

PROCEDURAL SAFEGUARDS

I. STATE POLICY

Arkansas Code Annotated 6-41-207 states, in relevant part: "(e) The board, in keeping with federal requirements, is designated as the agency having general educational supervision over public agencies which provide educational services to children with disabilities as defined in this subchapter, [The Children with Disabilities Act of 1973], to ensure that each public agency complies with state and federal regulations pursuant to the education of children with disabilities." (See Attachment 2 - Statutes.)

II. STATE PROCEDURES

The Arkansas Department of Education ensures that procedural safeguards required by 34 CFR 300.500 through 300.529 are met and implemented by each public agency. This includes a requirement that each public agency provide to parents from the point of student referral, or any time upon request, a copy of the procedural safeguards (rights). The SEA implements the following procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for children with disabilities served by the public agency.

- A. The issuance of detailed rules and regulations to be followed by local education agencies, educational services agencies and other public agencies in the location, identification, evaluation and provision of free appropriate public education to children with disabilities, 3 to 21 years of age, including the provision of procedural safeguards. (See Attachment 1, Sections 8.00, 9.00, 10.00, 11.00)
- B. The transmittal of all policies, procedures and standards referenced in item one (1) above to all LEAs and other agencies serving children with disabilities in Arkansas.
- C. The development and implementation of a series of administrative agreements between the Director of the Arkansas Department of Education and the chief officials of other agencies serving children with disabilities which assure 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 (1197-98 and Act 391 of 1999).
- D. The operation of a state and federal grants-and-aids program to local school districts and state-operated programs, which requires the following written agreements and assurances in the application prior to approval for receipt of funds.
 1. "Statement of Intent: This application is submitted in fulfillment of Ark. Code Ann. 6-41-202, et seq. and Section 614 (a) of IDEA, and the rules and regulations promulgated by the Arkansas State Board of Education which are applicable to those two sections. Upon approval by the Arkansas Department of Education, Special Education office, this

document shall certify the school district's authority to expend state and federal funds for the education of children with disabilities in accordance with the assurances, budget and program of services set forth herein. On this date the district has adopted "*Special Education and Related Services: Procedural Requirements and Program Standards* (ADE, 2000), and *Special Education Eligibility Criteria and Program Guidelines for Children with Disabilities, Ages 3-21* (ADE, 2000), as requirements for the administration of the special education program."

2. "The applicant assures that it has adopted and implemented state policies and procedures set forth in *Special Education and Related Services: Procedural Requirements and Program Standards* (ADE, 2000) regarding "Procedural Safeguards."
 3. "The applicant agrees to implement *Special Education and Related Services: Procedural Requirements and Program Standards* (ADE, 2000) to ensure that it provides special education services to enable children with disabilities to participate in regular educational programs and that each child has a properly developed individualized education program."
- E. The implementation of systematic monitoring and evaluation by the ADE of educational services to children with disabilities in Arkansas, including the provision of procedural safeguards to all such children.
- F. Specific provisions pertaining to Procedural Safeguards are set out in Attachment 1, *Special Education and Related Services: Procedural Requirements and Program Standards* (ADE, 2000), at the following cites:
1. General responsibility of public agencies; definitions:
§ 9.01
 2. Opportunity to examine records; parent participation in meetings:
§ § 9.02 - 9.03
 3. Independent educational evaluation:
§ 9.03
 4. Prior notice by the public agency; content of notice:
§ 9.04
 5. Procedural safeguards notice:
§ 9.05
 6. Parental consent:
§ 9.06; Appendix A, Required Forms, "Information Regarding Consent."
 7. Mediation:
§ 10.01.9; 10.01.10
 8. Impartial due process hearing; parent notice:
§ § 10.01.3; 10.01.5; 10.01.6; 10.01.7; 10.01.9; 10.01.10
 9. Impartial hearing officer:

