



North Central Special Education Cooperative

Comprehensive Plan for Special Education

2025-2026

Member School Districts:

Doland School District #56-2
Edmunds Central School District # 22-5
Frederick School District #06-2
Groton Area School District #06-6
Hitchcock-Tulare School District #56-6
Langford Area School District #45-2
Leola School District #44-2
Northwestern Area School District #56-7
Warner School District #06-5

South Dakota Comprehensive Plan/Program Narrative

Sec. 300.201 Consistency with State policies.

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures, established under Secs. 300.101 through 300.163, and 300.165 through 300.174. (Authority: 20 U.S.C. 1413(a)(1))

South Dakota Administrative Rule 24:05:21:01. Local education agency comprehensive plans- Contents.

Each local education agency must have a current comprehensive plan approved by the school board on file with the district superintendent or designee. Documentation supporting the implementation of the local school district's comprehensive plan shall be maintained by the district for review by Special Education Programs staff during onsite monitoring visits. Districts shall update comprehensive plans consistent with 24:05:21:01.02 and recertify their content annually.

The _____ School Cooperative has formally adopted the following policies and procedures as the district's comprehensive plan for special education. These policies and procedures were approved by the school board on _____. As indicated by the signature below, the authorizing official acknowledges the district will meet all requirements of the Individuals with Disabilities Education Act and Article 24:05 through the implementation of these policies and procedures and furthermore, provides assurances that it meets each of the conditions in 34 CFR 300.201 through 300.213.

CERTIFICATION- I certify that I have read and reviewed the above assurance and will comply with all provisions of applicable federal and state laws.

Signature of Authorized Official

Date

Typed Name and Title

Address/State/Zip

Telephone Number

*This page must be signed by Member Schools official listed above and returned to:

Department of Education
Special Education Programs
800 Governor's Drive
Pierre, SD 57501

If your coop is turning in one comprehensive plan narrative for all member districts, every district must still submit this page.

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South Dakota LEA Comprehensive Plan: Program Narrative

SECTION I: Free and Appropriate Public Education (FAPE) 34 C.F.R. §§ 300.101-300.108, 300.110; ARSD 24:05:13:02

The cooperative and all member schools/districts will make available to all children with disabilities residing in the district(s) between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 300.530(d); 24:05:26 and 24:05:26.01, ARSD. Specific reference in the narrative to include:

- FAPE beginning at age 3; 300.101(b); ARSD 24:05:13:02
- Children advancing from grade to grade; 300.101(c); ARSD 24:05:13:02
- Limitations- age exceptions to FAPE; 300.102; ARSD 24:05:22:04.01
- FAPE- methods and payments; 300.103; ARSD 24:05:19:08
- Residential placement; 300.104; ARSD 24:05:19:08
- Assistive technology; 300.105; ARSD 24:05:27:20, ARSD 24:05:27:18, ARSD 24:05:27:19
- Extended school year services; 300.106; ARSD 24:05:25:26
- Nonacademic services; 300.107; ARSD 24:05:28:06
- Physical education; 300.108; ARSD 24:05:28:08
- Program options; 300.110; ARSD 24:05:28:04

District Narrative:

North Central Special Education Cooperative member districts provide FAPE to all students ages 3 to 21 determined eligible and in need of special education services. Children that are from ages birth through three years of age and are categorized as in need of prolonged assistance will receive special education and related services, despite not yet being age three. Students who are turning three and on an IFSP shall transition to school age services upon their third birthday. Students whose third birthday happens in the summer months shall be provided the opportunity of Extended School Year (ESY) services if the IEP team determines them eligible for ESY services, in order to provide FAPE. If the team determines the child is not eligible for ESY, services will begin upon the beginning of the school year.

Any student aged 3-21, whether advancing to the next grade or retained, shall be provided FAPE.

For students who have received a regular diploma, FAPE ends upon graduation. A student who is enrolled in school and becomes 21 years of age during the fiscal year shall continue to receive special education and related services as determined by the IEP team until the end of fiscal year.

Member Schools will implement special education services and related services outlined on the student's IEP, including residential programs, free of cost to the parent, in a timely manner. Public or private residential program must be agreed upon by the student's IEP team.

Member Schools shall ensure that assistive technology devices and/or services and/or training or all three are made available to a child with a disability if they are required as a part of the child's special education or related services, or as supplementary aides and services. On a case-by-case basis, the use of school purchased assistive technology devices in a child's home or in other setting is required if the student's IEP team determines that the child needs access to those devices in order to receive FAPE.

Member Schools shall ensure the student receives ESY services as determined by the IEP team, based on data gathered. This can include related services and/or transportation, as determined by the IEP team.

Member Schools ensures the provision of nonacademic and extracurricular services are available to children in need of special education or special education and related services through the development of the IEP. Once the team has determined where instruction will occur, the team will consider the amount of time the student is removed from their peer group and document the student's program options in the IEP.

