

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 1

CHILD FIND

I. General Child Find

- A. Each local education agency (LEA) is responsible for locating, identifying and evaluating all children with disabilities from birth to twenty-one within its jurisdiction that need early intervention, early childhood special education, or special education and related services.
- B. The LEA must identify all children with disabilities, regardless of the severity of their disabilities, including children who are:
 - 1. Highly mobile, including migrant children;
 - 2. Homeless or a ward of the State;
 - 3. Suspected of having a disability even though they are advancing from grade to grade;
 - 4. Home schooled;
 - 5. Attending a private school located within the jurisdiction of the school district;
 - 6. Attending a charter school that is a public school of the LEA or;
 - 7. Below the age of compulsory school attendance.

Citations:

34 C.F.R. § 300.111

Code Ark. R. 005.18.3-3.01.1

II. Child Find Activities

- A. The LEA's child find must be published or announced in newspapers or other media with local circulation adequate to notify parents throughout the LEA's jurisdictions.
- B. Each local educational agency must develop and maintain a written child find plan outlining and documenting the systematic and continuous efforts the local educational agency will undertake to meet its responsibilities including, but not limited to;
 - 1. Initiation of a campaign of public awareness; and
 - 2. Procedures for the conduct of routine school screening.

- C. Confidentiality: The collection and use of data to meet the requirements of this part are subject to the confidentiality requirements
- D. The state education agency (SEA) will make available brochures relative to children with disabilities from birth to twenty-one (21) years of age, for distribution by LEAs, hospitals, medical offices, and other facilities that serve children with disabilities.

Citations:

34 C.F.R. § 300.111

Code Ark. R. 005.18.3-3.04

Code Ark. R. 005.18.3-3.03

Code Ark. R. 005.18.3-3.01.3

III. Child Find and Private School Students with Disabilities

- A. The LEA's child find process must apply to children, including those children who are residents of another state, enrolled by their parents in private schools, located within the boundaries of the school District.
- B. The District's child find activities for parentally-placed private school students must be similar to, and completed within a comparable time period, as child find activities for students in the LEA's public schools.
- C. The LEA must not include the cost of conducting child find activities for parentally-placed private school students, including individual evaluations, in determining whether it has spent a proportionate share of its federal IDEA funds on parentally-placed private school students with disabilities.
- D. The LEA must consult with private school representatives and parents of private school and home school students with disabilities regarding the following:
 - 1. How parentally-placed private school children suspected of having a disability can participate equitably;
 - 2. How parents, teachers, and private school officials will be informed of the child find process;
 - 3. How the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities was calculated;
 - 4. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities; and
 - 5. How the LEA disagrees with the views of the private school officials on the provision of services or the types of services, the LEA will provide the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through contract.

- E. The LEA's child find process for parentally-placed private school students must ensure the equitable participation of parentally-placed private school students with disabilities and an accurate count of those students.

Citations:

34 C.F.R. § 300.111

34 C.F.R. § 76.651(a)

Code Ark. R. 005.18.3-3.02.2

Code Ark. R. 005.18.14-14.02

IV. Child Find and Home-Schooled Children with Disabilities

- A. Eligible children with disabilities identified under the IDEA, in home school settings, shall be given the same consideration afforded to students in private school settings for the consideration for and provision of special education services.

Citations:

Ark. Code. Ann. §6-15-507(a)(2)

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 2

FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

I. Provision of FAPE

- A. Each LEA must ensure that all children with disabilities between three (3) and twenty-one (21) years of age within its jurisdiction, have the availability of FAPE, including:
 - 1. Children with disabilities who need special education and related services, even if the child has not failed or been retained in a course or grade or is advancing from grade to grade;
 - 2. Children with disabilities who have graduated from high school but have not been awarded a regular diploma; and
 - 3. Children with disabilities who have been suspended or expelled in accordance with special education discipline provisions and district policy.
 - 4. Who reach age 21 before the end of the school year. These students remain eligible until the end of the school year in which they reach 21.
- B. The services provided to a child with disabilities must address all of the child's identified special education and related service needs.
- C. The services and placement needed by each child with a disability to receive FAPE must be based of the child's unique needs and not the child's disability.
- D. Public agencies in the State of Arkansas may use whatever state, local, federal, and private sources of support are available in the State to meet the requirements of this part. Nothing herein relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. Public agencies must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.
- E. LEAs are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c), including medication to affect or alter thought processes, mood or behavior as a condition of attending school, receiving an evaluation to determine eligibility for early childhood special education or special education, or receiving special education services.
- F. If the IEP Team determines that placement in a public or private residential program is necessary to provide FAPE, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Citations:

34 C.F.R. § 300.101
34 C.F.R. § 300.102
34 C.F.R. § 300.103
34 C.F.R. § 300.104
34 C.F.R. § 300.174
Code Ark. R. 005.18.5-5.01
Code Ark. R. 005.18.5-5.02
Code Ark. R. 005.18.5-5.03
Code Ark. R. 005.18.5-5.13
Code Ark. R. 005.18.5-5.14
Code Ark. R. 005.18.13-13.02

II. Early Intervention Programs

- A. Transition from the Early Intervention Program (Part C) to the Early Childhood Special Education Program will occur upon the child's third birthday
- B. A child with disabilities can enter an Early Childhood Special Education Program provided by or in conjunction with an educational service agency/local education agency (LEA) provided that he is an eligible child with disabilities under the ADE's eligibility criteria for preschoolers with disabilities
- C. The pre-transitional process will be initiated by the sending agency (Part C agency) ninety (90) calendar days prior to the child's third birthday
- D. Upon receipt of notice of a child's impending transition from the Early Intervention Program to the Early Childhood Special Education Program, a transition team will meet to define the activities to take place throughout the transitional process, the time frames in which they will occur and the person(s) responsible for carrying out these activities, consistent with required due process.
- E. The Department of Human Services (DHS), Division of Developmental Disabilities Services (DDS) and the Arkansas Department of Education (ADE) are obligated to implement and adhere to the inter-agency agreement that outlines the transition process and procedures as jointly developed by the ADE and DHS/DDS.

Citations:

34 C.F.R. § 300.124
34 C.F.R. § 300.154
Code Ark. R. 005.18.21-21.01.2

III. Early Childhood Programs

- A. Transition from the Early Childhood Special Education Program to the school-age program will occur upon the child attaining the age of five (5) and becoming eligible for kindergarten enrollment

- B. A child with disabilities exiting the Early Childhood Special Education Program may receive special education and related services in the school-aged program only if the child is identified to be a child with a disability under the ADE's eligibility criteria governing school-age programs
- C. The pre-transitional process will begin in January prior to the child enrolling in kindergarten
- D. Beginning in January of each year, the Early Childhood Special Education Program will notify each LEA of the preschool children with disabilities in the LEA's jurisdiction that will be eligible to enter kindergarten the following school year, in order to begin transition planning for each child.
- E. Upon receipt of notice of a child's impending transition from the Early Childhood Special Education Program to the school-age program, a transition team will meet to define the activities that will take place throughout the transition process, the time frames in which these activities must be accomplished, and the person(s) responsible for carrying out these activities.
- F. Responsibility for implementing the transition guidelines established by the ADE is jointly shared by the Early Childhood Special Education Program and the LEA.

Citations:

34 C.F.R. § 300.124

Code Ark. R. 005.18.21-21.02.2

IV. Graduation

- A. A student with disabilities who graduates with a regular high school diploma is no longer entitled to receive FAPE.
 - 1. The term "regular high school diploma" does not include an alternative degree that is not fully aligned with states academic standards, such as the General Education Development Credential (GED).
- B. The LEA must provide prior written notice a reasonable time before a student with a disability graduates with a regular high school diploma.
- C. The District is not required to conduct a reevaluation before terminating eligibility due to graduation with a regular high school diploma.

Citations:

34 C.F.R. § 300.102

Code Ark. R. 005.18.5-5.13

Code Ark. R. 005.18.7-7.05.2

V. Assistive Technology

- A. The District makes assistive technology devices or assistive technology services, or both, available to a child with a disability if required as a part of the child's special education, related services or supplementary aids and services.

- B. For children who require assistive technology to communicate, assessment is an ongoing process. Initial assessment can only provide good baseline information and allow the assessment team to make reasonable hypotheses about where and how to begin intervention. The goals of communication assessment are to enable the team to:
 - 1. Determine the current and future communication needs of the child and those interacting with him/her;
 - 2. Identify the communication capabilities of the child and the child's partners, as well as the characteristics of his/her environments and tasks;
 - 3. Reach a consensus on communication goals and prioritize these goals;
 - 4. Develop and revise plans that allow these goals to be implemented and that increase the child's involvement in activities and interactions; and
 - 5. Monitor the success and/or failure of intervention approaches, including the use of assistive technology.
- C. The LEA must make available assistive technology devices purchased by the school for use in a child's home or in other settings when the child's IEP team determines that the child needs access to those devices to receive a free appropriate public education.
- D. District policy governs:
 - 1. Liability, if any, for the loss or damage of assistive technology devices; and,
 - 2. Transfer of an assistive technology device when a child with a disability using the device ceases to attend school in the District that purchased the device. "Transfer" means the process by which a school District that has purchased an assistive technology device may sell, lease or loan the device for the continuing use of a child with a disability who is ceasing to attend school in the District.

Citations:

34 C.F.R. § 300.105

Code Ark. R. 005.18.5-5.08.1

Code Ark. R. 005.18.5-5.08.2

Code Ark. R. 005.18.5-5.08.4

VI. Accessible Materials

- A. The state education agency (SEA) has adopted the National Instructional Materials Accessibility Standards (NIMAS)
- B. The SEA has entered into an agreement with the National Instructional Materials Access Center (NIMAC) to coordinate the delivery of instructional materials.

- C. LEAs must assess any child whose visual impairment adversely affects her/his educational performance to determine the need for accessible instructional materials and for the purpose of providing instructional materials to blind students or students with print disabilities for students who are determined eligible.

Citations:

34 C.F.R. § 300.172

Code Ark. R. 005.18.29-29.02

Code Ark. R. 005.18.29-29.06

VII. Extended School Year Services (ESY)

- A. Each LEA must provide extended school year services if the child's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE. Extended school year services means special education and related services that meet the standards of the SEA and are provided to a child with a disability beyond the normal school year in accordance with the child's IEP at no cost to the parents of the child.
- B. The purpose of ESY services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behaviors.
- C. ESY services for eligible children with disabilities should not be confused with traditional summer school or with summer services typically made available to all children. ESY services provide a different focus from general summer school programs.
- D. Determination of the need for ESY services must be the result of a thorough analysis by an IEP team of formal and informal assessment data, taking into consideration a variety of sources of data, including but **NOT** limited to regression and recoument data.
- E. The District may not limit ESY services to particular categories of disability or limit the type, amount, or duration of those services.

