

METHODS OF ENSURING SERVICES (FORMERLY: INTERAGENCY AGREEMENTS)

I. STATE POLICY

It is the policy of the Arkansas Department of Education that, as necessary and appropriate, interagency agreements and/or memoranda of understanding shall be developed and implemented between the SEA and all other agencies that provide or pay for services required under the IDEA for children with disabilities.

Authority for developing and implementing interagency agreements between the SEA and all other State and local agencies referred to in 34 CFR 300.142 is established by the following -

- A.** Ark. Code Ann. 6-41-202 states in relevant part that: “(b)(1) One of the purposes of this subchapter is to cooperate in any reasonable way with programs now in operation for children with disabilities in any state institution or treatment facility. (2) It shall be a primary purpose of this subchapter to cooperate fully with the institutions and treatment facilities to the end that the best interests of children with disabilities shall be served.” (See Attachment 2 - Statutes.)
- B.** Ark. Code Ann. 6-41-205 states in relevant part: “(a) The State Board of Education shall provide or cause to be provided by school districts, or in some cases by other departments of state government, institutions, or through private facilities, all regular and special education, corrective, and supporting services required by children with disabilities to the end that they shall receive the benefits of a free and appropriate public education.” (See Attachment 2 - Statutes.)
- C.** Ark. Code Ann. 6-41-207 states in relevant part: “(a) The board is empowered to initiate, inspect, approve, and supervise a program of education for children with disabilities as defined in this subchapter. (b) It is also designated as the agency for cooperation with the state and federal governments, the approved treatment centers, the institutions, and the local schools in carrying out the provisions of this subchapter. (f) The board, in compliance with federal enforcement requirements, is authorized to disallow the generation of all state aid to children with disabilities to any local school district or education service cooperative which fails to comply with state and federal regulations, as determined by independent hearing officers, agency hearing decisions, agency complaint investigation decisions, agency compliance monitoring reports, or agency jurisdictional decisions. The board is authorized to set aside funds disallowed under this subsection and to utilize such funds for the provision of a free appropriate public education to appropriate children with disabilities. (See Attachment 2 - Statutes.)
- D.** Ark. Code Ann. 6-41-209 states the following regarding cooperation among state agencies: “The State Board of Education is granted authority to and is directed to cooperate with the Department of Human Services and with available treatment institutions and qualified individuals in order to provide diagnostic

services to children with disabilities in need of such services." (See Attachment 3 - Statutes.)

II. STATE PROCEDURES

- A.** The Arkansas Department of Education assures that, with regard to establishing responsibility for services, interagency agreements or other mechanisms for interagency coordination are in effect between each noneducational public agency described in **II B** of this section and the Department, in order to ensure that all services described in **II B.1** of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under **II A.3** of this section. Such agreements or mechanisms include the following -
- 1.** An identification of, or a method for defining, the financial responsibility of each agency for providing services described in **II B.1** of this section to ensure FAPE is provided to children with disabilities. The financial responsibility of each noneducational public agency described in of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP.);
 - 2.** The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies;
 - 3.** Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism; and
 - 4.** Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in of this section.
- B.** The Arkansas Department of Education assures the following with regard to the obligation of noneducational public agencies -
- 1.** If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to **II A.** of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR 300.5 relating to assistive technology devices, 34 CFR 300.6 relating to assistive technology services, 34 CFR 300.24 relating to related services, 34 CFR 300.28 relating to supplementary aids and services, and 34 CFR 300.29 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

2. A noneducational public agency described in **II B.1** of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.
 3. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in **II B.1** of this section, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in **II A.1** of this section, and the agreement described in **II A.2** of this section.
- C.** The Arkansas Department of Education assures that the requirements of this section are met through -
1. State statute or regulation;
 2. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 3. Other appropriate written methods as determined by the Department.
- D.** The Arkansas Department of Education has on file with the Secretary information to demonstrate that the requirements of **II A** through **II C** of this section are met.
- E.** The Arkansas Department of Education assures that with regard to children with disabilities who are covered by public insurance -
1. A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in **II E.2** of this section.
 2. With regard to services required to provide FAPE to an eligible child under this part, the public agency -
 - a. May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;
 - b. May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to **II G.2** of this section, may pay the cost that the parent otherwise would be required to pay; and
 - c. May not use a child's benefits under a public insurance program if that use would -

- i. Decrease available lifetime coverage or any other insured benefit;
- ii. Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
- iii. Increase premiums or lead to the discontinuation of insurance; or
- iv. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

F. The Arkansas Department of Education assures the following with regard to children with disabilities who are covered by private insurance -

- 1. With regard to services required to provide FAPE to an eligible child under this part, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with 34 CFR 300.500(b)(1).
- 2. Each time the public agency proposes to access the parent's private insurance proceeds, it must -
 - a. Obtain parent consent in accordance with **II F.1** of this section; and
 - b. Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

G. The Arkansas Department of Education assures the following with regard to the use of Part B funds -

- 1. If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this party, to ensure FAPE the public agency may use its Part B funds to pay for the service.
- 2. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

H. The Arkansas Department of Education assures the following with regard to proceeds from public or private insurance -

- 1. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

2. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provision in 34 CFR 300.154 and 300.231.
- I. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

Since 1983, the Arkansas Department of Education has developed and implemented, in cooperation with other agencies and entities, cooperative administrative agreements. These agreements between the Director of the ADE and chief officials of other agencies serving children with disabilities provide assurance of compliance with the policies, procedures and standards issued by the State Board of Education for the implementation of Ark. Code Ann. 6-41-202 through 6-41-223 (1997-98 and Act 391 of 1999) and IDEA.

These agreements are periodically reviewed to improve the scope and clarity of roles and responsibilities for implementing provision of special education and related services to children with disabilities in Arkansas.