

## **ADDITIONAL INFORMATION IF SEA PROVIDES DIRECT SERVICES**

### **I. STATE POLICY**

- A.** It shall be the policy of the Arkansas Department of Education that, should it become necessary for the Department to provide FAPE to children with disabilities, or to provide direct services to these children, the agency -
1. Shall comply with any additional requirements of 34 CFR 300.220–300.230(a) and 300.234 - 300.250 as if the agency were an LEA; and
  2. May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to 34 CFR 300.184 (relating to excess costs).
- B.** At the current time, the Arkansas Department of Education provides no direct services to children with disabilities. However, in the past, in accordance with the terms of an Interagency Agreement with the Arkansas Department of Human Services, the Arkansas Department of Education has provided direct services to foster children with disabilities placed in out-of-state facilities for reasons other than education. Such out-of-state educational services were paid for with state funds. The terms of this Interagency Agreement are still in effect, should it become necessary to again provide such services. In such a case, the following assurances and provisions remain applicable -
1. The Department will provide an opportunity for participation of and consultation with parents or guardians of children with disabilities [34 CFR 300.503(c)];
  2. That to the maximum extent practicable and consistent with 34 CFR 300.550 - 300.553, special services will be provided so as to enable children with disabilities to participate in regular educational programs [34 CFR 300.227];
  3. That the resources of the entire state will be considered in making alternative placements available [34 CFR 300.551];
  4. The Department will not use funds provided under Part B of Title VI to provide services to children with disabilities unless the agency uses the State and local funds to provide services to children with disabilities which, taken as a whole, are at least comparable to services provided to other children with disabilities in the State [34 CFR 300.231(c)(1)(i) and ii]; and
  5. The Department will maintain records to show that this requirement is met [34 CFR 300.231(c)].

6. The Department assures that it will develop an IEP which complies with the requirements of 34 CFR 300.340 – 300.350 for each foster child with a disability placed in an out-of-state facility for reasons other than education and for whom the Agency provides direct services [34 CFR 300.128(a)].
  7. When arranging for these services through other public or private agencies, the provider or vendor of services will be required to provide satisfactory assurances that the requirements listed in Section V, Confidentiality, of these State eligibility documents are met.
  8. Funds used in fulfillment of this Section shall be under the control of the Department and any property acquired with those funds shall remain with the Department.
- C. At the point where the State education agency were to assume direct responsibility for the provision of special education and related services under the terms of this Interagency Agreement, these children have been legally declared wards of the state. No foster child in an out-of-state placement who would be the direct educational responsibility of the SEA, in accordance with the conditions set out in this section, is in such a placement for educational purposes.
  - D. As wards of the state, each of these children is eligible for a surrogate parent. This can be an Arkansas resident (including a relative of the student), or a resident of the community where the provider facility is located. Even the natural parent of the state ward may be involved when the Arkansas Department of Human Services determines that it is in the best interest of the child.
  - E. Surrogate parents are given training in their duties and responsibilities. They have the full responsibility, as would a natural parent, to participate in decisions on special education and related services for the children they represent. They are given all of the procedural safeguards available to parents and the opportunity for involvement in all due process activities pertaining to the provision of special education services to the child.
  - F. The severity of disabilities among some Arkansas students who might be placed out-of-state for treatment sometimes dictates a highly structured environment, at least initially. The Arkansas Department of Education assures that a system is in place to make available a continuum of alternative services to provide a student with an appropriate individualized education program in the least restrictive environment his condition will permit. This ranges from resource room and regular classes in public schools, to resource rooms and regular classes in institutional or secure hospital settings. As a student's condition improves, he may be placed for receipt of educational services in a lesser restrictive setting.

## **II. PROCESS AND PROCEDURES**

- A. The Arkansas Department of Education has provided notice to LEAs of the actions it will take prior to assuming the responsibility for the provision of direct services to children with disabilities. The specific process and procedures are contained in the *LEA Application for Funds*.