) (History: 20-7-402, MCA; IMP, 20-

7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 20

## Budget and Program Approved by the Superintendent of Public Instruction

10.16.2001 BUDGET AND PROGRAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.2002 HOMEBOUND AND/OR HOSPITALIZED SERVICE (REPEALED) (History: 20-9-161, 20-9-167, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.2003 ROOM AND BOARD APPROVAL (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.2004 PRESCHOOL PROGRAMS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1669, Eff. 11/11/83; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.2005 EXTENDED YEAR PROGRAMS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.2006 POST HIGH SCHOOL PROGRAMS (REPEALED) (History: 20-9-161, 20-9-167, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.2007 RENTAL OF FACILITIES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.2008 REMODELING FACILITIES FOR PHYSICALLY HANDICAPPED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.2009 CONTRACTED SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.2010 LEARNING DISABLED, EXCEEDING TWO PERCENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

## Subchapter 21

## Special Education Budgets

10.16.2101 DEFINITIONS (REPEALED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 314, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1992 MAR p. 213, Eff. 2/14/92; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.2102 CURRENT AND ENSUING YEAR (REPEALED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 314, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1992 MAR p. 213, Eff. 2/14/92.)

10.16.2103 SCHOOL DISTRICT BUDGET LIMITATION (REPEALED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 314, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1992 MAR p. 213, Eff. 2/14/92.)

10.16.2104 TRANSFER OF LINE ITEM AMOUNTS (REPEALED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 315, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; REP, 1992 MAR p. 213, Eff. 2/14/92.)

10.16.2105 EXPANSION OR IMPLEMENTATION OF PROGRAM DURING A GIVEN SCHOOL TERM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 315, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1992 MAR p. 213, Eff. 2/14/92; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.2106 APPLICATIONS FOR FEDERAL FUNDS BY A COOPERATIVE (REPEALED) (History: 20-7-457, MCA; IMP, 20-7-403, 20-7-457, MCA; NEW, 1977 MAR p. 315, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1992 MAR p. 213, Eff. 2/14/92; AMD, 1995 MAR p. 356, Eff. 3/17/95; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2107 TRANSPORTATION FOR SPECIAL EDUCATION STUDENTS WITH DISABILITIES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-10-145, MCA; NEW, 1977 MAR p. 315, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1992 MAR p. 213, Eff. 2/14/92; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3820, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2108 CALCULATIONS FOR BUDGETING PURPOSES (REPEALED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 316, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.2110 SUPERINTENDENT OF PUBLIC INSTRUCTION

Rule 10.16.2109 reserved

10.16.2110 RELATIONSHIP TO THE GENERAL FUND (REPEALED)

(History: 20-9-102, MCA; IMP, 20-7-431, 20-9-303, MCA; NEW, 1977 MAR p. 313, Eff. 8/26/77, ARM Pub. 11/26/77; TRANS & AMD, from 10.16.2201, 1992 MAR p. 213, Eff. 2/14/92; REP, 1995 MAR p. 356, Eff. 3/17/95.)

## Subchapter 22

## Special Education Funding

10.16.2201 RELATIONSHIP TO THE GENERAL FUND (TRANSFERRED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 313, Eff. 8/26/77, ARM Pub. 11/26/77; TRANS to 10.16.2110, 1992 MAR p. 213, Eff. 2/14/92.)

10.16.2202 COMPUTATION AND LIMITATIONS (REPEALED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 316, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.2203 DEFINITIONS (TRANSFERRED) (History: 20-7-402, 20-7-431, 20-7-457, MCA; IMP, 20-7-414, 20-7-431, 20-7-457, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS to 10.16.3803, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2204 GENERAL PRINCIPLES OF SPECIAL EDUCATION FUNDING (TRANSFERRED) (History: 20-7-431, 20-9-321, MCA; IMP, 20-7-431, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3804, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2205 SPECIAL EDUCATION ALLOWABLE COST LIMITATIONS (TRANSFERRED) (History: 20-7-431, MCA; IMP, 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS to 10.16.3805, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2206 SPECIAL EDUCATION ALLOWABLE COSTS--INSTRUCTIONAL BLOCK GRANT (TRANSFERRED) (History: 20-7-431, MCA; IMP, 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS to 10.16.3806, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2207 SPECIAL EDUCATION ALLOWABLE COSTS--RELATED SERVICES BLOCK GRANT (TRANSFERRED) (History: 20-7-431, MCA; IMP, 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS to 10.16.3807, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2208 SPECIAL EDUCATION ALLOWABLE COSTS--COOPERATIVES (TRANSFERRED) (History: 20-7-431, MCA; IMP, 20-7-431, 20-7-451, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS to 10.16.3808, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2209 COOPERATIVE BOUNDARIES (TRANSFERRED) (History: 20-7-457, MCA; IMP, 20-7-457, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3809, 2000 MAR p. 1048, Eff. 7/1/00.)



10.16.2210 SUPERINTENDENT OF PUBLIC INSTRUCTION

10.16.2210 ELIGIBILITY TO RECEIVE PAYMENT (TRANSFERRED)  
(History: 20-9-321, MCA; IMP, 20-7-414, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3810, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2211 GENERAL PRINCIPLES OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT CALCULATION (TRANSFERRED) (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS to 10.16.3811, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2212 CALCULATION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS (TRANSFERRED) (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3812, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2213 LOCAL MATCHING FUNDS (TRANSFERRED) (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS to 10.16.3813, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2214 ADVANCE ON SPECIAL EDUCATION ALLOWABLE COST PAYMENTS (TRANSFERRED) (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3814, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2215 TRANSITION PERIOD (REPEALED) (History: 20-7-431, 20-9-321, MCA; IMP, 20-7-431, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; REP, 1998 MAR p. 1719, Eff. 6/26/98.)

10.16.2216 SPECIAL EDUCATION TRANSFERS AND PAYMENTS TO OTHER DISTRICTS AND COOPERATIVES (TRANSFERRED) (History: 20-7-431, MCA; IMP, 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD, 1998 MAR p. 1719, Eff. 6/26/98; TRANS to 10.16.3815, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2217 DISTRIBUTION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS (TRANSFERRED) (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3816, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2218 SPECIAL EDUCATION FUNDING REVERSION (TRANSFERRED) (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD, 1998 MAR p. 1719, Eff. 6/26/98; AMD & TRANS to 10.16.3817, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 23

## Federal Programs

10.16.2301 FEDERAL PROGRAMS GENERALLY (REPEALED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1982 MAR p. 1934, Eff. 10/19/82; REP, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.2302 ELEMENTARY AND SECONDARY EDUCATION ACT, TITLE I (REPEALED) (History: 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 339, Eff. 8/26/77, ARM Pub. 11/26/77; REP, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.2303 INDIVIDUALS WITH DISABILITIES EDUCATION ACT, PART B (REPEALED) (History: 20-7-402, 20-7-403, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 340, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1995 MAR p. 356, Eff 3/17/95; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 24

## Special Education Due Process Procedural Rules

10.16.2401 SCOPE OF RULES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; TRANS to 10.16.3507, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2402 INITIATING SPECIAL EDUCATION DUE PROCESS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3508, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2403 SPECIAL EDUCATION DUE PROCESS HEARING PROCEDURES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS to 10.16.3509, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2404 NOTICE OF HEARING (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS to 10.16.3510, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2405 CONFERENCE AND INFORMAL DISPOSITION (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3511, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2406 IMPARTIAL HEARING OFFICER'S PREHEARING – FORMULATING ISSUES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3512, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2407 DISCOVERY (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS to 10.16.3513, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2408 DISCOVERY METHODS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3514, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2409 SUPERINTENDENT OF PUBLIC INSTRUCTION