Citations:

34 C.F.R. § 300.106

Code Ark. R. 005.18.5-5.09

Code Ark. R. 005.18.19-19.04.1

Code Ark. R. 005.18.19-19.04.2

Code Ark. R. 005.18.19-19.04.10

Code Ark. R. 005.18.19-19.04.12

Code Ark. R. 005.18.19-19.06-08

VIII. Nonacademic Services

- A. Each LEA must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

- B. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.
- C. The LEA ensures that hearing aids worn in school by children with hearing impairments, including deafness, and external components of surgically implanted medical devices are functioning properly.
- D. The LEA must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of each individual child.

Citations:

34 C.F.R. § 300.113

34 C.F.R. § 300.107

Code Ark. R. 005.18.5-5.06

IX. Physical Education

- A. The LEA must make physical education services, specially designed if necessary, available to every child with a disability receiving FAPE, unless the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade.
- B. The LEA must provide the opportunity to each child with a disability to participate in the regular physical education program available to nondisabled children unless the child needs specially designed physical education as prescribed in the child's IEP.
- C. If specially designed physical education is included in the child's IEP, the LEA must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- D. If the child with a disability is enrolled full time in a separate facility, the LEA must ensure that the child receives appropriate physical education services.

Citations:

34 C.F.R. § 300.108

Code Ark. R. 005.18.5-5.07

X. Charter Schools

- A. Children with disabilities who attend public charter schools and their parents retain all rights under IDEA.
- B. If the public charter school is an LEA, that charter school is responsible for ensuring that all students with disabilities attending the public charter school are identified and provided services

to meet each student's unique needs, unless State law assigns that responsibility to some other entity.

- C. Children with disabilities attending charter schools converted by the local District shall be provided all appropriate special education and related services in the same manner and in accordance with applicable laws and rules governing the District's provision of services to children with disabilities in its other schools.

Citations:

34 C.F.R. § 300.101

Code Ark. R. 005.18.5-5.11

XI. FAPE for Individuals Convicted and Incarcerated as Adults

- A. FAPE for individuals with disabilities ages 18 to 21 convicted and incarcerated as adults in an adult correctional facility is limited to those who, in their last educational placement, including in juvenile correctional facilities before their incarceration in the adult correctional facility:
 - 1. Were identified as being a child with a disability defined in accordance with Arkansas law; and
 - 2. Had an individualized education program (IEP)
- B. The following requirements do not apply to individuals with disabilities, ages 14 to 18, who are convicted as adults under state law and incarcerated in adult prisons :
 - 1. The requirements relating to participation of children with disabilities in statewide and district wide assessments; and
 - 2. The requirements related to transition planning and transition services for students whose eligibility for services will end, because of their age, before their release.
- C. The IEP team may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. Least restrictive environment requirements do not apply with respect to these modifications.

Citations:

34 C.F.R. § 300.102

34 C.F.R. § 300.607

Code Ark. R. 005.18.5-5.10

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 3

EVALUATION AND ELIGIBILITY

I. LEA Responsibility for Evaluation and Eligibility Determination

- A. Each LEA is responsible for evaluating and determining eligibility for special education and related services for children with disabilities between three (3) and twenty-one (21) years of age within its jurisdiction.
- B. Upon completion of the evaluation and eligibility determination, the LEA must provide the parent or eligible child a copy of the evaluation report and the documentation of determination of eligibility at no cost. The evaluation report describes and explains the results of the evaluation.
- C. The LEA must conduct a comprehensive evaluation or reevaluation before:
 - 1. Determining that a child has a disability as defined under IDEA;
 - 2. Determining that a child continues to have a disability as defined under IDEA;
 - 3. Changing the child's eligibility;
 - 4. Determining whether a child needs special education and related services,
 - 5. Determining whether a child continues to need special education and related services;
 - 6. Terminating the child's eligibility for special education, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate public education.
- D. Before conducting any evaluation or reevaluation, the LEA:
 - 1. Must provide prior written notice to the parent(s) that describes any evaluation procedures the agency proposes to conduct and,
 - 2. Must obtain informed written consent for the evaluation.

Citations:

34 C.F.R. § 300.122

34 C.F.R. § 300.301-306

Code Ark. R. 005.18.6-6.01-09

Code Ark. R. 005.18.7-7.01-05

II. Request and Procedures for Initial Evaluation

- A. Consistent with its child find and parent consent obligations, the each LEA must respond to requests initiated by a parent or public agency for an initial evaluation to determine if a child is a child with a disability.
- B. Within seven (7) days of receiving a referral from a parent or public agency for an initial evaluation, the LEA must schedule a referral conference to review all existing information related to the child and determine whether an initial evaluation will be conducted.
 - 1. The referral conference must be attended by at least three (3) persons, including the principal or a designee and one (1) teacher directly involved in the education of the child.
 - 2. If the LEA refuses an evaluation requested by the parent(s), the LEA must provide the parent(s) with prior written notice of its refusal to conduct an evaluation.
 - 3. The initial evaluation must consist of procedures
 - a. To determine if the child has a disability as defined under IDEA; and,
 - b. To identify the child's educational needs.
- C. The LEA must conduct the initial evaluation within 60 calendar days of receiving parental consent for evaluation, unless the parent repeatedly fails or refuses to produce the child for the evaluation.

Citations:

34 C.F.R. § 300.301

Code Ark. R. 005.18.4-4.01-06

Code Ark. R. 005.18.6-6.01

Code Ark. R. 005.18.6-6.03

III. Reevaluation

- A. The LEA must conduct a reevaluation:
 - 1. When the IEP team determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation;
 - 2. When the child's parent(s) or teacher(s) requests a reevaluation; and
 - 3. At least every three (3) years, unless the parent and the LEA agree that a reevaluation is unnecessary.
- B. The LEA must not conduct a reevaluation more than once a year, unless the parent and LEA agree otherwise.

- C. Informed parental consent must be obtained before conducting any reevaluation of a child with a disability.
 - 1. Review of existing data as part of an evaluation or reevaluation does not require parental consent.

Citations:

34 C.F.R. § 300.303

Code Ark. R. 005.18.7-7.01

Code Ark. R. 005.18.9-9.06

IV. Evaluation Procedures

- A. The LEA assess the child in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- B. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.
- C. The evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that assist in determining:
 - 1. Whether the child has a disability as defined under IDEA; and,
 - 2. The content of the child's IEP.
- D. The LEA must ensure that assessments and other evaluation materials, including those tailored to assess specific areas of educational need, used to assess a child:
 - 1. Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - 2. Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
 - 3. Have been validated for the specific purpose for which they are used,
 - 4. Are administered by trained and knowledgeable personnel; and,
 - 5. Are administered in accordance with any instructions provided by the producer of the assessments.
- E. The Lea must ensure that if a test is selected and administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting

the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

- F. The LEA must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- G. The LEA must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

Citations:

34 C.F.R. § 300.304

Code Ark. R. 005.6-6.04

V. Requirements If Additional Evaluation Data Are Not Needed to Determine Eligibility

- A. If the child's IEP or IFSP team determines that no additional data are needed to determine whether the child is or continues to be a child with a disability, and to determine the child's educational and developmental needs, the District provides prior written notice of that decision, the reasons for it, and the right of parents to request an assessment.
- B. When the IEP or IFSP team determines that no additional data are needed to determine eligibility, the District does not conduct an assessment of the child unless requested to do so by the parents.

Citations:

34 C.F.R. § 300.305(a)

Code Ark. R. 005.6-6.05

VI. Evaluation Procedures for Transfer Students

When a child with disabilities transfers from one school district to another school district in the same school year, the District coordinates with the previous school district to complete any pending assessments as quickly as possible.

Citations:

34 C.F.R. § 300.323(e) and (f)

Code Ark. R. 005.18.8-8.03.3 and 4

VII. Eligibility Determination

- A. Once evaluation is completed, the LEA must, within 30 days, designate an eligibility team to determine whether the child is eligible for special education services.
- B. The eligibility team must include:
 - 1. Two (2) or more professionals, one of whom will be knowledgeable and experienced in evaluating and teaching students with the suspected disability; and,

2. The student's parent(s).
3. For consideration of eligibility in the area of specific learning disabilities, the eligibility team must include:
 - a. A group of qualified professionals and the parent;
 - b. The child's regular classroom teacher or, if the child does not have a regular classroom teacher, a regular classroom teacher qualified to teach a child of his or her age, or, for a child of less than school age, a preschool teacher; and,
 - c. A person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or other qualified professional.
- C. In interpreting evaluation data the eligibility team carefully considers and documents information from a variety of sources, including but not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior and all required elements of the evaluation.
- D. Each eligibility team must prepare a written eligibility statement and that statement must include:
 1. Identification of the evaluation data considered in determining the child's eligibility, including the required evaluation components for the disability under consideration;
 2. A determination of whether the child meets the minimum evaluation criteria for one or more of the disability categories in Arkansas Administrative Rule;
 3. A determination of whether the primary basis for the suspected disability is:
 - a. A lack of appropriate instruction in reading (including the essential components of reading) or math; or,
 - b. Limited English proficiency;
 4. A determination of whether the child's disability has an adverse impact on the child's educational performance;
 5. A determination of whether, as a result of the disability, the child needs special education services;
 6. The signature of every team member and an indication of whether each agrees with the eligibility determination;
 7. For a child suspected of having a specific learning disability, the team's written report includes additional specific documentation as required by Arkansas Administrative Rule.
- E. The eligibility team does not find a child eligible as a child with a disability if:

1. The determinant factor for that eligibility decision is:
 - a. Lack of appropriate instruction in reading, including the essential components of reading instruction, or lack of appropriate instruction in math; or,
 - b. Limited English proficiency; and,
 - c. The child does not otherwise meet the eligibility criteria found in Arkansas Administrative Rule for the category(ies) of disability under consideration.
- F. The eligibility team can find a child eligible if the child has a disability and needs special education and related services, even though the child is advancing from grade to grade.
- G. A child may have disabilities in more than one disability category, but the eligibility team needs to find the child eligible under only one category. However, the LEA must evaluate the child in all areas related to the suspected disability or disabilities, and the child's IEP must address all of the child's special education needs.