§ 10.01.18

- 10.** Hearing rights:
§ § 10.01.11; 10.01.12; 10.01.13
- 11.** Finality of decision; appeal; impartial review:
Not applicable to Arkansas
- 12.** Timelines and convenience of hearings and reviews:
§ § 10.01.14; 10.01.15
- 13.** Civil action:
§ 10.01.38 and Section VII **G** of Annual State Application
- 14.** Attorneys' fees:
Referenced in Section VII **H** of Annual State Application
- 15.** Child's status during proceedings:
§ 10.01.39
- 16.** Surrogate parents:
§ § 15.01 - 15.05
- 17.** Transfer of parental rights at age of majority:
§ § 9.07.1.1 - 9.07.1.5
- 18.** Change of placement for disciplinary removals:
§ 11.01
- 19.** Authority of school personnel
§ § 11.03.1 - 11.03.7
- 20.** Authority of hearing officer:
§ 11.04
- 21.** Determination of setting:
§ 11.05
- 22.** Manifestation determination review:
§ § 11.06.1 - 11.06.6
- 23.** Determination that behavior was not manifestation of disability:
§ § 11.07.1 - 11.07.3
- 24.** Parent appeal:
§ § 11.08.1 - 11.08.2
- 25.** Placement during appeals:
§ § 11.09.1 - 11.09.3

- 26.** Protections for children not yet eligible for special education and related services:
§ § 11.10.1 - 11.10.4
 - 27.** Expedited due process hearings:
§ § 11.11.1 - 11.11.4
 - 28.** Referral to and action by law enforcement and judicial authorities:
§ 11.12
- G.** The Arkansas Department of Education assures that any party aggrieved by the findings and decision made under 34 CFR 300.507 or 300.520 - 300.528 who does not have the right to an appeal under 34 CFR 300.510 (b), and any party aggrieved by the findings and decision under 34 CFR 300.510 (b), has the right to bring a civil action with respect to the complaint presented pursuant to 34 CFR 300.507. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
- 1.** In any action brought under this part, the court -
 - a.** Shall receive the records of the administrative proceedings;
 - b.** Shall hear additional evidence at the request of a party; and
 - c.** Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.
 - 2.** The district courts of the United States have jurisdiction of actions brought under Section 615 of the Act without regard to the amount in controversy.
 - 3.** Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under 34 CFR 300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.
- H.** The following assurance is given by the Arkansas Department of Education regarding Attorney's Fees –
- 1.** Each public agency shall inform parents that in any action or proceeding brought under Section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.
 - 2.** Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under Section 615 of the Act and subpart E of this part. The previous statement does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under Section 615 of the Act.

3. A court awards reasonable attorney's fees under Section 615(i)(3) of the Act consistent with the following:
 - a. Fees awarded under Section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind of quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.
 - b. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if –
 - i. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
 - ii. The offer is not accepted within 10 days; and
 - iii. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
4. Attorney's fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in 34 CFR 300.506 that is conducted prior to the filing of a request for due process under 34 CFR 300.507 – 300.528.
5. Notwithstanding **G3b** of this Section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
6. Except as provided in **H7** of this Section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that -
 - a. The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
 - b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; or
 - c. The time spent and legal services furnished were excessive.
 - d. The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with 34 CFR 300.507(c).

7. The provisions of **H6** of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.
- I. Each public agency shall provide to parents a copy of the "Complaint Procedures of the State" in compliance with 34 CFR 300.660 – 300.662. (See Attachment 1, Section 12)
- J. The Arkansas Department of Education ensures that it shall meet the requirements set out in 34 CFR 300.506 pertaining to Mediation in the following manner:
 1. 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.
 2. The State shall assign mediators on a random (e.g., a rotation) basis from the list described in item 1 above. However, in the event that a mediator is not selected in the manner previously described, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.
 3. The State shall bear the cost of the mediation process, including the costs of meetings to encourage the use of mediation as described in 34 CFR 300.506(d).
 4. An individual who serves as a mediator under this part may not be an employee of any LEA or State agency described under 34 CFR 300.194 (agencies other than the SEA). Further, the individual may not be an employee of the SEA if it is providing direct services to a child who is the subject of the mediation process. Any individual who serves as a mediator must not have a personal or professional conflict of interest.
 5. The State has established procedures to afford an opportunity for parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center in the State, as established under provisions of the IDEA. The purpose of the meeting shall be to explain the benefits of the mediation process and encourage the parents to use the process.