10.16.2409 SCOPE OF DISCOVERY (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS to 10.16.3515, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2410 LIMITATIONS ON DISCOVERY BY THE IMPARTIAL HEARING OFFICER (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS to 10.16.3516, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2411 SEQUENCE AND TIMING OF DISCOVERY (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS to 10.16.3517, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2412 ABILITY OF CROSS-EXAMINATION OR PARTICIPATION IN THE HEARING (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS to 10.16.3518, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2413 EX-PARTE CONSULTATIONS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS to 10.16.3519, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2414 POWERS OF THE IMPARTIAL HEARING OFFICER (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS to 10.16.3520, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2415 HEARING (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS to 10.16.3521, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2416 RECORD (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3522, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2417 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3523, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 25

## Special Education Transportation

10.16.2501 SPECIALIZED TRANSPORTATION AS A RELATED SERVICE (REPEALED) (History: 20-7-442, MCA; IMP, 20-3-106, MCA; NEW, 1986 MAR p. 1383, Eff. 8/15/86; AMD, 1995 MAR p. 356, Eff. 3/17/95; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2502 ELIGIBILITY (REPEALED) (History: 20-7-442, MCA; IMP, 20-3-106, MCA; NEW, 1986 MAR p. 1383, Eff. 8/15/86; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.2503 BUS CAPACITY (REPEALED) (History: 20-7-442, 20-10-112, MCA; IMP, 20-3-106, 20-10-141, MCA; NEW, 1986 MAR p. 1383, Eff. 8/15/86; AMD, 1995 MAR p. 356, Eff. 3/17/95; AMD, 1997 MAR p. 203, Eff. 1/28/97; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

## Subchapter 26

## Special Education Cooperatives

10.16.2601 DURATION OF COOPERATIVE (TRANSFERRED) (History: 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3901, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2602 MANAGEMENT BOARD (TRANSFERRED) (History: 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3902, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2603 APPROVAL OF COOPERATIVES (REPEALED) (History: 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; REP, 1995 MAR p. 356, Eff. 3/17/95.)

10.16.2604 NON-PARTICIPATING DISTRICTS (TRANSFERRED) (History: 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3903, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2605 PROCEDURES FOR APPROVAL (TRANSFERRED) (History: 20-7-457, MCA; IMP, 20-7-453, 20-7-454, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS to 10.16.3904, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2606 FUNDING OF ITINERANT PERSONNEL WITH REDUCED CASELOADS (REPEALED) (History: 20-7-457, 20-7-458, MCA; IMP, 20-7-458, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; REP, 1995 MAR p. 356, Eff. 3/17/95.)

## Subchapter 27

## Responsibilities of the Local Educational Agency

10.16.2701 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3122, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2702 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PRESCHOOL SPECIAL EDUCATION AND RELATED SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2703 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PROMOTION OF STUDENTS WITH DISABILITIES (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3345, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2704 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3752, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2705 LOCAL EDUCATIONAL AGENCY FEDERAL FUNDS APPLICATIONS (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3181, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2706 TYPES OF APPLICATIONS FOR FEDERAL FUNDS -- SINGLE/CONSOLIDATED (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2707 WRITTEN NOTICE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2708 PARENTAL CONSENT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3505, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2709 PARENTAL INVOLVEMENT IN INDIVIDUALIZED EDUCATION PROGRAM (IEP) MEETING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2710 SUPERINTENDENT OF PUBLIC INSTRUCTION

10.16.2710 STUDENT'S STATUS DURING PROCEEDINGS (REPEALED)  
(History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2711 STUDENT'S STATUS DURING EXCLUSION FROM SCHOOL (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2712 INDIVIDUALIZED EDUCATION PROGRAM IMPLEMENTATION (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2713 COMPOSITION OF INDIVIDUALIZED EDUCATION PROGRAM TEAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2714 RELATED SERVICES (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2715 IEP ACCOUNTABILITY (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2716 DETERMINING LEAST RESTRICTIVE ENVIRONMENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2717 COMPARABILITY (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2718 LENGTH OF SCHOOL DAY, SCHOOL YEAR (REPEALED)  
(History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2719 COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS to 10.16.3135, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2720 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR SPECIAL EDUCATION AND RELATED SERVICES FOR PRIVATE SCHOOL STUDENTS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)



10.16.2721 ENROLLMENT IN NONPUBLIC SCHOOLS BY PARENTS  
(REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2722 SPECIAL EDUCATION AND RELATED SERVICES WHEN STUDENT IS RESIDENT OF ANOTHER LOCAL EDUCATIONAL AGENCY  
(REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; REP, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.2723 RESIDENTIAL PLACEMENT BY PUBLIC AGENCY OTHER THAN LOCAL EDUCATIONAL AGENCY (TRANSFERRED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; TRANS to 10.16.3341, 2000 MAR p. 1048, Eff. 7/1/00.)

Subchapters 28 and 29 reserved

## Subchapter 30

## Definitions

Rule 10.16.3001 through 10.16.3006 reserved

10.16.3007 ELIGIBLE STUDENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3008 ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE (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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

Rule 10.16.3009 reserved

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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2005 MAR p. 2056, Eff. 10/28/05.)

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.

(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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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:

(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.

(History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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 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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3016 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING HEARING IMPAIRMENT (1) The student may be identified as having a hearing impairment if an audiological report documents that the student has a permanent hearing 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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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). (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

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 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 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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 6778, Eff. 5/25/07.)

10.16.3019A RESPONSE TO SCIENTIFIC, RESEARCH BASED INTERVENTION IN LEARNING DISABILITY IDENTIFICATION (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 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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3019B SEVERE DISCREPANCY IN LEARNING DISABILITY IDENTIFICATION (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 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). (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3019C DOCUMENTATION REQUIREMENTS IN LEARNING DISABILITY IDENTIFICATION (1) Evaluation teams shall document evaluation team findings under ARM 10.16.3019A or 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 [NEW RULE VI], 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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07.)

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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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 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. (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-414, MCA; NEW, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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) 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; or

(b) a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in (1)(a). (History: 20-7-402, MCA; IMP, 20-7-401, 20-7-403, 20-7-471, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2010 MAR p. 1076, Eff. 4/30/10.)

## Subchapter 31

## State and Local Eligibility

Rules 10.16.3101 through 10.16.3120 reserved

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 USC, 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 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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES

(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 USC, 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) unless the parent has refused initial consent for services or has revoked such consent. 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 a student's residence as defined in 1-1-215, MCA.

(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 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 aids 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, including individuals with disabilities, to provide special education and related services to students with disabilities. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2010 MAR p. 1076, Eff. 4/30/10; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

Rules 10.16.3123 and 10.16.3124 reserved

10.16.3125 LOCAL EDUCATIONAL AGENCY CHILD FIND

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 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. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3126 through 10.16.3128 reserved

10.16.3129 PARENTAL INVOLVEMENT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; REP, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3130 and 10.16.3131 reserved

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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3133 and 10.16.3134 reserved

10.16.3135 COMPREHENSIVE SYSTEM OF PERSONNEL

DEVELOPMENT (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.

(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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

#### 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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2004 MAR p. 1383, Eff. 6/18/04; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3137 through 10.16.3140 reserved



10.16.3141 SUPERINTENDENT OF PUBLIC INSTRUCTION

RESPONSIBILITY FOR MONITORING (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 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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

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.

(History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07.)

Rule 10.16.3144 reserved

10.16.3145 PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3146 FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; REP, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3147 through 10.16.3149 reserved

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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 6778, Eff. 5/25/07.)

Rules 10.16.3151 through 10.16.3171 reserved

10.16.3172 ACCESS TO INSTRUCTIONAL MATERIALS (1) The Superintendent of Public Instruction shall adopt the National Instructional Materials Accessibility Standard (NIMAS). (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3173 through 10.16.3179 reserved

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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

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. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3182 through 10.16.3193 reserved

10.16.3194 SUPERINTENDENT OF PUBLIC INSTRUCTION NOTIFICATION TO LOCAL EDUCATIONAL AGENCY OF INELIGIBILITY TO RECEIVE FUNDS UNDER PART B (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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3195 reserved

10.16.3196 OFFICE OF PUBLIC INSTRUCTION DISAPPROVAL OF FEDERAL FUNDS: OPPORTUNITY FOR HEARING (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; REP, 2007 MAR p. 678, Eff. 5/25/07.)