Citations:

34 C.F.R. § 300.306

Code Ark. R. 005.18.6-6.06

VIII. Additional Procedures for Evaluating Children with Specific Learning Disabilities.

- A. Criteria for determining the existence of a specific learning disability.
 1. An LEA must use the state criteria in determining whether a child has a specific learning disability.
 2. The IEP team may determine that a child has a specific learning disability if:
 - a. The child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards;
 - i. Oral expression;
 - ii. Listening comprehension;
 - iii. Written expression;
 - iv. Basic reading skill;
 - v. Reading fluency skills;
 - vi. Reading comprehension;
 - vii. Mathematics calculation;
 - viii. Mathematics problem solving.

- b. The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas, when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.
- 3. The eligibility team may not identify a child as having a specific learning disability if the findings are primarily the result of-
 - a. A visual, hearing or motor disability;
 - b. Mental retardation;
 - c. Emotional disturbance
 - d. Cultural factors;
 - e. Environmental or economic disadvantage;
 - f. Limited English proficiency.
- B. The LEA must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the procedural time frames if:
 - a. Prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, and
 - b. Whenever a child is referred for an evaluation.
- C. For a child suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of-
 - a. Whether the child has a specific learning disability;
 - b. The basis for making the determination
 - c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - d. The educationally relevant medical findings, if any;
 - e. Whether the child does not achieve adequately for the child's age or to meet State-approved grade-level standards; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, State-approved grade level standards or intellectual development;
 - f. The determination of the group concerning the effects of a visual, hearing or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or

economic disadvantage; or limited English proficiency on the child's achievement level;
and

- g. If the child has participated in a process that assesses the child's response to scientific, research-based intervention including the instructional strategies used and the student-centered data collected; and the documentation that the child's parents were notified about:
 - a. The state educational agency's (SEA's) policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - b. Strategies for increasing the child's rate of learning; and
 - c. The parents' right to request an evaluation.

Citations:

34 C.F.R. § 300.307-311

Code Ark. R. 005.18.6-6.07

IX. Additional Procedures for Evaluating Children with Emotional Disturbance

- A. For students suspected of having emotional disturbance, a clinical diagnosis must be made by either a licensed psychologist or psychiatrist. A clinical diagnosis alone does not qualify a student to receive special education services.
- B. The IEP team shall determine the adverse effect on educational performance of the emotional disturbance and the corresponding need for special education and related services.

Citations:

Code Ark. R. 005.6-6.08

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 4

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

I. General IEP Information

- A. Each LEA must ensure that an IEP is in effect for each eligible student:
 - 1. Before special education and related services are provided to a student, and,
 - 2. At the beginning of each school year for each student with a disability for whom the public agency is responsible.
- B. The LEA must implement all of the special education and related services, including program modifications, supports, and/or supplementary aids and services, as identified on the IEP.
- C. The IEP must be accessible to each of the student's regular education teacher(s), the student's special education teacher(s), and the student's related services provider(s), and other service provider(s) responsible for implementing the IEP.
- D. The LEA must inform all teachers and service providers of their specific responsibilities for implementing the IEP, accommodations, modifications, and/or supports that must be provided for the student to fully implement the IEP, including any amendments made to the IEP.
- E. If a child with a disability, who had an IEP that was in effect in a previous LEA in the same state, transfers to a new LEA in the same state, and enrolls in a new school within the same school year, the new LEA, in consultation with the parents, must provide FAPE to the child including services comparable to those described in the child's IEP from the previous LEA, until the new LEA either –
 - 1. Adopts the child's IEP from the previous LEA; or
 - 2. Develops, adopts, and implements a new IEP
- F. If a child with a disability, who had an IEP that was in effect in a previous LEA in another state, transfers to a LEA in a new state, and enrolls in a new school within the same school year, the new LEA, in consultation with the parents, must provide the child with FAPE including services comparable to those described in the child's IEP from the previous LEA, until the new LEA –
 - 1. Conducts an evaluation, if determined to be necessary by the new LEA; and
 - 2. Develops, adopts, and implements a new IEP, if appropriate.

Citations:

34 C.F.R. § 300.122

34 C.F.R. § 300.320-328

Code Ark. R. 005.18.8-8.01-10

II. IEP Team

- A. IEP Team members must include the following:
1. The student's parent(s);
 2. The student, when appropriate;
 3. At least one of the student's special education teachers or, if appropriate, at least one of the student's special education providers;
 4. At least one of the student's regular education teachers, if the student is or may be participating in the regular education environment. If the student has more than one regular education teacher, the LEA may determine which teacher or teachers will participate.
 5. A representative of the LEA who is qualified to provide or supervise the provision of special education and is knowledgeable about the general education curriculum and about available resources. The representative of the LEA has the authority to commit agency resources, and must ensure that all services identified in the IEP are delivered.
 6. An individual who can interpret the instructional implications of evaluation results; and
 7. At the discretion of the parent or LEA, other persons who have knowledge or special expertise regarding the student.
- B. Student participation:
1. If the purpose of the IEP meeting includes consideration of postsecondary goals and transition services necessary to achieve those goals, the LEA must include the student in the IEP team meeting.
 2. If the purpose of the IEP meeting includes consideration of postsecondary goals and transition services, and the student does not attend the meeting, the LEA must take other steps to ensure the student's preferences and interests are considered.
- C. Participation by other agencies:
1. With consent of the parent or a child who has reached the age of majority, and where appropriate, the LEA must invite a representative of any other agency that is likely to be responsible for providing or paying for transition services if the purpose of the IEP meeting includes the consideration of transition services.

Citations:

34 C.F.R. § 300.321

Code Ark. R. 005.18.8-8.05

III. IEP Meetings

- A. The LEA must conduct an IEP meeting for each eligible student periodically, but not less than once per year.
- B. At IEP meetings, the IEP team reviews and revises the IEP, if necessary, to address any lack of expected progress toward annual goals and discuss new evaluation data or new information from the parent(s), the student's anticipated needs, and other matters.

C. The LEA and the parent may agree to amend or modify the student's current IEP without convening an IEP team meeting and instead may develop a written document to amend or modify the child's current IEP.

D. The LEA must provide notice of a IEP meeting a reasonable time, usually 14 days, prior to the scheduled date of the meeting. The parent has the right to waive this requirement.

E. If an agency, other than the LEA, fails to provide agreed upon transition services contained in the IEP, the LEA convenes an IEP meeting to plan alternative strategies to meet the transition objectives and, if necessary, to revise the IEP.

F. The LEA must provide prior written notice to the parent before implementing any changes to the IEP, unless the parent consents to immediate implementation.

Citations:

34 C.F.R. § 300.324(b)

Code Ark. R. 005.18.8-8.05

IV. Agreement for Nonattendance and Excusal

A. The parent may consent to excuse an IEP team member from attending an IEP meeting, in whole or in part, when the meeting involves a discussion or modification of the team member's area of curriculum or service.

B. If excusing an IEP team member whose area is to be discussed at an IEP meeting, the LEA must ensure that:

1. The parent consents in writing to the excusal; and
2. The team member submits written input to the parent(s) and other members of the IEP team before the meeting.

Citations:

34 C.F.R. § 300.321(e)

Code Ark. R. 005.18.8-8.05.5

V. IEP Team Considerations and Special Factors

A. In developing, reviewing, and revising the IEP, the IEP team must consider:

1. The strengths of the student and concerns of the parent for enhancing the education of the student;
2. The results of the initial or most recent evaluation of the student;
3. The academic, developmental, and functional needs of the student; and
4. As appropriate, the results of the student's performance on any general state or district-wide assessments.

B. In developing, reviewing, and revising the student's IEP, the IEP team must consider the following special factors:

1. The communication needs of the student; and,

2. The need for assistive technology services and/or devices.
- C. As appropriate, the IEP team must also consider the following special factors:
1. For a student whose behavior impedes his or her learning or that of others, strategies, positive behavioral intervention, and supports to address that behavior;
 2. For a student with limited English proficiency, the language needs of the student as those needs relate to the IEP;
 3. For a student who is blind or visually impaired, instruction in Braille and the use of Braille unless the IEP team determines (after an evaluation of reading and writing skills, needs, and appropriate reading and writing media, including evaluation of future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate;
 4. For a student who is deaf or hard of hearing, the student's language and communication needs, including opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
 5. Any device or service needed for the student to receive a Free Appropriate Public Education (FAPE).
- D. Beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:
1. Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training education, employment, and where appropriate, independent living skills; and
 2. The transition services (including courses of study) needed to assist the student in reaching those goals.
- E. At least one year before a student reaches the age of majority, the IEP must include a statement that the LEA has informed the student that all procedural rights will transfer at the age of majority.

Citations:

34 C.F.R. § 300.324

Code Ark. R. 005.18.8-8.01

VI. IEP Content

- A. In developing the IEP, the LEA must consider the student's strengths, the parent's concerns, the results of the initial or most recent evaluation, and the academic, developmental, and functional needs of the student.
- B. The LEA must ensure that IEPs for each eligible student include:
 1. A statement of the student's present levels of academic achievement and functional performance that:
 - a. Includes a description of how the disability affects the student's progress and involvement in the general curriculum;

- b. Describes the results of any evaluations conducted, including functional and developmental information
 - c. Is written in language that all IEP Team members, including parents, understand;
 - d. Is clearly linked to each annual goal statement.
2. A statement of measurable annual goals, including academic and functional goals, or for students whose performance is measured by alternate assessments aligned to alternate achievement standards, statements of measurable goals and short term objectives. The goals and, if appropriate, objectives:
 - a. Meet the student's needs that are present because of the disability, or because of behavior that interferes with the student's ability to learn, or impedes the learning of other students;
 - b. Enable the student to be involved in and progress in the general curriculum, as appropriate; and,
 - c. Clearly describe the anticipated outcomes, including intermediate steps if appropriate, that serve as a measure of progress toward the goal.
 3. A statement of the special education, related services, related services, supplementary aids and services that the LEA provides to the student.
 - a. The LEA bases special education and related services, modifications, and supports on peer-reviewed research to the extent practicable to assist students in advancing toward goals, progressing in the general curriculum, and participating with other students (including those without disabilities) in academic, nonacademic, and extracurricular activities .
 - b. Each statement of special education services, related or supplementary services, aids, modifications, or supports includes a description of the inclusive dates, amount or frequency, location, and who is responsible for implementation.
 4. A statement of the extent, if any, to which the student will not participate with nondisabled students in regular academic, nonacademic, and extracurricular activities.
 5. A statement of any individual modifications and accommodations in the administration of State or District-wide assessments of student achievement,
 - a. A student will not be exempt from participation in State or District-wide assessment, because of a disability unless the parent requests an exemption.
 - b. If the IEP team determines that the student will take an alternate assessment in any area instead of a regular State or District-wide assessment, a statement of why the student cannot participate in the regular assessment and why the alternate assessment selected is appropriate for the student.
 6. A statement describing how the LEA will measure student's progress toward completion of the annual goals and when periodic records on the student's progress toward the annual goals will be provided.