The need for physical education services, specially designed if necessary, will be made available to every child in need of special education or special education and related services. The need for physical education services is documented in the IEP and reviewed annually.

Students on an IEP shall participate in all education programs, unless otherwise determined by the IEP team and documented on the student's IEP. Students who receive special education and/or related services shall receive meals and/or recess with same-age peers to the maximum extent appropriate. Each school district shall take steps to ensure that its children in need of special education or special education and related services have available to them the variety of educational programs and services available to children without disabilities in the area served by the district, including art, music, industrial arts, family and consumer science, and vocational education.

Administrative Rules for Section I: Free and Appropriate Public Education (FAPE) are as follows:

- FAPE beginning at age 3; 300.101(b); ARSD 24:05:13:02

The North Central Special Education member school districts will provide FAPE to all students with disabilities who reside within the boundaries of the district between the ages of 3 and 21 years of age. This includes any student with a disability who has been suspended or expelled. All eligible preschool aged students will have FAPE made available to them by their third birthday, including those whose birthdays fall during the summer months.

- Children advancing from grade to grade; 300.101(c); ARSD 24:05:13:02

All eligible students with disabilities, regardless of whether they are advancing from grade to grade, will have FAPE available to them on an individualized basis as determined by the student's IEP team on an annual basis. Exceptions to FAPE for students aged 3-21 includes those students who have graduated from high school with the regular high school diploma.

- Limitations- age exceptions to FAPE; 300.102; ARSD 24:05:22:04.01

A child's eligibility for special education or special education and related services continues from age 3 through completion of an approved public or nonpublic school secondary program or through age 21, as designated in that child's individual education program as set out in SDCL 13-37-1.

- FAPE- methods and payments; 300.103; ARSD 24:05:19:08

Consistent with the IEP requirements in this article regarding the provision of services in a timely manner, the department shall 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.

- Residential placement; 300.104; ARSD 24:05:19:08

If placement in an approved public or private residential program is necessary to provide special education and related services to a child with disabilities, the program, including nonmedical care and room and board, must be provided at no cost to the parent of the child.

- Assistive technology; 300.105; ARSD 24:05:27:18 ARSD 24:05:27:19

An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities. An assistive technology device does not include a medical device that is surgically implanted, or the replacement of the device.

An assistive technology service is any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

- (1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for a child with disabilities or, the child's family; and

(6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

- **Extended school year services; 300.106; ARSD 24:05:25:26**

The NCSEC member school districts shall provide extended school year services to eligible children if the IEP team determines on an individual basis that such services are necessary for the provision of FAPE.

An IEP pursuant to chapter 24:05:27 shall be developed and implemented by the IEP team that addresses the need for extended school year services. The IEP team shall determine the length of the school day and duration of extended school year services based on the individual child's needs.

In implementing the requirements of this section, a district may not:

- (1) Limit extended school year services to particular categories of disability;
- (2) Unilaterally limit the type, amount, or duration of those services; or
- (3) Apply a regression/recoupment criterion to children in need of prolonged assistance.

As used in this section, the term, extended school year services, means special education and related services that meet the standards of the state and are provided to a student with a disability beyond the normal school year of the district, in accordance with the student's IEP and at no cost to the parents of the student.

- **Nonacademic services; 300.107; ARSD 24:05:28:06**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities listed in this chapter, each school district shall develop and implement procedures which ensure that each child in need of special education or special education and related services participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of that child. The district shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

- **Physical education; 300.108; ARSD 24:05:28:08**

Physical education services, specially designed if necessary, shall be made available to every child in need of special education or special education and related services, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. Each child shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities unless the child is enrolled full time in a separate facility or the child needs specially designed physical education which cannot be provided in the regular physical education program.

If specially designed physical education is prescribed in the child's individual education program, Member Schools responsible for the education of the child shall provide the services directly or make arrangements for it to be provided through other public or private programs.

For children enrolled in separate facilities, the district responsible for the education of the child shall ensure that the child receives appropriate physical education services.

- **Program options; 300.110; ARSD 24:05:28:04**

Each NCSEC member school district shall take steps to ensure that its children in need of special education or special education and related services have available to them the variety of educational programs and services available to children without disabilities in the area served by the district, including art, music, industrial arts, family and consumer science, and vocational education.

SECTION II: Full educational opportunity goal (FEOG) 34 C.F.R. § 300.109; ARSD 24:05:22:04, ARSD 24:05:22:04.01

The cooperative and all member schools/districts will have in effect policies and procedures, demonstrating that the cooperative has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and include a timetable for accomplishing that goal.

District Narrative:

It is the goal of the North Central Special Education Cooperative member districts to provide full educational opportunity to all children with disabilities, aged birth through twenty-one, consistent with the timetable established in the South Dakota Eligibility Document or Part B of the Individuals with Disabilities Act.