## Subchapter 32

## State and Local Eligibility - Specific Conditions

Rules 10.16.3201 through 10.16.3219 reserved

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 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. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

## Subchapter 33

## Services

Rules 10.16.3301 through 10.16.3319 reserved

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.

(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 or electronic 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 or electronic 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. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2010 MAR p. 1076, Eff. 4/30/10.)

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 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. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3322 COMPOSITION OF A CHILD STUDY TEAM (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; NEW, 2007 MAR p. 678, Eff. 5/25/07.)



Rule 10.16.3323 reserved

10.16.3324 EXTENDED SCHOOL YEAR SERVICES (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 data that research has shown to predict regression and difficulty with recoupment.

(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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07, AMD, 2010 MAR p. 1076, Eff. 4/30/10.)

Rules 10.16.3325 through 10.16.3339 reserved

10.16.3340 INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT DECISIONS (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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3341 RESIDENTIAL PLACEMENT BY PUBLIC AGENCY OTHER THAN LOCAL EDUCATIONAL AGENCY (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 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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3342 TRANSFER STUDENTS: INTRASTATE AND INTERSTATE (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; REP, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3343 and 10.16.3344 reserved

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 nongraded 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 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. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3346 AVERSIVE TREATMENT PROCEDURES

(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;
- (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 time-out 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 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 must be in writing and 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.

(9) Parents must be informed as soon as possible, but no more than 24 hours after the procedure is used, in writing, or orally if in writing is not possible, in their native language each time an aversive procedure is implemented on their child. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2001 MAR p. 396, Eff. 3/9/01; AMD, 2010 MAR p. 1076, Eff. 4/30/10; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

Subchapter 34 reserved

## Subchapter 35

## Procedural Safeguards

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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07.)

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). (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

Rule 10.16.3503 reserved

10.16.3504 SURROGATE PARENTS (1) Procedures for the appointment of a surrogate parent shall comply with 20-7-461 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. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3505 PARENTAL CONSENT (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 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. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2001 MAR p. 1099, Eff. 6/22/01; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2010 MAR p. 1076, Eff. 4/30/10.)

10.16.3505A REVOCATION OF PARENTAL CONSENT (1) A parent may revoke consent for services at any time. The revocation of consent must be provided to the district in writing.

(2) Upon receipt of the parent's written revocation of consent, the district must:

- (a) issue written notice to the parent of receipt of the revocation;
- (b) issue prior written notice of the date on which special education and related services will cease; and
- (c) inform the parent in writing that the procedural safeguards of IDEA no longer apply to their child.

(3) On the date set forth in the prior written notice in (2)(b), the district must cease providing services and is not permitted to file a request for a special education due process hearing or implement any dispute resolution procedures generally allowed under the Individuals with Disabilities Education Act as revised. The district is not required to amend the child's education records to remove references to the child's receipt of special education and related services. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 2010 MAR p. 1076, Eff. 4/30/10.)

10.16.3506 VOLUNTARY MEDIATION (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) Mediation may not be used in the case of revocation of parental consent for placement.

(3) 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.

(4) 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.

(5) 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.

(6) Mediation shall comply with 34 CFR 300.506. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2010 MAR p. 1076, Eff. 4/30/10.)

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.

(2) A school district is not permitted to request a due process hearing when a parent has revoked consent for special education evaluation or services. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2010 MAR p. 1076, Eff. 4/30/10.)



10.16.3508 SPECIAL EDUCATION DUE PROCESS HEARING (1) A parent as defined in 34 CFR 300.30 or public agency as defined in 34 CFR 300.33 may request an impartial due process hearing involving the educational placement, evaluation, possible identification of a student with disabilities, or the provision of FAPE to the child. The request shall be made in writing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501. A copy of the request shall be mailed to the other party.

(2) The Superintendent of Public Instruction shall develop a model form to assist the complainant 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
- (f) a proposed resolution of the problem to the extent known and available to the complainant at the time.

(3) 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).

(4) Pursuant to 34 CFR 300.508 (e) and (f), the party receiving a due process complaint has ten days to file a response, and if required, the LEA must send prior written notice.

(5) All pleadings shall be filed with the OPI and served both electronically and by U.S. mail. The time period for any response shall begin on the next business day following electronic service. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3508A RESOLUTION PROCESS (1) Within 15 days of receipt of notice of the parents' due process request, the local educational agency must convene a resolution meeting in accordance with 34 CFR 300.510. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3509 APPOINTMENT OF IMPARTIAL HEARING OFFICER (1) Upon receipt by mail of a signed written request for a due process hearing involving a special education controversy, the Superintendent of Public Instruction shall:

(a) promptly advise the public agency, parent, or other parties as identified in ARM 10.16.3508(1) 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) Upon receiving a request for hearing, the Superintendent of Public Instruction shall mail to each party a list of the names of three proposed impartial hearing officers together with a summary of their qualifications.

(iii) Each party shall have three business days to rank the proposed hearing officers on the list in order of preference.

(iv) 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 appointment or 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 directed to the Superintendent of Public Instruction. Any subsequent appointment of an impartial hearing officer shall be conducted as provided above.

(3) A party may submit one written request to the Superintendent of Public Instruction to remove an appointed impartial hearing officer for personal or professional conflict of interest or bias with a supporting affidavit showing the particular facts which constitute good cause for disqualifying the appointed hearing officer. Such a request may be made within ten days of the appointment of the hearing officer. The decision of the Superintendent is final and not subject to interlocutory appeal. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3510 SCHEDULING CONFERENCE AND NOTICE OF HEARING

(1) The impartial hearing officer shall, within five business days of the filing of the response or the completion of the resolution process, whichever comes first, conduct a prehearing scheduling conference. Following the prehearing scheduling conference, the impartial hearing officer shall issue a notice of hearing. The notice of hearing shall include, at a minimum:

- (a) a statement of the date, time, place, location, and nature of the hearing;
- (b) a schedule for discovery;
- (c) a schedule for identification of expert and lay witnesses and exchange of proposed exhibits;
- (d) the extent to which prehearing motions will be allowed, and if allowed, a schedule ensuring such motions do not unnecessarily delay the hearing;
- (e) the extent to which post-hearing legal briefs and/or proposed findings of fact, conclusions of law and order will be required;
- (f) references to the specific applicable statutes and rules;
- (g) a provision advising the parties of their right to be represented by counsel at the hearing;
- (h) a provision informing the parent of any free or low-cost legal and other relevant services available in the area;
- (i) a statement of whether or not the parent wants an electronic verbatim record of the hearing and/or the findings of facts and decision; and
- (j) consideration of such other matters as may aid in the disposition of the action.

(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 and electronic mail addressed to the attorney representing the party.

(3) 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 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 at the hearing officer's discretion after stipulation by all parties or upon motion of a party showing reasonable necessity for the continuance, but in no event beyond 12 months from the date of filing of the due process action. In determining whether to grant a request for continuance, or approve a stipulation for continuance, or approve any action which may unduly delay the hearing, the hearing officer shall consider the potential negative impact on the student who is the subject of the hearing, including the impact to the student's right to FAPE due to a delay of the hearing process, and the complexity of the case.

(5) 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 public agency is located. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3511 INFORMAL DISPOSITION (1) The impartial hearing officer may confer with the parties for the purpose of attempting informal disposition of any special education controversy in addition to the requirements in ARM 10.16.3510 and 10.16.3512.