Citations:

34 C.F.R. § 300.160

VII. Extended School Year Services

- A. Each LEA must make extended school year (ESY) services available to all students for whom the IEP Team has determined that such services are necessary to provide a free appropriate public education (FAPE).
- B. ESY services are:
 - 1. Provided to a student with a disability in addition to the services provided during the typical school year;
 - 2. Identified in the student's IEP; and,
 - 3. Provided at no cost to the parent(s).
- C. The LEA must not limit consideration of ESY services to particular disability categories or unilaterally limit the type, amount, or duration of services.
- D. The LEA must provide ESY services to maintain the student's skills or behavior, but not to teach new skills or behaviors.
- E. The LEA's criteria for determining the need for extended school year services must include:
 - 1. Regression and recoupment time based on documented evidence and/or,
 - 2. If no documented evidence, then on predictions according to the professional judgment of the team.
 - 3. Regression and recoupment data shall not be the sole criteria for determining a student's need for ESY.
- F. "Regression" means significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services.
- G. "Recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services.

Citations:

VIII. Assistive Technology

- A. The LEA must ensure that assistive technology devices or assistive technology services, or both, are made available if they are identified as part of the student's IEP. These services and/or devices may be part of the student's special education, related services, or supplementary aids and services.

- B. On a case-by-case basis, the LEA will permit the use of school purchased assistive technology devices in the student's home or in other settings if the student's IEP team determines that the student needs access to those devices to receive a free appropriate public education.

Citations:

34 C.F.R. § 300.105

Code Ark. R. 005.18.5-5.08.1-2

IX. Incarcerated Youth

- A. For students with disabilities who are convicted as adults, incarcerated in adult correctional facilities, and otherwise entitled to FAPE, the following IEP requirements do not apply:
 - 1. Participation of students with disabilities in State and District-wide assessment; and,
 - 2. Transition planning and transition services, for students whose eligibility will end because of their age before they will be eligible to be released from the adult correctional facility based on consideration of their sentence and eligibility for early release.
- B. The IEP team may modify the student's IEP, if the State has demonstrated a bona fide security or other compelling interest that cannot be otherwise accommodated.

Citations:

34 C.F.R. § 300.324(d)(ii)

Code Ark. R. 005.18.5-5.10.4.2

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 5

LEAST RESTRICTIVE ENVIRONMENT (LRE)

I. Least Restrictive Environment

- A. To the maximum extent appropriate, students with disabilities, including children in public or private institutions or other care facilities, must be educated with students who are non-disabled; and,
- B. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment must occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Citations:

34 C.F.R. § 300.114

Code Ark. R. 005.18.13-13.01

II. Placement of the Student

- A. The placement decision for each eligible student must be:
 - 1. Made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options;
 - 2. Made in conformity with the Least Restrictive Environment requirements;
 - 3. Determined at least once annually;
 - 4. Based on the student's IEP; and
 - 5. As close as possible to the student's home.
- B. Each student must be educated in the school that he or she would attend if nondisabled, unless the student's IEP requires some other arrangement.
- C. A continuum of placement options must be made available to meet the needs of students with disabilities for special education and related services.
 - 1. The continuum includes instruction in regular classes (with special education and related services, and/or supplementary aids and services as identified on the IEP), special classes, special schools, home instruction, and instruction in hospitals and institutions.
 - 2. Placement options, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions are available to the extent necessary to implement the individualized education program for each student with a disability.

Citations:

34 C.F.R. § 300.115-116

Code Ark. R. 005.18.13-13.02-03

III. Nonacademic Settings

- A. An LEA must take steps, including providing the supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.
- B. Nonacademic and extracurricular services and activities include all those available to nondisabled students, and may include:
 - 1. Counseling services;
 - 2. Athletics;
 - 3. Transportation;
 - 4. Health services;
 - 5. Recreational activities;
 - 6. Special interest groups or clubs;
 - 7. Referrals to agencies that provide assistance to individuals with disabilities; and
 - 8. Employment of students.

Citations:

34 C.F.R. § 300.117

Code Ark. R. 005.18.13-13.04

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 6

DISCIPLINE

I. Disciplinary Change of Placement

A. Disciplinary removal of a student with a disability constitutes a change in the student's educational placement when:

1. The removal is for more than 10 consecutive school days; or
2. The removal is for more than 10 cumulative school days and constitutes a pattern of removals.

B. An LEA may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary change in placement.

Citations:

34 C.F.R. § 300.536

Code Ark. R. 005.18.11-11.01

II. Manifestation Determination

A. Within 10 days of any decision to initiate a disciplinary change in placement of a student with a disability, an LEA must convene a manifestation determination meeting.

B. The LEA must follow all required special education procedures for determining whether a student's conduct that led to a disciplinary removal from school was caused by, or had a direct and substantial relationship to the student's disability or was a direct result of An LEA's failure to implement the student's IEP.

Citations:

34 C.F.R. § 300.530(e)

Code Ark. R. 005.18.11-11.05

III. Disciplinary Removals for up to 10 School Days

A. An LEA may remove students with disabilities from their current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to

ten school days in a school year to the same extent, and with the same notice, for violation of a code of conduct as for students without disabilities. These removals are not considered a change in placement.

B. During disciplinary removals for up to 10 school days:

1. An LEA is not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time.
2. An LEA is not required to determine whether the student's behavior resulting in the disciplinary removal is a manifestation of the student's disability.

Citations:

34 C.F.R. § 300.536

34 C.F.R. § 300.530(e)

Code Ark. R. 005.18.11-11.01

Code Ark. R. 005.18.11-11.05

IV. Disciplinary Removals of More than 10 Cumulative School Days and Pattern of Removal

A. An LEA may remove students with disabilities from their current educational placement to an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten days in a school year to the same extent, and with the same notice as for students without disabilities, if the removals do not constitute a pattern. These removals do not constitute a change in placement.

B. In determining whether removals of additional periods of up to 10 school days constitute a pattern of removals, school personnel will consider, on a case-by-case basis:

1. Whether the behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
2. Additional factors such as the length of each removal, the total number of days of removal, and the proximity of removals to one another.

C. During removals of additional periods of up to 10 school days in a school year that do not constitute a pattern, the LEA must provide services that are necessary to enable the student to:

1. Continue to participate in the general education curriculum; and
2. Progress toward achieving the goals in the student's IEP;
3. In a location determines by the student's IEP team.

D. The determination regarding whether a series of removal constitutes a pattern is subject to review in an expedited due process hearing.

Citations:

34 C.F.R. § 300.536

34 C.F.R. § 300.530(e)

Code Ark. R. 005.18.11-11.01

Code Ark. R. 005.18.11-11.05

V. Removal to an Interim Alternative Educational Setting for Not More Than 45 Days by an LEA under Special Circumstances

A. An LEA may remove a student with disabilities from the student's current educational placement to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 school days in a school year for a drug or weapon violation, or for infliction of serious bodily injury, without regard to whether the behavior is a manifestation of the student's disability. This removal is considered a change in placement. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order such a removal.

B. For the purpose of determining a drug or weapon violation or serious bodily injury, an LEA must apply the following definitions:

1. **"Drug"** means an illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.
2. **"Drug violation"** means the use, possession, sale, or solicitation of drugs at school or a school function. The student must have knowledge of his or her use, possession, sale or solicitation.
3. **"Serious bodily injury"** means bodily injury, which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
4. **"Weapon"** means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that it does not include a knife with a blade of less than 2 ½ inches in length.
5. **"Weapon violation"** means possession of a weapon at school or at a school function.

C. On the date that An LEA decides to remove a student to an interim alternative educational placement because of a drug or weapon violation or for serious bodily injury, an LEA must notify the parent(s) of the decision and gives the parent(s) a Procedural Safeguards Notice.

D. Within 10 school days of any decision to remove the student to an interim alternative educational placement because of a drug or weapon violation or for serious bodily injury, the LEA must:

1. Convene a meeting to determine whether the behavior is a manifestation of the student's disability, and
2. Conduct, as appropriate, a functional behavior assessment, and develop a behavior intervention plan based on the functional behavior assessment that is designed to address the behavior so it does not recur.

Citations:

34 C.F.R. § 300.530

Code Ark. R. 005.18.11-11.03.5 and 7

VI. Interim Alternative Educational Setting

A. When a student with a disability is placed in an interim alternative educational setting, the setting:

1. Is determined by the student's IEP team; and
2. Enables the student to:
 - a. Continue to participate in the general education curriculum, although in another setting; and
 - b. Progress toward achieving the goals in the student's IEP; and

Citations:

34 C.F.R. § 300.531

Code Ark. R. 005.18.11-11.04.1

VII. Placement pending appeal

A. If a parent disagrees with the manifestation determination or any decision about placement related to the disciplinary removal and requests a due process hearing, the student will remain in the most recent educational setting prior to filing the due process complaint, pending the decision of the hearing officer, or until the end of the disciplinary removal, whichever is shorter, unless the parent and LEA agree to another placement pending the hearing.

Citations:

34 C.F.R. § 300.533

Code Ark. R. 005.18.11-11.05.4.1(B)

VIII. Conduct and Outcome of a Manifestation Determination

A. Within 10 school days of any decision to change the placement of a student with a disability for disciplinary reasons, an LEA must convene a manifestation determination meeting.

B. The team that determines whether a student's behavior that led to a disciplinary removal from school was caused by, or had a substantial relationship to the student's disability or was a direct result of the LEA's failure to implement the student's IEP, includes the parent(s), LEA representatives, and other relevant members of the IEP team, as determined by the parent and LEA.

1. The team must review all relevant student information, including the student's IEP, teacher observations, and information provided by the parent(s).

2. The team must conclude that the conduct in question is a manifestation of the student's disability if it determines the behavior was caused by, or had a direct and substantial relationship to, the child's disability, or if it was the direct results of the LEA's failure to implement the IEP.

C. Regardless of whether the behavior was a manifestation of the student's disability, an LEA may remove a student to an interim alternative educational setting for weapons or drug violations or for infliction of serious bodily injury for up to 45 days.

