

## Statutory Citations

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### LEA Consultation with Private School Representatives

Statutory Authority: 20 U.S.C. 1412(a)(10)(A)(iii) and (iv) –

(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(10) CHILDREN IN PRIVATE SCHOOLS.—

(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding—

(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

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

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure

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that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

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

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

(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

### **Private School Complaint of Noncompliance with Consultation Requirements**

Statutory Authority: 20 U.S.C. 1412(a)(10)(A)(v) –

(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(10) CHILDREN IN PRIVATE SCHOOLS.—

(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

(v) COMPLIANCE.—

(I) IN GENERAL.—A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(II) PROCEDURE.—If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

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#### **Number of Children with Disabilities Enrolled by in Private Schools by Their Parents**

Statutory Authority: 20 U.S.C. 1412(a)(10)(A)(i)(V) –

(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(10) CHILDREN IN PRIVATE SCHOOLS.—

(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

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

#### **State Plan for High Cost Fund**

Statutory Authority: 20 U.S.C. 1411(e)(3)(C)(ii) –

(e) STATE-LEVEL ACTIVITIES.—

(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

(C) STATE PLAN FOR HIGH COST FUND.—

(ii) STATE PLAN.—The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall—

(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum—

(aa) addresses the financial impact a high need child with a disability has on the budget of the child's local educational agency; and

(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act of 1965) in that State;

(II) establish eligibility criteria for the participation of a local educational agency that, at minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency; provides distributions each fiscal year to

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local educational agencies that meet the criteria developed by the State under subclause (II); and  
(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

### **Free and low-cost Legal Services**

Statutory Authority: 20 U.S.C. 1415(b)(6) –

(b) TYPES OF PROCEDURES.—The procedures required by this section shall include the following:

(6) An opportunity for any party to present a complaint—

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

“(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

### **Early Intervening Services Annual Report**

Statutory Authority: 20 U.S.C. 1413(f)(4) –

(f) EARLY INTERVENING SERVICES.—

(4) REPORTING.—Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on—

(A) the number of students served under this subsection; and

(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the preceding 2-year period.

### **List of Hearing Officers and Mediators**

Statutory Authority: 20 U.S.C. 1415(e)(2)(C) –

“(e) MEDIATION.—

“(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

“(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

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### State Complaint Procedures

Statutory Authority: This information was included in former OMB Collection 0599.

### LEA Application under Part B, and report of Early Intervening Services

Statutory Authorities: 20 U.S.C. 1413(f) –

(f) EARLY INTERVENING SERVICES.—

(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

(2) ACTIVITIES.—In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include—

(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this part.

(4) REPORTING.—Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on—

(A) the number of students served under this subsection; and

(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the preceding 2-year period.

(5) COORDINATION WITH ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

20 U.S.C. 1415(d) –

(d) PROCEDURAL SAFEGUARDS NOTICE.—

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(1) IN GENERAL.—

(A) COPY TO PARENTS.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

- (i) upon initial referral or parental request for evaluation;
- (ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and
- (iii) upon request by a parent.

(B) INTERNET WEBSITE.—A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

- (A) independent educational evaluation;
- (B) prior written notice;
- (C) parental consent;
- (D) access to educational records;
- (E) the opportunity to present and resolve complaints, including—
  - (i) the time period in which to make a complaint;
  - (ii) the opportunity for the agency to resolve the complaint; and
  - (iii) the availability of mediation;
- (F) the child's placement during pendency of due process proceedings;
- (G) procedures for students who are subject to placement in an interim alternative educational setting;
- (H) requirements for unilateral placement by parents of children in private schools at public expense;
- (I) due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (J) State-level appeals (if applicable in that State);
- (K) civil actions, including the time period in which to file such actions; and
- (L) attorneys' fees.

### **Written Notification for the Use of Public Benefits or Insurance**

20 U.S.C. 1402(9)

(9) Free appropriate public education.--The term 'free appropriate public education' means special education and related services that--

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 614(d).

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20 U.S.C. 1412(a)(12)

(12) Obligations related to and methods of ensuring services.--

(A) Establishing responsibility for services.--The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in

subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

(i) Agency financial responsibility.--An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

(ii) Conditions and terms of reimbursement.--The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) Interagency disputes.--Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Coordination of services procedures.--Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) Obligation of public agency.--

(i) In general.--If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(26) relating to related services, 602(33) relating to supplementary aids and services, and 602(34) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

(ii) Reimbursement for services by public agency.--If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public

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agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A) (ii).

(C) Special rule.--The requirements of subparagraph (A) may be met through--

(i) State statute or regulation;

(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

20 U.S.C. 1417(c)

(c) Confidentiality.--The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act, to ensure the protection of the

confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this part.