(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 resolve the special education controversy by stipulation, agreed settlement, dismissal, or other resolution. 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. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3512 IMPARTIAL HEARING OFFICER'S PREHEARING - FORMULATING ISSUES (1) The impartial hearing officer shall conduct a prehearing conference prior to the hearing to:

- (a) identify and clarify the issues to be decided at the hearing;
  - (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; and
  - (d) consider such other matters as may aid in the disposition of the action.
- (2) Any evidence to be introduced at the hearing, including all evaluations and recommendations based on the evaluations, shall be disclosed to the opposing party at least five business days before the hearing.
- (3) Initial objections to the introduction of any offered evidence must be made at least three business days prior to the hearing.
- (4) 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.
- (5) The impartial hearing officer shall implement provisions to ensure the privacy of matters before him/her as is required by law. Parents maintain the right to waive their right of confidentiality 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. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2010 MAR p. 1076, Eff. 4/30/10; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3513 DISCOVERY (1) The impartial hearing officer may compel or limit discovery prior to the hearing and/or prehearing conference.

(2) Within the discretion of the hearing officer, the following methods of discovery are available to the parties upon the filing of a request for due process:

- (a) depositions;
- (b) written interrogatories;
- (c) requests for admissions;
- (d) production of documents or things; and
- (e) permission to enter upon land or property, to observe educational programs and other purposes.

(3) The time for responding to requests for production, requests for admission, and interrogatories is 20 calendar days from the date the discovery requests are served on the receiving party or such other time as set by the hearing officer.

(4) The hearing officer shall set a date by which discovery must be completed and establish a calendar so that discovery does not delay the hearing.

(5) The hearing officer may limit or compel discovery as necessary to balance the need for reasonable discovery with the need to not unduly delay the hearing. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3514 DISCOVERY METHODS (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2001 MAR p. 396, Eff. 3/9/01 ; REP, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3515 SCOPE AND LIMITATION OF DISCOVERY (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07 ; REP, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3516 LIMITATIONS ON DISCOVERY BY THE IMPARTIAL HEARING OFFICER (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; REP, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3517 SEQUENCE AND TIMING OF DISCOVERY (REPEALED)

(History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; REP, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3518 AVAILABILITY OF CROSS-EXAMINATION OR PARTICIPATION IN THE HEARING

(1) The right to examine or cross-examine as a party in this action shall be limited to the attorneys, the parties named in the matter, and the impartial hearing officer. A lay advocate with special knowledge or training with respect to students with disabilities may accompany and advise a party named in the matter.

(2) Parents involved in hearings have the right to have the child who is the subject of the hearing present at the hearing and open the hearing to the public. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

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. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3520 POWERS OF THE IMPARTIAL HEARING OFFICER (1) The impartial hearing officer may:

- (a) administer oaths;
- (b) issue subpoenas;
- (c) upon request of a party, as deemed appropriate by the hearing officer, allow for the taking of testimony by video, audio, or deposition of witnesses who will not be available for the hearing, or when procurement of the witness in person at the hearing will be unduly costly and burdensome for a party;
- (d) set the time, place, and length 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; and
- (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, except as provided by these rules. All evidence and objections to evidence shall be noted in the record.

(3) Educational records of the student who is the subject of the proceeding as defined in FERPA, and its implementing regulations at 34 CFR 99, shall be allowed as self-authenticating, and shall require no extrinsic evidence of authenticity as a condition precedent to admissibility.

(4) Any part of the evidence may be received in written form. 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. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3521 HEARING (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. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

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 the 45-day time frame delineated in 34 CFR 300.515, 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, in writing, when the decision will be issued, providing justification for the extension and including consideration of the impact on the student at issue in the matter. 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 LEA'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 be responsible for paying only administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and court reporter services. The parties involved shall each be responsible for any legal or other fees that occur.

(7) 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. (History: 20-7-402, MCA; IMP, 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

Rules 10.16.3524 through 10.16.3527 reserved

10.16.3528 INITIATING EXPEDITED DUE PROCESS HEARING (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 days. The facsimile number may be requested by calling the Office of Public Instruction. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3528A EXPEDITED DUE PROCESS HEARING RESOLUTION PROCESS (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). (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3529 SELECTION OF EXPEDITED DUE PROCESS HEARING OFFICER (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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3530 EXPEDITED HEARING (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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3531 FINAL DECISION IN EXPEDITED DUE PROCESS HEARING

(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 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. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

Rules 10.16.3532 through 10.16.3559 reserved

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 300.610 through 300.626.

(2) The OPI shall enforce this rule consistent with the IDEA. LEAs found to be out of compliance by OPI with provisions of this policy under IDEA shall be given an opportunity to come into compliance; demonstrate policies, procedures, or practices to ensure future compliance; be required to complete a corrective action plan consistent with this rule and applicable state and federal law; or any other sanctions determined necessary and appropriate by the OPI.

(3) The special education record retained by each LEA 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 requirements of FERPA, evaluation reports, individualized education programs, and reports of the student's progress toward meeting annual goals of the individualized education program. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2010 MAR p. 1076, Eff. 4/30/10; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

Rules 10.16.3561 through 10.16.3570 reserved

10.16.3571 PARENTAL CONSENT FOR RECORDS (REPEALED)  
(History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; REP, 2015 MAR p. 2257, Eff. 12/25/15.)

## Subchapter 36

## State Administration - Complaint Procedures

Rules 10.16.3601 through 10.16.3659 reserved

10.16.3660 EARLY ASSISTANCE PROGRAM (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, LEA or other public agency as defined in 34 CFR 300.33, or their representative may request early assistance in any issue related to a student's free appropriate public education or any violation of Part B of the IDEA, 20 U.S.C. 1400, et seq., or Montana special education laws, Title 20, chapter 7, MCA, and corresponding regulations at 34 CFR Part 300 and ARM 10.16.3007, et seq. Assistance may be requested by contacting the Office of Public Instruction Legal Division Dispute Resolution Office.

(3) Pursuant to ARM 10.16.3662, immediately following the filing of a state complaint as referenced in 34 CFR 300.151 through 300.153 the Early Assistance Program has 15 business days from the day it receives the written complaint to attempt to resolve the problem through the program. Pursuant to 34 CFR 300.152(b)(1)(ii) these 15 days shall not be counted as part of the 60-day complaint resolution timeline.

(4) The services offered under this program are available in all circumstances where there is a possibility for resolution. If the Early Assistance Program director decides that any attempt to mutually resolve the complaint would be futile, the dispute resolution office shall proceed according to the procedures and timelines set forth in 34 CFR 300.151 through 300.153 and ARM 10.16.3662. (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2010 MAR p. 1076, Eff. 4/30/10; AMD, 2015 MAR p. 2557, Eff. 12/25/15.)

10.16.3661 OPPORTUNITY TO PRESENT STATE COMPLAINT

(1) Pursuant to 34 CFR 300.151 through 300.153, individuals or organizations alleging that a Montana local educational or public agency has violated the provisions of Part B of the IDEA, 20 U.S.C. 1400, et seq. or Montana special education laws including failure to provide a student with disabilities a free appropriate public education or procedural safeguards may use ARM 10.16.3662 to file a state complaint. As used in this chapter, the term "local educational agency (LEA)," shall include other public agencies or state-operated programs. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

10.16.3662 STATE COMPLAINT PROCEDURES (1) An organization or individual may file a written signed complaint alleging the LEA or public agency as defined in 34 CFR 300.33 violated 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 state complaint must:

(a) allege a violation that occurred not more than one year prior to the date the complaint is filed;

(b) state the name and address of the affected child, if applicable, and the name of the school or public agency where the violation allegedly occurred;

(c) contain a statement that the agency has violated a requirement of federal or state special education laws or regulations;

(d) state the nature of the problem and the facts on which each allegation is based; and

(e) state a proposed resolution of the problem to the extent known and available to the complainant.

(3) The complaint must be filed with the OPI Dispute Resolution Office, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501 and a copy provided by the complainant to the LEA, or public agency serving the child. An insufficient complaint not meeting the requirements in (2) may be returned to the complainant.