D. When Behavior is a Manifestation of Disability

1. If the team concludes that the behavior was a manifestation of the student's disability:

a. The LEA must not proceed with a disciplinary removal for more than 10 days.

b. The LEA must conduct a functional behavioral assessment and develop a behavior intervention plan to address the behavior that led to the disciplinary action. If the LEA has already conducted a functional behavior assessment or, if the student already has a behavior intervention plan regarding that behavior, the LEA must review, modify as necessary, and implement the plan to address the behavior.

c. An LEA may review and revise the student's IEP and placement through normal IEP and placement processes.

d. An LEA may enter into an agreement with the parent to change the student's placement as part of the modification of the behavior intervention plan.

e. If An LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the student or to others, the LEA may requesting an expedited due process hearing. A hearing officer who concludes that that maintaining the current educational placement is substantially likely to result in injury to the student or to others may order a change in placement to an interim alternative educational setting for not more than 45 days.

E. When Behavior is Not a Manifestation of Disability

1. If the IEP team determines that the student's behavior is not a manifestation of the student's disability, the LEA may proceed with disciplinary removals, in the same manner and for the same duration, as would be applied to students without disabilities. If the LEA takes such action, the LEA must:

- a. Notify the parent(s) of the decision to remove the student and give the parent(s) a *Procedural Safeguards Notice*;
- b. Give the parent(s) prior written notice of any proposed change in placement;
- c. Provide services to the student in an interim alternative educational setting that is determined by the IEP team; and
- d. Provide, as appropriate, a functional behavior assessment, and develop and implement appropriate behavioral interventions to address the behavior.

Citations:

34 C.F.R. § 300.530(e)

Code Ark. R. 005.18.11-11.05

IX. Protections for Students Not Yet Eligible for Special Education

A. An LEA must follow all special education disciplinary procedures for a student who has not yet been identified as a student with a disability if the LEA had knowledge that the student had a disability and needed special education.

B. An LEA is not presumed to have knowledge of a disability if:

1. The parent has not allowed an evaluation of the student or has refused the initial provision of special education services to the student; or
2. The student has been evaluated and found not eligible for special education services.

C. If An LEA did not have knowledge before taking disciplinary action against the student, an LEA may take the same disciplinary actions as applied to students without disabilities who engaged in comparable behaviors. However:

1. If a special education evaluation is requested, or if an LEA initiates a special education evaluation, the evaluation will be conducted in an expedited manner.
2. Until the evaluation is completed, the student may remain in the educational placement determined by school personnel, which may include suspension, expulsion, or placement in alternative education.

3. Upon completion of the evaluation, if the student is determined to be a student with a disability, the LEA must conduct an IEP meeting to develop an IEP and determine placement and provide special education and related services in accordance with the IEP.

Citations:

34 C.F.R. § 300.534

Code Ark. R. 005.18.11-11.07

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 7

PROCEDURAL SAFEGUARDS

I. Procedural Safeguards - General

A. An LEA must ensure that students with disabilities and their families are afforded their procedural safeguards related to:

1. Access to students' educational records;
2. Parent and adult student participation in special education decisions;
3. Transfer of rights to students who have reached the age of majority;
4. Prior written notice of proposed actions;
5. Consent for evaluation and for initial placement in special education;
6. Independent educational evaluation;
7. Dispute resolution through mediation, state complaint investigation, resolution sessions, and due process hearings;
8. Discipline procedures and protections for students with disabilities, including placements related to discipline;
9. Placement of students during the pendency of due process hearings;
10. Placement of students by their parents in private schools;
11. Civil actions; and
12. Attorney's fees.

Citations:

34 C.F.R. § 300.121

34 C.F.R. § 300.149+150

34 C.F.R. § 300.500-536

Code Ark. R. 005.18.9-12

II. Procedural Safeguards Notice

- A. An LEA must provide to parents, a copy of the Procedural Safeguards Notice, published by the Arkansas Department of Education, at least once per year and upon initial referral or parent request for special education evaluation and upon any other parent request. An LEA must also give a copy to the student at least one year before the student's 18th birthday.
- B. An LEA must provide the Procedural Safeguards Notice in the parent's native language or other mode of communication unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the LEA must take steps to ensure that the notice is translated orally or by other means understandable to the parent and that the parent understands the content of the notice. The LEA must maintain written evidence that it meets these requirements.

Citations:

34 C.F.R. § 300.504

Code Ark. R. 005.18.9-9.05

III. Parent or Adult Student Meeting Participation

- A. An LEA must provide parents or adult students an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the student, and the provision of a free appropriate public education to the student.
- B. An LEA must provide parents or adult students written notice of any meeting sufficiently in advance to ensure an opportunity to attend. The written notice:
1. States the purpose, time, and place of the meeting and who is invited to attend;
 2. Advises that parents or adult students may invite other individuals who they believe have knowledge or special expertise regarding the student;
 3. Advises the parents or adult students who to contact before the meeting to provide information if they are unable to attend; and
 4. Indicates if one of the meeting's purposes is to consider transition services or transition services needed. If so:
 - a. Indicates that the student will be invited; and,
 - b. If considering transition services, identifies any agencies invited to send a representative (with parent or adult student consent).
- C. An LEA must take steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:
1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

2. Scheduling the meeting at a mutually agreed upon time and place.
- D. If neither parent can attend, an LEA must use other methods to ensure participation, including, but not limited to, individual or conference phone calls.
- E. After the transfer of rights to an adult student, an LEA must provide written notice of meetings to the adult student and parent, if the parent can be reasonably located. (This provision does not apply to parents of incarcerated youth.)
- F. A meeting does not include:
1. Informal or unscheduled conversations involving school district personnel;
 2. Conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP; or
 3. Preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Citations:

34 C.F.R. § 300.501(b)

34 C.F.R. § 300.520

34 C.F.R. § 300.322

Code Ark. R. 005.18.9-9.02.2+3

Code Ark. R. 005.18.8-8.06.1.1A

Code Ark. R. 005.18.8-8.06.2.1

IV. Surrogate Parents

- A. An LEA must protect the rights of a student with a disability, or suspected of having a disability, by appointing a surrogate parent when:
1. The parent cannot be identified or located after reasonable efforts;
 2. The student is a ward of the state or an unaccompanied homeless youth, and there is reasonable cause to believe that the student has a disability, and there is no foster parent or other person available who can act as the parent of the student; or,
 3. The parent or adult student requests the appointment of a surrogate parent.
- B. An LEA must only appoint a surrogate who:
1. Is not an employee of the LEA, the Arkansas Department of Education, or any other agency that is involved in the education or care of the student;
 2. Is free of any personal or professional interest that would interfere with representing the student's special education interests; and

3. Has the necessary knowledge and skills to ensure adequate representation of the child in special education decisions. An LEA must provide training, as necessary, to ensure that surrogate parents have the requisite knowledge.
- C. An LEA must provide all special education rights and procedural safeguards to appointed surrogate parents.
 - D. A surrogate will not be considered an employee of the LEA solely on the basis that the surrogate is compensated from public funds.
 - E. The duties of the surrogate parent are to:
 1. Protect the special education rights of the student;
 2. Be acquainted with the student's disability and the student's special education needs;
 3. Represent the student in all matters relating to the identification, evaluation, IEP, and educational placement of the student; and,
 4. Represent the student in all matters relating to the provision of a free appropriate public education to the student.

Citations:

34 C.F.R. § 300.519

Code Ark. R. 005.18.15-15.01-08

V. Transfer of Rights at Age of Majority

- A. When a student with a disability reaches the age of majority, the rights accorded to the student's parents under the special education laws transfer to the student.
- B. An LEA must provide notice to the student and the parent that these rights will transfer at the age of majority.
- C. After the transfer of rights to the student, an LEA must provide any prior written notices and written notices of meetings required by the special education laws to the adult student and to the parent, if the parent can be reasonably located.

Citations:

34 C.F.R. § 300.520

Code Ark. R. 005.18.9-9.07

VI. Prior Written Notice

- A. An LEA must provide prior written notice to the parent of a student, or adult student, within a reasonable period of time when the LEA proposes to initiate or change, or refuses to initiate or

change, the identification, evaluation, or educational placement of the student, or the provision of a free appropriate public education.

B. An LEA must provide prior written notice after a decision is made and a reasonable time before that decision is implemented.

C. The content of the prior written notice will include:

1. A description of the action proposed or refused by An LEA must;
2. An explanation of why An LEA must proposed or refused to take the action;
3. A description of any options that the IEP team considered and reasons why those options were rejected;
4. A description of each evaluation procedure, test, record, or report that An LEA must used as a basis for the proposed or refused action;
5. A description of any other factors that are relevant to An LEA must's proposal or refusal;
6. A statement that the parents of a student with a disability have procedural safeguards and, if it is not an initial referral for evaluation, how a copy of the Notice of Procedural Safeguards may be obtained; and,
7. Sources for parents to contact to obtain assistance in understanding their procedural safeguards.

Citations:

34 C.F.R. § 300.503

Code Ark. R. 005.18.9-9.04

VII. Consent

A. Consent for initial evaluation:

1. An LEA must provide notice and obtain informed written consent from the parent or adult student
 - a. Before conducting an initial evaluation to determine whether a student has a disability and needs special education and related services. Consent for initial evaluation is not consent for the LEA to provide special education and related services.
 - b. An LEA must make reasonable efforts to obtain informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services. If a parent does not provide consent for an initial evaluation or does not respond to a request for consent for an initial evaluation, the school

district may, but is not required to, pursue the initial evaluation of the child through due process hearing procedures.

B. Consent for initial provision of services:

1. An LEA must obtain informed consent from the parent before the initial provision of special education and related services to the student.

C. Consent for reevaluation:

1. An LEA must obtain informed parental consent before conducting any reevaluation of a child with a disability, except:

- a. If a parent refuses to consent to the reevaluation, an LEA may, but is not required to, pursue the reevaluation by using due process hearing procedures.

2. Revocation of consent:

- a. A parent or adult student may revoke consent at any time before the completion of the activity or action for which they have given consent.

- b. If a parent or adult student revokes consent, that revocation is not retroactive.

D. Exceptions to consent requirements:

1. An LEA does not need written parent or adult student consent before:

- a. Reviewing existing data as part of an evaluation or a reevaluation;

- b. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all students;

- c. Conducting evaluation tests, procedures or instruments that are identified on a child's IEP as a measure for determining progress; or

- d. Conducting a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.

2. An LEA does not need consent if a hearing officer determines that the evaluation or reevaluation is necessary to ensure that the student receives a free appropriate public education.