(4) Within ten calendar days of filing, the dispute resolution office shall send written notice to the complainant and the LEA or public agency that a complaint has been filed.

(a) The written notice shall include a copy of the complaint.

(b) If the complaint addresses matters listed in 34 CFR 300.503(a)(1) and (2) relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of a free appropriate public education to the student, the written notice shall inform the complainant of the right to request a due process hearing under 34 CFR 300.507 and ARM 10.16.3508 through 10.16.3531.

(c) The written notice shall inform the parties of the Early Assistance Program as set forth in ARM 10.16.3660.

(5) The EAP shall have up to 15 business days from the filing of the complaint to assist the parties to resolve the dispute. If successful, the complaint will be dismissed. If the EAP process is not successful, the dispute resolution office shall immediately notify the responding party to prepare and submit its written response of the complaint to the dispute resolution office and send a copy to the complainant within ten calendar days. An extension may be granted based on reasonable necessity.

(6) Upon receipt of the response, the dispute resolution office shall begin an appropriate investigation.

(7) The complainant will have ten calendar days to submit additional relevant information to the dispute resolution office, either orally or in writing.

(8) Following an appropriate investigation, the dispute resolution office shall review all relevant information and make an independent determination as to whether a violation of a federal or state statute, regulation, or rule concerning IDEA special education has occurred. A final report shall be issued within 60 days of filing 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 shall address each allegation in the complaint and list findings of fact and conclusions of law, including the reasons for the decision. If the final report concludes that an allegation is true and corrective action is required to comply with federal or state law, corrective action shall be ordered including 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 Office of Public Instruction shall retain the investigative files as a confidential agency record pursuant to the appropriate retention schedule.

(10) At any time during this process, if the dispute resolution office determines the complaint has been resolved and compliance is achieved, the parties shall be informed and the complaint dismissed.

(11) IF within the timelines identified in the Final Report the LEA 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) Prior to implementing the final report order, and prior to implementing sanctions against the LEA or public agency, and if the LEA or public agency alleges that the office 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 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.

(13) There is no right to appeal a final report issued as a result of a state complaint. (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1984 MAR p. 817, Eff. 5/18/84; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 12/25/07; AMD, 2015 MAR p. 2257, Eff. 12/25/15.)

## Subchapter 37

## Allocation of Funds - Reports

Rules 10.16.3701 through 10.16.3750 reserved

10.16.3751 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR CHILD COUNT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; REP, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3752 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT (REPEALED) (History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; REP, 2007 MAR p. 678, Eff. 5/25/07.)



## Subchapter 38

## Special Education Funding

Rules 10.16.3801 and 10.16.3802 reserved

10.16.3803 DEFINITIONS 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 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) "Low incidence disability services" means services to students whose disability occurs in less than one percent of the statewide public school population, presents a need for very intensive special education services, and costs for the services exceed the average costs for other students with disabilities.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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. (History: 20-7-402, 20-7-431, 20-7-457, MCA; IMP, 20-7-414, 20-7-431, 20-7-457, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1740, Eff. 6/28/02; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2011 MAR p. 2262, Eff. 10/28/11.)

#### 10.16.3804 GENERAL PRINCIPLES OF SPECIAL EDUCATION FUNDING

(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 current ANB.

(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.

(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 shall use the trustees' financial summary to determine the special education allowable cost payments to districts and cooperatives. (History: 20-7-431, 20-9-321, MCA; IMP, 20-7-431, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1740, Eff. 6/28/02; AMD, 2006 MAR p. 3070, Eff. 12/22/06.)

#### 10.16.3805 SPECIAL EDUCATION ALLOWABLE COST LIMITATIONS

(1) Allowable costs for public school districts for purposes of determining payments are limited to instructional and related service costs and do not include the entire cost of operating a special education program. Allowable costs specifically do not include:

(a) the cost of the teachers' retirement system, the public employees' retirement system, or the federal social security system;

(b) the cost for unemployment compensation insurance;

(c) the cost of any administrative, instructional or teacher aide personnel necessary to meet Montana school accreditation standards;

(d) salaries and benefits for transportation aides employed for assisting students with disabilities;

(e) the on-schedule and over-schedule costs of transportation for special education purposes;

(f) the cost of administrative support personnel, such as clerks and clerical personnel, with the exception of ARM 10.16.3807(1)(c) and 10.16.3808(1)(a); and

(g) any overhead costs of operations and maintenance. Examples of overhead costs include, but are not limited to, heat, electricity, repairs and maintenance of building and equipment, minor remodeling, service contracts on equipment, and security services.

(2) Allowable costs for expenditures for salaries and benefits of personnel who serve both regular and special education must be directly proportionate to the time dedicated to special education allowable costs outlined in ARM 10.16.3806 and 10.16.3807. To support the proportion of time charged to special education, districts and cooperatives must maintain documentation such as time and effort reports, class schedules, job descriptions or other support information that will verify the time each person devotes to activities associated with special education allowable costs. (History: 20-7-431, MCA; IMP, 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3806 SPECIAL EDUCATION ALLOWABLE COSTS--  
INSTRUCTIONAL SERVICES (1) Allowable costs associated with instruction of students with disabilities include:

(a) salaries and benefits, not excluded in ARM 10.16.3805, for qualified special education teachers and special education teacher aides for the proportion of time spent providing services to students with disabilities. This includes time spent:

(i) in activities associated with structured support and assistance to regular education teachers to identify and meet diverse student needs; and

(ii) providing or receiving inservice training on the provision of special education services;

(b) teaching supplies and text books necessary to implement an IEP for a student with disabilities;

(c) the purchase, rental, repair and maintenance of instructional equipment and assistive technology required to implement an IEP for a student with disabilities;

(d) contracted services, including fees paid for professional advice, training and consultation regarding students with disabilities or their programs and the delivery of special education instructional services by public or private agencies;

(e) payments made to a cooperative for the instructional services;

(f) transportation costs for:

(i) special education instructional personnel who travel on an itinerant basis from school to school or district to district for the provision of instructional services;

(ii) travel to in-state child study team meetings or in-state IEP meetings;

(iii) in-state travel related to activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and

(iv) travel for providing or receiving inservice training on the provision of special education services. (History: 20-7-431, MCA; IMP, 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1740, Eff. 6/28/02.)

10.16.3807 SPECIAL EDUCATION ALLOWABLE COSTS--RELATED SERVICES (1) Allowable costs associated with the provision of related services to students with disabilities include:

(a) salaries and benefits, not excluded in ARM 10.16.3805, for licensed or certified professional support personnel who meet the qualifications in ARM 10.16.3136, for supervisors of special education, speech language pathologists, audiologists, counselors, social workers, school psychologists, physicians, nurses, physical and occupational therapists and other professional persons meeting the requirements for the profession or discipline responsible for delivery of a special education related service for the proportion of time spent:

(i) providing services for students with disabilities;  
(ii) providing supervision of special education programs;  
(iii) in activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and  
(iv) providing or receiving inservice training on the provision of special education services;

(b) salaries and benefits, not excluded in ARM 10.16.3805, for support personnel aides for the proportion of time spent:

(i) providing services for students with disabilities;  
(ii) in activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and  
(iii) providing or receiving inservice training on the provision of special education services;

(c) salaries and benefits, not excluded in ARM 10.16.3805, for clerical personnel who assist professional support personnel, corresponding to the proportion of time spent providing assistance to professional support personnel;

(d) the cost of supplies for professional support personnel;

(e) contracted services of public or private agencies, including fees paid for professional advice, training and consultation regarding students with disabilities or their program, and the delivery of special education services;

(f) payments made to a cooperative for the provision of related services;

(g) transportation costs for professional support personnel who:

(i) travel on an itinerant basis from school to school or district to district for the provision of related services;

(ii) travel to in-state child study team meetings or in-state individualized education program meetings;

(iii) in-state travel related to activities associated with structured support and assistance to regular education teachers in identifying and meeting diverse student needs; and

(iv) travel for providing or receiving inservice training on the provision of special education services;

- (h) equipment purchase, rental, repair, and maintenance required to:
- (i) implement the related service portion of a student's individualized education program; and
- (ii) fulfill reporting and record keeping requirements of evaluation and the provision of related services. (History: 20-7-431, MCA; IMP, 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1740, Eff. 6/28/02.)

10.16.3808 SPECIAL EDUCATION ALLOWABLE COSTS--

COOPERATIVES (1) Special education allowable costs for cooperatives include all allowable costs in ARM 10.16.3806 and 10.16.3807 and the additional cost of the operation of the cooperative. These additional costs allowed exclusively for a cooperative are:

- (a) costs associated with support services including, but not limited to, administration, advertising, recruitment, communication such as postage, telephone, printing, clerk services, audit services and liability insurance;
- (b) costs associated with operation and maintenance including, but not limited to, custodial salaries and benefits, heat, utilities, supplies and expenses, replacement parts, rent, purchase of real property, labor negotiations/representations, omissions and errors insurance, fire insurance and property insurance. (History: 20-7-431, MCA; IMP, 20-7-431, 20-7-451, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3809 COOPERATIVE BOUNDARIES (1) Boundary lines of cooperatives established for the provision of special education services are defined by the Superintendent of Public Instruction based on consultation with regional representatives.

- (a) No more than 23 special education cooperatives may be established.
  - (b) All districts are included within the boundaries of a special education cooperative but are not required to be a participating member of that cooperative.
  - (c) The special education cooperative boundaries shall be established so that the districts included within the boundaries are contiguous.
  - (d) A district may become a member only of the cooperative within which boundaries it lies.
- (2) The Superintendent of Public Instruction shall maintain an official Montana school district data file with districts identified within the cooperative boundary consistent with the requirements of 20-7-457, MCA.
- (3) Districts or cooperatives requesting a change to the boundary lines must provide a written request to the Superintendent to change the boundary lines. The written request must clearly describe the proposed boundary line and the reasons for the requested change.

(4) The request for change must be provided to the Superintendent of Public Instruction no later than October 1 to be in effect for the ensuing fiscal year.

(5) Prior to making the change, the Superintendent will notify and request comment from all districts within the boundaries of each affected cooperative.

(6) The Superintendent must approve any boundary changes prior to January 1 in order to be in effect for the ensuing fiscal year.

(7) All changes must comply with the conditions in (1).

(8) Boundary changes for districts already participating in a cooperative must occur on timelines consistent with the district's commitment for participation in the cooperative as specified in the interlocal agreement, unless the changes:

(a) result in the creation of a new cooperative;

(b) result in the merging of existing cooperatives; or

(c) are approved by a majority of the trustees in each school district directly affected and approved by the majority of the management board of each affected cooperative. (History: 20-7-457, MCA; IMP, 20-7-457, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1740, Eff. 6/28/02.)

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. (History: 20-9-321, MCA; IMP, 20-7-414, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1740, Eff. 6/28/02; AMD, 2007 MAR p. 678, Eff. 5/25/07.)

10.16.3811 GENERAL PRINCIPLES OF THE SPECIAL EDUCATION

ALLOWABLE COST PAYMENT CALCULATION (1) For purposes of calculating statewide allowable cost amounts, the Superintendent of Public Instruction shall use the most current information available as the basis for calculating the special education allowable cost payments for the ensuing fiscal year. If material differences in statewide factors used in the calculation are documented or legislative changes occur regarding the calculation, the Superintendent of Public Instruction may recalculate and notify all districts and counties. Current ANB will be used in the payment calculation for the purpose of reflecting relative district and program size. Use of ANB does not limit the age range for fund expenditures.

(2) The special education allowable cost payments consist of instructional block grants, related services block grants, reimbursements for disproportionate costs and cooperative administrative and travel amounts.

(3) The statewide special education allowable cost payments to districts and cooperatives may not exceed the legislative appropriation available for special education allowable costs.

(4) The special education allowable cost payment calculation distributes appropriations according to the following formula:

- (a) 52.5% through instructional block grants;
- (b) 17.5% through related services block grants;
- (c) 25% through reimbursement of local districts;
- (d) 5% to special education cooperatives for administration and travel.

(History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1740, Eff. 6/28/02; AMD, 2006 MAR p. 3070, Eff. 12/22/06.)

10.16.3812 CALCULATION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS

(1) The instructional services block grant rate for the ensuing fiscal year is calculated by multiplying the state special education appropriation by .525 and dividing by the ensuing year statewide current ANB of eligible districts, truncated to two decimal places.

(2) The related services block grant rate for the ensuing fiscal year is calculated by multiplying the state special education appropriation by .175 and dividing by the ensuing year statewide current ANB of eligible districts, truncated to two decimal places.

(3) A district's eligibility to receive reimbursement for disproportionate costs for the ensuing fiscal year is calculated as follows for each district that is eligible per ARM 10.16.3803:

(a) sum the district's prior fiscal year special education state allowable cost expenditures for instructional and related services;

(b) from (3)(a) subtract the district's prior fiscal year minimum special education expenditure to avoid reversions;

(c) if the result of (3)(b) is less than or equal to zero, a district is not eligible for reimbursement;



(d) if the result of (3)(b) is greater than zero, a district may receive reimbursement for disproportionate costs provided that the district's rate of expenditures calculated by dividing (3)(a) by the district's prior fiscal year minimum special education expenditure to avoid reversion reaches the threshold for eligibility based on the following formula:

(i) multiply the state special education appropriation by .25;

(ii) for all districts where the result of (3)(b) is greater than zero, sum the results of (3)(b) and multiply by .40;

(A) if (3)(d)(i) equals (3)(d)(ii), the threshold for eligibility is 1.00, and the district shall be reimbursed \$0.40 for each dollar calculated in (3)(b);

(B) if (3)(d)(i) exceeds (3)(d)(ii), the threshold for eligibility is 1.00. The .40 multiplier in (3)(d)(ii) shall be increased to a multiplier which causes the result of (3)(d)(ii) to equal (3)(d)(i), and the district shall be reimbursed at that multiplier for each dollar calculated in (3)(b);

(C) if (3)(d)(ii) exceeds (3)(d)(i), the threshold rate in (3)(d)(ii) shall be increased to a percent which causes the result of (3)(d)(ii) to equal (3)(d)(i). The district shall be reimbursed \$.40 for each dollar calculated in (3)(a) that exceeds the amount calculated by multiplying the threshold rate times the district's prior year special education spending to avoid reversion.

(4) The statewide amount for cooperative administration and travel is calculated by multiplying the state appropriation by .05. This figure is distributed to cooperatives under the following two components:

(a) to calculate administration:

(i) multiply the figure in (4) by .60;

(ii) divide (4)(a)(i) by the ensuing year's current ANB for all participating districts in all approved cooperatives to determine per ANB rate;

(iii) multiply (4)(a)(ii) by the cooperative's ensuing year's current ANB from member districts.

(b) to calculate travel:

(i) multiply the figure in (4) by .40;

(ii) use the following factors to distribute, on a weighted basis, the figure from (4)(b)(i) among approved cooperatives (weight assigned to each cooperative is determined by dividing the number of rural miles within the boundaries of a cooperative by the total current ANB of member districts within the cooperative and add to that figure the number of member districts and full-time equivalent of itinerant personnel in the cooperative);

(A) the number of member districts;

(B) the number of full-time equivalent reported for itinerant personnel on the most current annual data collection report;

(C) the most up-to-date current ANB reported by member school districts;  
and

(D) the number of road miles within the boundaries of the cooperative.