Citations:

34 C.F.R. § 300.300

Code Ark. R. 005.18.9-9.06

VIII. Independent Educational Evaluations

- A. A parent of a student with a disability or a suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA. If a parent requests an independent educational evaluation at public expense, the LEA must provide information to the parent(s) about where an independent educational evaluation may be obtained, and LEA criteria applicable for independent educational evaluations.
- B. If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, either:
1. Initiate a due process hearing to show that its evaluation is appropriate; or,
 2. Ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet district criteria.
- C. LEA criteria for independent educational evaluations must be the same as for its own evaluations including, but not limited to, location, examiner qualifications and cost.
1. Criteria established by an LEA must not preclude the parent's access to an independent educational evaluation.
 2. A parent is limited to one independent educational evaluation at public expense each time the LEA conducts an evaluation with which the parent disagrees.
- D. An LEA must consider an independent educational evaluation submitted by the parent, if the evaluation meets district criteria, in any decision made with respect to the provision of a free appropriate public education to the student.

Citations:

34 C.F.R. § 300.502

Code Ark. R. 005.18.9-9.03

IX. Mediation

- A. An LEA or parent may request mediation for any special education matter, including before or after the filing of a complaint or due process hearing request.
- B. ADE offers mediation at no cost to the parties.
- C. Mediation must be voluntary on the part of the parties, must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques, and may not be used to deny or delay a parent's right to a due process hearing or filing a complaint.
- D. Each mediation session must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

E. An agreement reached by the parties to the dispute in the mediation process must be set forth in a legally binding written mediation agreement that: 1) states the terms of the agreement; 2) states that all discussions that occurred during the mediation process remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and 3) is signed by the parent and a representative of the LEA who has the authority to bind the LEA to the mediation agreement.

F. The mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

Citations:

34 C.F.R. § 300.506

Code Ark. R. 005.18.10-10.01.13.1-5

X. Complaint Investigation

A. Any organization or person may file a signed, written complaint with the Arkansas Department of Education (ADE) alleging that an LEA is violating or has violated the Individuals with Disabilities Education Act or associated regulations within one year before the date of the complaint. The parent or party filing the complaint is responsible for issuing a copy of the complaint to the LEA.

B. The LEA and the complainant may attempt to resolve a disagreement that led to a complaint through any means, such as mediation, during the pendency of the complaint investigation.

C. If the alleged IDE violations are substantiated, corrective action will be ordered. An LEA must comply with its corrective action obligations within the time frames listed in the report.

D. If an LEA disagrees with the findings and conclusions in a complaint investigation report, it may file for a due process hearing.

Citations:

34 C.F.R. § 300.152-153

Code Ark. R. 005.18.12-12.01-06

XI. Due Process Hearings

A. Parent Requests for a Due Process Hearing

1. Parents may request a due process hearing if they disagree with a district proposal or refusal relating to the identification, evaluation, educational placement, or provision of a free appropriate education to a student who may have a disability and be eligible for special education.

2. The parent, or an attorney representing the parent, must provide notice to the LEA and to ADE when requesting a hearing. The notice must include:

a. The student's name and address (or contact information for a homeless student);

- b. The name of the school the student attends;
- c. A description of the nature of the parent's disagreement with the LEA, including facts relating to the problem; and
- d. A proposed resolution of the problem.

B. District Request for a Due Process Hearing

1. An LEA may request a due process hearing regarding the identification, evaluation, educational placement, or provision of a free appropriate education to a student who may have a disability and be eligible for special education.
2. When requesting a due process hearing, the LEA or the attorney representing the LEA must provide notice to the parent and to ADE.

C. Response to a Request for a Due Process Hearing

1. The party that did not file the hearing request must, within ten days of receiving the request for hearing, send to the other party a response that specifically addresses the issues raised in the hearing request.
2. If the parent had not yet received prior written notice of the LEA's proposal or refusal, the LEA must, within ten days of receiving the hearing request for a due process hearing, send to the parent a response that includes:
 - a. An explanation of why the LEA proposed or refused to take the action raised in the hearing request;
 - b. A description of other options that the LEA considered and the reasons why those options were rejected;
 - c. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
 - d. A description of the factors relevant to the LEA's proposal or refusal.

D. Resolution session.

1. Within 15 days of receiving a due process hearing request, an LEA must hold a resolution session with the parent(s) and relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request.
 - a. The LEA and parent may agree in writing to waive the resolution meeting. If so, the 45 day hearing timeline will begin the next business day.

E. Time limitation and exception

1. A parent must request a due process hearing within two years after the date of the LEA's act or omission that gave rise to the parent's hearing request.

2. This timeline does not apply to a parent if the LEA withheld relevant information from the parent or incorrectly informed the parent that it had resolved the problem that led to the parent's hearing request.

G. Request for Expedited Hearing and Relevant Timelines

1. If a parent disagrees with a determination that a child's behavior was not a manifestation of the child's disability or with any decision regarding placement of the child during disciplinary removals, the parent may appeal the decision by filing a complaint requesting an expedited due process hearing
2. An LEA may request an expedited hearing when school personnel have reason to believe that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
3. The ADE is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing
4. Unless the parents and LEA agree in writing to waive the resolution meeting:
 - a. A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
 - b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
5. Timeline for requesting a hearing
 - a. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.
 - b. Exceptions to the timeline are the same as in a standard due process hearing

Citations:

34 C.F.R. § 300.511-514

Code Ark. R. 005.18.10-10.01.1-12

Code Ark. R. 005.18.10-10.01.15-23

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 8

STUDENT EDUCATION RECORDS, ACCESS, AND CONFIDENTIALITY

I. Access to Records

An LEA must provide to parents of a student with a disability or to an adult student with a disability the opportunity at any reasonable time to examine all records pertaining to the student's identification, evaluation, educational placement, and free appropriate public education.

Citations:

34 C.F.R. § 300.123

34 C.F.R. § 300.613

Code Ark. R. 005.18.16-16.01

II. Annual Notification to All Parents and Adult students

- A. An LEA must annually notify parents of all students currently in attendance, and adult students currently in attendance, that they have the right to:
 - 1. Inspect and review the student's education records;
 - 2. Request amendment of the student's education records to ensure that they are not inaccurate;
 - 3. Consent to disclosure of personally identifiable information contained in the student's education records, except to the extent that disclosure is authorize by law without consent;
- B. An LEA must annually notify parents and adult students of what it considers to be directory information and the conditions for disclosure of such.

Citations:

34 C.F.R. § 300.612

34 C.F.R. § 300.625

III. Confidentiality of Student Records

- A. An LEA must designate one official responsible for ensuring the confidentiality of any personally identifiable information.

B. An LEA must ensure the confidentiality of personally identifiable information is protected at collection, storage, disclosure, and destruction stages.

C. An LEA must ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing records and confidentiality of personally identifiable information in accordance with applicable laws and regulations.

D. With respect to students with disabilities, an LEA must maintain a record of access of other authorized parties reviewing or receiving personally identifiable information ,that identifies:

- a. The name of the person;
- b. The date access was given; and
- c. The purpose for which the person is authorized to use the records.

Citations:

34 C.F.R. § 300.614

34 C.F.R. § 300.623

34 C.F.R. § 300.627

Code Ark. R. 005.18.16-16.03

Code Ark. R. 005.18.16-16.12

IV. The Rights of Parents and Adult Students Regarding Educational Records

A. An LEA must provide full rights regarding educational records to either parent, unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

B. When a student becomes an adult student, the rights accorded to, and consent required of, parents regarding students' education records transfer from the parents to the student. If an adult student has a disability that prevents the student from exercising his or her rights, the student's parents may continue to act on the student's behalf if they are the legal guardian.

C. An LEA must permit a parent, adult student, or a representative of the parent or adult student to inspect and review any educational records relating to the student that are collected, maintained, or used by an LEA, as required by applicable law and regulations.

D. An LEA must provide parents or adult students, on request, a list of the types and locations of education records collected, maintained, or used by the LEA.

E. An LEA must comply with requests from a parent or adult student to inspect and review any education records without unnecessary delay and before any meeting relating to the identification, evaluation, or placement of the student or regarding an IEP, hearing, or resolution session;

F. An LEA must ensure that a parent or adult student who requests an explanation or interpretation of any information contained in an education record receives a timely and appropriate explanation or interpretation.

G. An LEA must presume that the parent has authority to inspect and review records relating to his or her child unless the LEA determines that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

Citations:

34 C.F.R. § 300.613-18

Code Ark. R. 005.18.16-16.01-07

V. Prior Consent to Disclose Information

A. An LEA must obtain signed and dated written consent from the parent or adult student before permitting personally identifiable information to be disclosed to anyone other than officials of participating agencies collecting or using information for the purposes of the activities described in these procedures and only where the disclosure is consistent with all applicable federal statutes.

B. An LEA must obtain written consent before personally identifiable information is disclosed to officials of participating agencies providing or paying for transition services.

C. For non-resident children enrolled by their parents in private schools within An LEA must, An LEA must obtain written parental consent before disclosing personally identifiable information to An LEA must of the parent's residence.

D. An LEA must obtain written consent from the parent or adult student before permitting personally identifiable information to be used for any purpose other than meeting a requirement under these procedures.

E. The written consent specifies the records to be disclosed, the purpose of the disclosure, and the person or persons to whom the disclosure may be made.

1. When a disclosure is made, An LEA must provide a parent or adult student a copy of the disclosed record upon request.

2. An LEA must not release information from education records without parent consent unless permitted under an authorized exception.

Citations:

34 C.F.R. § 300.622

Code Ark. R. 005.18.16-16.11

VI. Exceptions to Prior Consent to Disclose Personally Identifiable Information

A. An LEA may disclose personally identifiable information from a student's educational record if the disclosure is:

1. To school officials and teachers within the LEA must who have legitimate educational interests;
2. To officials of another school, school system, institution of postsecondary education, or other educational agency that has requested the records and in which the student seeks or intends to enroll, or is enrolled in;
3. To authorized representatives of government agencies;
4. To accrediting organizations to carry out their accrediting functions;
5. To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986;
6. In connection with a health or safety emergency to law enforcement, child protective services, and health care professionals, and other appropriate parties if knowledge of the information is necessary to protect the health and safety of the student or other individuals. A "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a student who may be a victim of kidnap, abduction, or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect; or,
7. Information an LEA has designated as "directory information" if the LEA has given annual notice to parents of students in attendance and adult students in attendance of:
 - a. The types of personally identifiable information that the educational agency or institution has designated as directory information;
 - b. A parent or adult student's right to refuse to let the educational agency or institution designate any or all of those types of information about the student as directory information; and
 - c. The period of time within which a parent or adult student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

B. An LEA may disclose student records without consent to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction only if:

1. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and,
2. The information is destroyed when no longer needed for the purposes for which the study was conducted.