(5) Cooperatives shall report staff information to the Superintendent of Public Instruction on the annual data collection report. Annual membership information and any additional information needed to administer the provisions of 20-9-321, MCA, shall be reported on forms provided by the Superintendent of Public Instruction. Cooperatives shall notify the Superintendent of Public Instruction of any revisions to the annual data collection report or membership information by February 1.

(6) The Superintendent of Public Instruction calculates an eligible district's special education allowable cost payment for the ensuing fiscal year by multiplying the instructional block grant rate by the district's ensuing fiscal year current ANB, adding the related services block grant rate multiplied by the district's ensuing fiscal year current ANB, adding the district's reimbursement for disproportionate costs, if applicable. If the district is a participating member of a cooperative, the special education allowable cost payment will not include the related services block grant.

(7) A cooperative's special education allowable cost payment for the ensuing fiscal year consists of the cooperative travel and administration amounts plus the related services block grants of districts who are participating members of the cooperative. (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1740, Eff. 6/28/02; AMD, 2006 MAR p. 3070, Eff. 12/22/06.)

10.16.3813 LOCAL MATCHING FUNDS (1) Districts must provide local matching funds for special education to ensure that the districts pay at least one dollar for every three dollars of state special education allowable cost funds distributed in the form of instructional and related services block grants. The Superintendent of Public Instruction will provide to districts certified reports of required local match amounts.

(2) The Superintendent of Public Instruction will determine from district prior fiscal year trustees' financial summary reports if local match has been met.

(a) Demonstration that local match contributions have been made is determined by totaling the prior fiscal year special education allowable cost expenditures, defined in ARM 10.16.3806 and 10.16.3807, as reported on the annual trustees' financial summary for the general fund, the impact aid fund, the metal mines tax reserve fund and state mining impact fund. Those prior fiscal year expenditures must equal or exceed the district's minimum special education expenditures to avoid reversion for the prior fiscal year.

(3) Districts that are participating members of a cooperative must provide the required local related services block grant match, as certified by the superintendent, to their cooperative. This amount ensures that the districts pay at least one dollar for every three dollars of the districts' share of the related services block grant funds. The cooperatives' allowable cost expenditures from these funds is not limited to related services.

(a) A district's local related services block grant match for cooperative use may be demonstrated by:

(i) transfer of at least the required amount from the district general fund or impact aid fund to the cooperative; or

(ii) completion of a written agreement between the district and the cooperative that states the manner in which the contribution will be made, if different from (i). This written agreement must be on file with the cooperative.

(b) At the close of each fiscal year, cooperatives must certify to the Superintendent of Public Instruction that each member district provided its required related services block grant match to the cooperative. (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3814 ADVANCE ON SPECIAL EDUCATION ALLOWABLE COST PAYMENTS (1) A district may be eligible for an advance on its special education allowable cost payment if it experiences severe economic hardship because of exceptional special education costs.

(2) Application for an advance on a special education allowable cost payment must be made to the Superintendent of Public Instruction in writing and include requested documentation.

(3) The Superintendent of Public Instruction will determine eligibility for an advance on a district's special education allowable cost payment based upon the following requirements:

(a) The Superintendent of Public Instruction has funds available to meet the advance request.

(b) The exceptional special education costs are an unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the ability to provide a free appropriate public education to its students with disabilities.

(c) The district adopts a budget amendment under 20-9-161(6), MCA.

(d) Other revenues are not available to the district that could address the unforeseen cost, including:

(i) district reserves;

(ii) available cooperative funds;

(iii) Individuals with Disabilities Education Act, Part B funds; and

(iv) cash available in other funds of the district.

(e) The exceptional special education costs combined with budgeted special education allowable cost expenditures exceed 110 percent of the current fiscal year minimum special education budget to avoid reversion.

(4) Payments are for the fiscal year in which the actual costs are incurred.

(5) The amount of the advance will reduce the ensuing fiscal year's special education allowable cost payment by a like amount. If the district's special education allowable cost payment in the ensuing fiscal year is not sufficient to repay the advance, the district will repay the advance to the state by warrant no later than December 31 in the fiscal year following the advance. (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3815 SPECIAL EDUCATION TRANSFERS AND PAYMENTS TO OTHER DISTRICTS AND COOPERATIVES

(1) To meet its obligation to provide services for students with disabilities, a district may establish its own special education program, participate in a full service cooperative for special education services established under 20-7-451, MCA, or enter into an interlocal agreement, as defined in Title 7, chapter 11, part 1, MCA, with another district.

(2) If a district chooses to enter into an interlocal agreement with another district to receive special education services, it may pay its state special education allowable cost payment, required block grant match and additional costs of providing services to the providing district on a reimbursement basis.

(a) The payment must be deposited to the miscellaneous programs fund or the interlocal agreement fund of the district providing services.

(b) The receipt and expenditure of the money by the district providing special education services must be identified on the accounting records using a project reporter number.

(i) The accumulated balance in the project account must be zero by June 30th of each fiscal year. That is, receipts must equal total expenditures.

(ii) Any amounts received but not obligated must be returned to the paying district by June 30th and recorded as an expenditure abatement by the paying district and a revenue abatement by the district providing the service.

(3) When a full service cooperative for special education services established under 20-7-451, MCA, contracts with a district to provide special education instructional and related services:

(a) payment received by a district from a cooperative must be deposited in the district's miscellaneous programs fund; and

(b) the receipt and expenditure of the money must be identified on the accounting records using a project reporter number.

(i) The accumulated balance in the project account must be zero by June 30th of each fiscal year. That is, receipts must equal expenditures.

(ii) Any amounts received but not obligated must be returned to the paying cooperative by June 30th and recorded as an expenditure abatement by the cooperative and a revenue abatement for the district providing the service.

(4) Expenditures of special education money received as payment for services provided to other districts or cooperatives or transferred from another district or cooperative will not be considered in determining the reimbursement for disproportionate costs under 20-9-321, MCA.

(5) In accordance with 20-9-507, MCA, any special education resource transferred from a district or cooperative to another district and deposited in the miscellaneous program fund must be used for special education. In no event may the transfer from a cooperative to a district circumvent the match requirement.

(History: 20-7-431, MCA; IMP, 20-7-431, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD, 1998 MAR p. 1719, Eff. 6/26/98; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3816 DISTRIBUTION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS (1) The state will distribute the special education allowable cost payments to districts and cooperatives at the same time direct state aid payments are made under 20-9-344, MCA.

(2) A district's instructional and related services block grants are based on current ANB.

(a) Except as provided in (2)(b), subsequent increases or decreases in ANB after the final budget is adopted will not increase or decrease the district's block grant funding.

(b) In cases of significant adjustments in ANB, the Superintendent of Public Instruction may require adjustment of the block grant funding. (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2006 MAR p. 3070, Eff. 12/22/06.)

10.16.3817 SPECIAL EDUCATION FUNDING REVERSION (1) If at fiscal year end school district special education allowable cost expenditures do not equal or exceed the amount of special education instructional and related services block grant funds plus required local match, as indicated by the annual trustees' financial summary, the district is required to revert the unspent portion of the special education allowable cost payment in the ensuing fiscal year. The unspent balance of state special education allowable cost funding cannot be used to reduce local levies or to increase the operating reserves, but must be used to reduce the state special education allowable cost payment of the district for the ensuing fiscal year through the reversion calculation described in (3). If special education allowable cost payments are not received by that district in the ensuing fiscal year, the district must return the unspent portion by warrant by December 31.

(2) For purposes of determining the special education funding reversion required by 20-9-321, MCA, the expenditure information provided on the trustees' annual financial report will be used.

(3) The reversion will be calculated as follows:

(a) Calculate the district's total prior fiscal year expenditures of allowable costs in accordance with 20-7-431, MCA, and ARM 10.16.3806 and 10.16.3807.

(b) Subtract the district's total prior fiscal year expenditures calculated in (3)(a) from the district's prior fiscal year minimum special education expenditure to avoid reversion as defined in ARM 10.16.3803.