3. For the purposes of this section, the term “organization” includes, but is not limited to, federal, state, and local agencies, and independent organizations.

4. The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary to:

- a. Determine eligibility for the aid;
- b. Determine the amount of the aid;
- c. Determine the conditions for the aid;
- d. Enforce the terms and conditions of the aid.

Citations:

20 U.S.C.A. § 1232g (West)

VII. Fees

A. Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an LEA may charge a fee for copies of educational records provided to parents or adult students.

B. An LEA must not charge a fee to search for or to retrieve a student's education records for a parent or adult student.

Citations:

34 C.F.R. § 300.617

Code Ark. R. 005.18.16-16.06

VIII. Transfer of Student Education Records

A. Within ten days of a student seeking enrollment in or services from a public or private school, or when a student is placed in a state institution other than an institution of postsecondary education, or a private agency or youth care center (hereinafter referred to as the new educational agency), the new educational agency must notify the public or private school, education service district, institution, agency, or youth care center in which the student was formerly enrolled (hereinafter referred to as the former educational agency), and request the student's education records.

B. The former educational agency must transfer all requested student education records to the new educational agency no later than 10 days after receiving the request.

C. The education records transferred to the new educational agency must include any education records relating to the particular student retained by an education service district.

D. The educational agency must retain originals of student education records for the time periods and under the conditions described in the record retention rule, except that originals shall be transferred to a new education agency upon request.

E. When original records have been transferred to a new educational agency, as required by law, the former district must retain readable photocopies of the following documents for the time periods and under the conditions as prescribed in the record retention rule,

1. The student's permanent record, and
2. Such special education records as are necessary to document compliance with state and federal audits.

Citations:

34 C.F.R. § 300.323(e)

Code Ark. R. 005.18.8-8.03.3

Code Ark. R. 005.18.8-8.03.4

IX. Destruction of Information

A. An LEA must send written notice to inform parents or adult students when personally identifiable information collected, maintained, or used by the LEA is no longer needed to provide educational services to the student.

B. The written notice sent to the parent or adult student must describe the personally identifiable information that the LEA intends to destroy and inform the parents that the information will be destroyed no earlier than 60 days from the date of the notice. The notice must also outline the procedure which the parent or adult student may follow if they wish to formally object to the destruction of the records in question.

C. Upon request of the parent or adult student, an LEA must destroy such personally identifiable information, provided that the LEA may maintain a permanent record, without time limitation, of the student's name, address and phone number, grades, attendance records, classes attended, grade level completed, and year completed.

D. An LEA must not destroy any education records if there is an outstanding request to inspect and review the records.

Citations:

34 C.F.R. § 300.624

Code Ark. R. 005.18.16-16.13

X. Amendment of Records at Parent's Request

A. A parent or adult student who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the student may request an LEA to amend the information.

B. An LEA must, upon receiving a request from a parent or adult student, decide whether to amend the information as requested within ten days from the date of receipt of the request.

C. If an LEA refuses to amend the information, the LEA must inform the parent or adult student of the refusal and advise the person of the right to a hearing.

Citations:

34 C.F.R. § 300.618

Code Ark. R. 005.18.16-16.07

XI. Disclosure of Student Records to Judicial Authorities

A. An LEA may disclose personally identifiable information or other information allowed to be disclosed under FERPA from a student's education record to courts and state and local juvenile justice agencies including, but not limited to, law enforcement agencies when:

1. Disclosure relates to these agencies ability to serve the needs of a student prior to the student's adjudication; and,
2. The person receiving the information certifies, in writing, that they will not disclose the information to a third person other than another court or juvenile justice agency or a person or organization providing direct services to the student on behalf of a juvenile justice agency.

B. If an LEA reports a crime committed by a student with a disability, the LEA may transmit a copy of the student's special education and disciplinary records to the appropriate authorities for consideration, only if:

1. The disclosure is with consent of the parent or adult student; or,
2. The disclosure is permitted without consent under FERPA.

Citations:

Code Ark. R. 005.18.16-16.10

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 9

CHILDREN WITH DISABILITIES PLACED BY DISTRICTS IN PRIVATE SCHOOLS

I. SEA Responsibility

- A. The SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by an LEA—
 - 1. Is provided special education and related services—
 - a. In conformance with an IEP that meets the requirements of §§300.320 through 300.325; and
 - b. At no cost to the parents;
 - 2. Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.18 and §300.156(c); and
 - 3. Has all of the rights of a child with a disability who is served by a public agency.
- B. In carrying out its responsibility, the SEA must—
 - 1. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
 - 2. Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and
 - 3. Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

Citations:

34 C.F.R. § 300.146

34 C.F.R. § 300.147

II. LEA Responsibility

- A. Each LEA shall ensure that each child with a disability who is placed in or referred to a private school or facility by the LEA:
 - 1. Is provided special education and related services:

- a. In conformance with an IEP that meets the legal requirements; and
 - b. At no cost to the parents;
2. Is provided an education that meets the standards that apply to education provided by the SEA and LEAs; and
3. Has all of the rights of a child with a disability served by the LEA.

Citations:

Code Ark. R. 005.18.14-14.16

POLICIES AND PROCEDURES FOR SPECIAL EDUCATION

EFFECTIVE JULY 1, 2015

SECTION 10

CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

I. LEA Responsibility for Students

- A. LEAs are responsible for children enrolled by their parents in private schools within the LEAs jurisdiction, regardless of whether the parent is a resident of the LEA. Non-resident students include children who are residents of another state.
- B. The LEA must consult with private school representatives about its procedures and services and provide child find activities, evaluations, reevaluations, and eligibility determinations comparable to those provided for public schools.
- C. The LEA must provide equitable services, funded by a proportionate share of federal special education funds, for resident and non-resident students with disabilities.
- D. The LEA must maintain in its records and provide annually to the Arkansas Department of Education, a count of the number of parentally-placed private school students evaluated, the number found eligible, and the number to whom it provides services.

Citations:

34 C.F.R. § 300.129

34 C.F.R. § 300.130

34 C.F.R. § 300.136-137

Code Ark. R. 005.18.14-14.00

II. Consultation Requirements

- A. The LEA must consult, in a timely and meaningful way, with private school representatives and parents of children with disabilities who are homeschooled and enrolled in private schools located within the LEA's jurisdiction.
- B. As part of the consultation process the LEA must address, at a minimum, the following topics:
 - 1. The child find process, including:
 - a. How parentally-placed private school children suspected of having a disability can participate equitably; and
 - b. How parents, teachers, and private school officials will be informed of the process.

2. The proportionate share of federal funds available to serve parentally-placed private school children with disabilities and how this is calculated;
3. The consultation process and how it will operate throughout the school year; and
4. How, where, and by whom special education and related services will be provided, including a discussion of types of services, apportionment of funds if insufficient to serve all students, and how and when those decisions will be made.
5. The LEA must provide a written explanation of its service decisions if the LEA disagrees with the private school officials about the services to be provided or the methods of providing those services.

Citations:

34 C.F.R. § 300.134(a-c)

34 C.F.R. § 300.136-137

Code Ark. R. 005.18.14-14.05.1-3

III. Child Find

- A. The LEA's child find system must apply to resident and nonresident children, including children who are residents of other states, enrolled by their parents in private schools located within the LEA's jurisdiction.
- B. The LEA must conduct child find activities that are similar to, and completed within a comparable time period, as child find activities for students in the LEA's public schools.
- C. The LEA must consult with private school representatives and parents of private school and homeschool children with disabilities about how to implement the child find activities and how to keep parents and private school personnel informed.
- D. The LEA may not include the cost of conducting child find activities for private school students, including individual evaluations, in determining whether it has spent a proportionate share of its federal IDEA funds on parentally-placed private school students with disabilities.
- E. The LEA must ensure that an accurate count of these children is made between October 1 and December 1 of each year and must use this count in calculating the amount the LEA must spend on services for in the subsequent fiscal year.

Citations:

34 C.F.R. § 300.131

Code Ark. R. 005.18.14-14.02

Code Ark. R. 005.18.14-14.03

IV. Evaluation, Reevaluation, and Eligibility Determination

- A. The LEA must conduct evaluations, reevaluations, and eligibility determinations, in accordance with federal and state laws and regulations, for both resident and non-resident children enrolled by their parents in private schools located within the LEA's jurisdiction.
- B. Following an initial determination of eligibility for a resident student, and upon any subsequent determination of eligibility, the LEA must:
 - 1. Provide written notice to the parent(s) that the LEA will provide a free appropriate public education if the student enrolls in the district; and
 - 2. If the parent does not enroll the student in a district public school, convene a meeting to develop, review or revise the student's service plan.
- C. Following an initial determination of eligibility for a non-resident student, and upon any subsequent determination of eligibility, the LEA must:
 - 1. Notify the parent(s) to contact the resident district if they are interested in enrolling the student in a public school district to receive a free appropriate public education (FAPE); and
 - 2. If the parent does not enroll the student in a district public school, convene a meeting to develop, review or revise the student's service plan.
- D. The LEA in which the private school is located may not release evaluation and eligibility determination information or other personally identifiable information to the student's resident district without written parental consent, unless the parents seek to enroll the student in the resident district and the resident district requests such records.

Citations:

34 C.F.R. § 300.132

Code Ark. R. 005.18.6-6.01-09

Code Ark. R. 005.18.7-7.01-05

V. Service Plans

- A. The service plan for a parentally-placed private or homeschooled student with disabilities, must describe the specific special education and related services that the LEA will provide to the student in light of the services that have been determined through the consultation process.

Citations:

34 C.F.R. § 300.132

Code Ark. R. 005.18.14-14.07

VI. Provisions for Serving Students Placed by Their Parents in Private Schools

- A. The LEA determines what services will be provided to eligible parentally-placed private school and homeschool children.
- B. The LEA may provide services to private school students with disabilities onsite at the student's private school, including a religious school, to the extent that services can be provided in a religiously neutral setting within the private school.
- C. The LEA may assign its own employees to provide services or contract with other qualified public agencies, organizations, or individuals, including private school employees, as allowed by law.
 - 1. Public School.
 - a. The LEA may use IDEA funds to make public school personnel available to the extent necessary to implement any of the requirements related to private school students with disabilities; and
 - b. Personnel providing these services must meet the same standards as personnel providing services in the public schools.
 - 2. Private School.
 - a. The LEA may use IDEA funds to pay for the services of an employee of a private school to provide services to private school students if the employee performs the services outside of his or her regular hours of duty; and the employee performs the services under public supervision and control.
 - b. Under federal law, private school employees providing equitable services to parentally enrolled private school students do not need to meet the highly qualified special education teacher requirements.
- D. The LEA is not required to provide transportation from the student's home to the private school. If necessary for the student to benefit from or participate in the services provided, the LEA must provide transportation between the private school and the location of the services.

Citations:

34 C.F.R. § 300.138

34 C.F.R. § 300.139

34 C.F.R. § 300.142

34 C.F.R. § 300.144

Code Ark. R. 005.18.14-14.06

VII. Separate Classes Prohibited

The LEA may not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include students enrolled in public schools programs and students enrolled in private schools.

Citations:

34 C.F.R. § 300.143

Code Ark. R. 005.18.14-14.10

VIII. Funds and Property Not To Benefit Private Schools

- A. The LEA may not use IDEA funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- B. The LEA may use IDEA funds to meet the special education needs of students enrolled in private schools, but not for the needs of a private school or the general needs of the students enrolled in the private school.

Citations:

34 C.F.R. § 300.141

Code Ark. R. 005.18.14-14.11

IX. Federal Funds Available for Services

- A. The LEA must calculate a proportionate share of federal funds available to provide special education and related services to private school students with disabilities using the formula specified in the Individuals with Disabilities Education Act (IDEA).
- B. If the LEA does not expend the proportionate share of funds by the end of the fiscal year, the LEA must obligate the remaining funds to be used in the following year.
- C. The LEA may not include child find expenditures in determining whether the LEA has met its expenditure requirements for parentally-placed private school students, but may include the cost of transportation required for students to access necessary special education services.

Citations:

34 C.F.R. § 300.162

34 C.F.R. § 300.608

34 C.F.R. § 300.133

Code Ark. R. 005.18.14-14.04.2

IX. Reimbursement for Private Placement

An LEA is not required to pay for the cost of the education, including special education and related services, for a student with a disability, if the private school student had a free appropriate public education available to them in the LEA; and the parent chose to place the student in a private school.

Citations:

34 C.F.R. § 300.148

Code Ark. R. 005.18.14-14.15.3

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

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SECTION 11

PERSONNEL QUALIFICATIONS

I. LEA Responsibility for Personnel

- A. Each LEA must take measurable steps to recruit, hire, train and retain highly qualified personnel to provide special education and related services.
- B. Each LEA must employ highly qualified special education teachers, paraprofessionals, and related service providers as defined by the Arkansas Department of Education (ADE) or, in the case of related service providers, the appropriate professional licensing board.
- C. LEAs may only use speech-language pathology aides and speech-language pathology assistants who have been approved by the ADE, Special Education Unit, in accordance with a written agreement between the ADE, Special Education Unit, and the Arkansas Board of Examiners in Speech-Language Pathology and Audiology.
- D. Each LEA must ensure that all district personnel necessary to implement special education and related services and special education programs are appropriately and adequately prepared, subject to the requirements of state and federal law, including both the Elementary and Secondary Education Act (ESEA) or No Child Left Behind (NCLB), and the Individuals with Disabilities Education Act (IDEA).
- E. LEAs employing Educational Interpreters for the Deaf must comply with standards set forth by the ADE.

Citations:

34 C.F.R. § 300.156

Code Ark. R. 005.18.26-26.01.1

Code Ark. R. 005.18.26-26.02.2

II. Additional Licensure Plan (ALP)

- A. When an LEA cannot employ a teacher who holds a valid teaching license in special education from the Arkansas Department of Education, the LEA may use a teacher who is not licensed in special education to provide special education and related services when:
 - 1. The LEA can demonstrate that it has made a good faith effort to recruit and hire appropriately and adequately trained teachers to provide special education and related services;
 - 2. The individual holds a valid teaching license from the Arkansas Department of Education in an area other than special education;
 - 3. The individual has a current ALP from the ADE, Office of Professional Licensure, and has a copy on file with the ADE, Special Education Unit; and
 - 4. The individual is making progress toward completion of the ALP in accordance with ADE policies.

Citations:

34 CFR §300.156

34 CFR §300.207

Code Ark. R. 005.18.26-26.02. 3

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

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SECTION 12

STATE FUNDING, MONITORING, SUPPORT, AND ENFORCEMENT

I. Funding

- A. The State Board of Education is designated as the state agency to receive and disburse federal funds designed to improve educational opportunities provided for children with disabilities
- B. The State Board of Education will not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing
- C. The board shall develop such plans and procedures as may be required in order to receive and disburse federal funds for children with disabilities
- D. It is the responsibility of school districts to expend effort on behalf of the education of each child with disabilities equal to the effort expended on account of the education of each child who does not have a disability.
 - a. Any additional effort necessary to provide supplemental aids and services shall be the ultimate responsibility of the state but shall, to the maximum extent practicable, be the responsibility of the local school districts.
- E. The State of Arkansas will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year unless a waiver has been granted.
- F. Funds under Part B must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.
- G. The State Board, when responsible for providing FAPE, is subject to the same requirements listed

Citations:

34 C.F.R. § 300.149

34 C.F.R. § 300.155

34 C.F.R. § 300.162

34 C.F.R. § 300.163

34 C.F.R. § 300.164

34 C.F.R. § 300.166

34 C.F.R. § 300.174

Ark. Code Ann. § 6-41-220 (West)

Ark. Code Ann. § 6-41-221 (West)

II. Monitoring and Enforcement

- A. The Special Education Unit's integrated accountability system results in a continuous monitoring cycle involving data collection, verification, reporting, and improvement activities by both the State and LEAs. This system ensures both state and district level compliance with the federal special education requirements and monitors those areas most closely associated with improved results for children with disabilities.
- B. This monitoring system includes the following components of general supervision: State Performance Plan and State Goals with Measurable Targets; Fiscal Management; Integration of On-Site and Off-Site Monitoring Activities; Effective Policies and Procedures; Data on Processes and Results; Improvement, Correction, Rewards and Enforcements; Effective Dispute Resolution; Targeted Technical Assistance; and Professional Development.
- C. Local Education Agencies are informed of their compliance status through multiple measures including Annual Performance Determinations, desk audits of statewide data systems (student management and fiscal management), state complaints and hearings, self-monitoring, and on-site monitoring.
- D. The ADE is authorized to disallow the generation of all state aid to children with disabilities to any LEA or education service cooperative that 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.
 - a. The ADE is authorized to set aside these funds and to utilize such funds for the provision of a free and appropriate public education to appropriate children with disabilities
- E. Each LEA shall report annually to the State Board of Education at a prescribed due date the extent to which it is at that time providing special education for children with disabilities.
 - a. The report will provide data detailing the performance of students with disabilities, focusing on the indicators required by federal law and will be published on the ADE-SEU website.
- F. Local boards of education and treatment institutions shall keep an accurate account, in the manner and on the forms prescribed by the board, of all moneys expended for special education programs and shall report those expenditures to the State Board of Education.

- G. The SEA will examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs in the State or compared to the rates for nondisabled children within those agencies

Citations:

34 C.F.R. § 300.157

34 C.F.R. § 300.170

34 C.F.R. § 300.600-602

34 C.F.R. § 300.606

34 C.F.R. § 300.608

34 C.F.R. § 300.626

Ark. Code Ann. § 6-41-207 (West)

Ark. Code Ann. § 6-41-223 (West)

Ark. Code Ann. § 6-41-312 (West)

III. Support

- A. There shall be an Advisory Council for the Education of Children with Disabilities, which shall advise and consult with the Commissioner of Education and the Associate Director of the Special Education Section of the Department of Education
 - a. The advisory council shall be advisory only and shall have no administrative responsibility or authority
- B. The Advisory Council will include:
 - a. Parents of persons from birth to twenty-six (26) years of age with disabilities;
 - b. Individuals with disabilities;
 - c. Teachers;
 - d. Representatives of institutions of higher education that prepare special education and related services personnel;
 - e. State and local education officials;
 - f. Administrators of programs for children with disabilities;
 - g. Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
 - h. Representatives of private schools and public charter schools;

- i. Not fewer than one (1) representative of a vocational, community, or business organization concerned with the provision of transitional services to children with disabilities;
 - j. Representatives from the state juvenile and adult corrections agencies; and
 - k. A representative from the Arkansas child welfare agency responsible for foster care.
- C. A majority of the members of the panel shall be individuals with disabilities or parents of persons from birth to twenty-six (26) years of age with disabilities.

Citations:

34 C.F.R. § 300.167-169

Ark. Code Ann. § 6-41-211 (West)

POLICY AND PROCEDURES FOR SPECIAL EDUCATION

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SECTION 13

FULL EDUCATIONAL OPPORTUNITY GOAL (FEOG)

I. Full Educational Opportunity Goal

- A. It is the policy of the state of Arkansas to provide and to require school districts to provide, as an integral part of the public schools, a free appropriate public education for students with disabilities.
- B. The provisions of this section shall apply to all political subdivisions of the state that are involved in the education of children with disabilities, including without limitation the state educational agency, local educational agencies, educational service agencies, public charter schools that are not otherwise included as local educational agencies or educational service agencies and are not a school of a local educational agency or educational service agency, other state agencies and schools, including without limitation the Division of Behavioral Health Services of the Department of Human Services and state schools for children with deafness or children with blindness, and state and local juvenile and adult correction facilities.
- C. The provisions of this section shall be binding on each public agency in the state that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.
- D. Each public agency in the state is responsible for ensuring that the rights and protections under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq., are given to children with disabilities referred to or placed in private schools and facilities by that public agency or placed in private schools by their parents under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.

- E. The state educational agency is responsible for ensuring that the requirements of this section are carried out and that each educational program for children with disabilities administered within the state, including without limitation each program administered by any other state or local agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the state educational agency and meets the educational standards of the state educational agency, including without limitation the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.

- F. It is the goal of the State Board of Education to provide a full educational opportunity to all children with disabilities, between three (3) and twenty-one (21) years of age, within the state of Arkansas.

- G. The ADE Special Education and Related Services Procedural Requirements and Program Standards require LEAs to provide a full continuum of placements and services to students eligible to receive special education.

- H. To facilitate implementation of the goal, the Arkansas Department of Education gathers information from LEAs and other agencies providing services for children with disabilities. This information includes:
 - I. Number, age, disability, and location of children with disabilities receiving special education services;
 - J. Number of personnel employed by LEAs to provide special education services; and
 - K. Federal, state, and local funds expended for special education and related services.

Citations:

Ark. Code Ann. 6-41-202