(c) If (b) is less than or equal to zero, no reversion is required.

(d) If (b) is greater than zero, the required reversion amount is calculated by multiplying (b) by a factor that ensures that the district has paid a minimum of one dollar for every three dollars of state special education funds.

(4) Revisions to the annual trustees' financial summary report must be made in accordance with ARM 10.10.504. Revisions to the annual trustees' financial summary report made by the district after December 10 of the ensuing fiscal year, will not be considered in calculating the reversion amount. The Superintendent of Public Instruction may accept the adjustments after those dates for unusual circumstances.

(5) A district participating in a cooperative must provide to the cooperative the required related service matching funds as certified by the Superintendent of Public Instruction. Failure to provide the match by June 30 of the fiscal year for which the related services block grant was established will cause the participating district to lose eligibility for future membership in the cooperative at the end of the three year participation cycle as defined in ARM 10.16.3901 and may affect the terms of the cooperative's interlocal agreement. (History: 20-9-321, MCA; IMP, 20-9-321, MCA; NEW, 1995 MAR p. 356, Eff. 3/17/95; AMD, 1998 MAR p. 1719, Eff. 6/26/98; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00 ; AMD, 2016 MAR p. 880, Eff. 5/21/16.)

10.16.3818 SPECIAL EDUCATION TUITION RATES (1) To be eligible to charge tuition for special education services, a district must provide a special education program that complies with Board of Public Education policies and is approved by the Superintendent of Public Instruction.

(2) The maximum tuition rate for students with disabilities is the general education tuition rate established in ARM 10.10.301, reduced by any waivers that a district must apply equally to all students whose tuition is paid by the same type of entity, plus the additional charges as calculated in (3), that apply to districts only.

(3) A responsible school official of the receiving school district shall use one of the options defined below to determine the maximum amount which may be charged to the resident district for students with disabilities in addition to the general education tuition rate:

(a) Option A: The additional charge shall be calculated by determining the number of hours during which direct special education and related services are being provided each week, as established on the student's individualized education program (IEP). If the total hours are less than 15 (7 1/2 for half-time kindergarten), tuition may not exceed the general education tuition rate. If the total hours per week are 15 (7 1/2 for half-time kindergarten) or more, the total hours will be divided by 30 (the average number of school hours per week, 15 for half-time kindergarten), and multiplied by the maximum general education tuition rate in ARM 10.10.301 to determine the amount which may be added to the rate in ARM 10.10.301.

(b) Option B: The actual unique costs of services provided to the student ages 3 to 21 as per the individualized education program (IEP), less 80% of the maximum per-ANB rate established in 20-9-306(10), MCA for the year of attendance and less the per ANB special education block grants received by the district, may be added to the rate in ARM 10.10.301 if the county superintendent determines all of the following factors are present:

(i) the allowable special education costs for that student exceed the rate determined under Option A;

(ii) the costs are for special education and related services unique to the student, including specialized one-on-one staff and specialized equipment and supplies and excluding:

- (A) the costs for removal of architectural barriers;
- (B) prorated costs of ordinary special education services such as teachers' salaries and benefits; and
- (C) costs of equipment and supplies commonly used in special education programs.

(c) Option C: For specialized school district programs which provide concentrated services for significant numbers of students with low incidence disabilities, including nonresident students who enroll in the host district specifically to attend the program, the estimated total per-pupil cost of the program including administrative operating costs, less 80% of the maximum per ANB rate established in 20-9-306(1), MCA for the year of attendance and less the per ANB special education block grants received by the district, may be added to the rate in ARM 10.10.301, provided:

(i) such services provided in any multidistrict program must be determined by the student's IEP team and cannot be based solely on the student's identified low incidence disability;

(ii) the host district has submitted a written description of the program and the Office of Public Instruction has provided written approval for the host district to apply the Option C special education tuition add-on rate for nonresident students of the program;

(iii) the host district does not pass program costs for resident students on to parties paying nonresident student tuition;

(iv) the host district uses any unreserved balance after operating the prior year's special education program for low incidence disabilities to defray the ensuing year's program costs used to determine the tuition rate; and

(v) the total per-pupil cost of operating the program is determined based on the estimated average number of students expected to participate in the program for the following year.

(4) The special education tuition rate calculation should be adjusted for the portion of the year the student is enrolled in special education services in the receiving school district, based on the percentage of the number of days the student was enrolled divided by 180.

(5) Districts may not charge a parent or guardian more than the regular education tuition rate calculated in ARM 10.10.301 for a student with disabilities.

(6) Districts may not discriminate on the basis of disability in their approval or disapproval of discretionary out-of-district attendance agreements.

(7) When a student's IEP requires special education or related services beyond the 180 day school year, the school district providing services may initiate an attendance agreement or amend an existing agreement to provide tuition that covers the additional extended year period by prorating the actual cost on a daily or hourly basis. (History: 20-5-323, MCA; IMP, 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-306, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; AMD, 1990 MAR p. 717, Eff. 4/13/90; AMD, 1992 MAR p. 211, Eff. 2/14/92; AMD, 1992 MAR p. 1365, Eff. 6/26/92; AMD, 1994 MAR p. 1824, Eff. 7/8/94; AMD, 1998 MAR p. 1719, Eff. 6/26/98; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2002 MAR p. 1662, Eff. 6/14/02; AMD, 2008 MAR p. 1692, Eff. 8/15/08; AMD, 2011 MAR p. 2262, Eff. 10/28/11.)

10.16.3819 CONTESTED CASES (1) Contested cases regarding tuition calculation will be addressed through the procedures for all school controversy contested cases before the county superintendents of the state of Montana. (History: 20-3-107, MCA; IMP, 20-3-210, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3820 TRANSPORTATION FOR SPECIAL EDUCATION STUDENTS WITH DISABILITIES (1) Specialized student transportation, for students with disabilities, to and from school is not a special education allowable cost. Budget authority for transportation of students with disabilities must be established in the transportation fund of the local school district and must follow the budgeting procedures established in the Montana School Accounting Manual. (History: 20-7-402, MCA; IMP, 20-7-403, 20-10-145, MCA; NEW, 1977 MAR p. 315, Eff. 8/26/77; ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1992 MAR p. 213, Eff. 2/14/92; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)



## Subchapter 39

## Special Education Cooperatives

10.16.3901 DURATION OF COOPERATIVE (1) The interlocal agreement creating a special education cooperative must require participating districts to remain members for a term of at least three state fiscal years which have an effective date of July 1.

(2) Notification of intent to withdraw from a cooperative shall be provided no later than October 1 of every third fiscal year of the district's commitment of participation. (History: 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3902 MANAGEMENT BOARD (1) The management board is responsible for administering the cooperative and is comprised of trustees of the participating districts or their authorized representatives.

(2) Designation of the representative shall be by formal action taken annually. Formal action shall be in the form of a resolution of the trustees of a participating district which names one of the trustees or an authorized representative to serve on the management board. The same person may be the authorized representative of more than one board of trustees.

(3) The interlocal agreement shall specify the voting powers of the member districts. (History: 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3903 NONPARTICIPATING DISTRICTS (1) The interlocal agreement shall require annual notification of opportunity to join to nonparticipating districts within the geographic boundary of the cooperative. This annual notification must be provided to nonparticipating districts no later than October 1 of each fiscal year and must require response within 60 days from those districts who wish to join. (History: 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

10.16.3904 PROCEDURES FOR APPROVAL (1) A draft of a new or amended interlocal agreement shall be submitted to the Superintendent of Public Instruction for review and approval. Upon approval, the cooperative contract shall be filed with the county Clerk and Recorder of the county or counties in which the school districts involved are located and with the Secretary of State. (History: 20-7-457, MCA; IMP, 20-7-453, 20-7-454, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90; AMD, 1995 MAR p. 356, Eff. 3/17/95; TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2010 MAR p. 1076, Eff. 4/30/10.)