The Administrative Rules for Section II: Full educational opportunity goal (FEOG) are as follows:

The North Central Special Education Cooperative's member school district, consistent with the timetable established by the State of South Dakota and Part B of the Individuals with Disabilities Education Act (IDEA), has a goal of providing full educational opportunity to all children with disabilities, aged birth through twenty-one. The district will review data annually to guide decisions with regard to adjustments in its programs to ensure appropriate services to all students with disabilities.

Each school district shall provide special education or special education and related services for children less than three years of age who are in need of prolonged assistance.

A child's eligibility for special education or special education and related services continues from age 3 through completion of an approved public or nonpublic school secondary program or through age 21, as designated in that child's individual education program as set out in SDCL 13-37-1.

SECTION III: Child Find 34 C.F.R. § 300.111; Child Identification ARSD 24:05:22

The cooperative and all member schools/districts must have in effect policies and procedures for ensuring that all children with disabilities who reside within the boundaries of the cooperative member districts, including those who are homeless children or are wards of the state, and children with disabilities who attend private schools, regardless of the severity of their disabilities, who are in need of special education and related services are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. Specific reference in the narrative to include:

- Use of the term developmental delay; ARSD 24:05:24.01:09
- Children who may be suspected of having a disability, and in need of special education, even though they are advancing from grade to grade, 300.111(c)(1); ARSD 24:05:22:01
- Children who are highly mobile, including migrant children, 300.111(c)(2); ARSD 24:05:22:01

District Narrative:

A student who is at least three years of age but less than nine years of age may be identified as a student with a disability if the student has one or the major disabilities or if the student experiences a severe delay in development and needs special education or special education and related services. A student with a severe delay in development functions at a developmental level two or more standard deviations below the mean in any one area of development specified in this section or 1.5 standard deviations below the mean in two or more areas of development. The areas of development are cognitive development, physical development, communication development, social or emotional development, and adaptive development.

The North Central Special Education Cooperative member district have in effect policies and procedures to ensure that all children with disabilities who residing within the boundaries of the district and who may be in need of special education and related services are located, identified, and evaluated according to all relevant regulations. This includes those students who may be homeless or wards of the state, as well as children with disabilities who may attend private schools within the jurisdiction of the district. Child find includes ongoing efforts to identify preschool and school-age students who may be experiencing developmental delays.

Each member district has in place policies and procedures for advertising screenings and child find activities. A screening instrument will be used to determine potential developmental delays in preschool-aged children 3-5 years of age. District and Cooperative staff will also work collectively with Hub Area Birth-to-3 to identify needs of children under age 3 and conduct evaluations, as needed.

The Cooperative will work with individual districts in conducting multidisciplinary evaluations. Individual districts will collect and maintain accurate records of all child-find activities. These activities will be ongoing and include children not currently enrolled in the public school education program.

Administrative Rules for each bullet under Section III are as follows:

The North Central Special Education Cooperative and its member districts have in effect policies and procedures to ensure that all children with disabilities who reside within the boundaries of the cooperative member districts and who may be in need of special education and related services are located, identified, and evaluated according to all relevant regulations. This includes those students who may be homeless or wards of the state, as well as children with disabilities who may attend private schools within the jurisdiction of the district. Child find includes our ongoing efforts to identify pre-school and school age students with disabilities through our referral and evaluation procedures, as well as our periodic screening of preschoolers who may be experiencing developmental delays.

- Use of the term developmental delay; ARSD 24:05:24.01:09

A student who is at least three years of age but less than nine years of age may be identified as a student with a disability if the student has one of the major disabilities listed in § 24:05:24.01:01 or if the student experiences a severe delay in development and needs special education and related services.

A student with a severe delay in development functions at a developmental level two or more standard deviations below the mean in any one area of development specified in this section or 1.5 standard deviations below the mean in two or more areas of development.

The areas of development are cognitive development, physical development, communication development, social or emotional development, and adaptive development.

A district is not required to adopt and use the term developmental delay for any students within its jurisdiction. If a district uses the term developmental delay, the district must conform to both the department's definition of the term and to the age range that has been adopted by the department.

A district shall ensure that all of the student's special education and related services needs that have been identified through the evaluation procedures described under chapter 24:05:25 are appropriately addressed.

- Children who may be suspected of having a disability, and in need of special education, even though they are advancing from grade to grade, 300.111(c)(1); ARSD 24:05:22:01

Each school district shall develop and utilize a system for the identification, location, and evaluation of children in need of special education or special education and related services. The system must include all children residing within the jurisdiction of the district who are ages birth through 21 regardless of the severity of their disability, including children in all public and private agencies and institutions, private schools, including religious schools, and children receiving alternative instruction under SDCL 13-27-3 within the legal boundaries of the district. The requirements of this section apply to:

- (1) Wards of the state and highly mobile children with disabilities such as migrant children and homeless children; and
- (2) Children who are suspected of being children with disabilities under this article and in need of special education, even though they are advancing from grade to grade.

- Children who are highly mobile, including migrant children, 300.111(c)(2)

Member districts ensure that children who reside within the school district boundaries and are highly mobile, including migrant children are subject to child find requirements. NCSEC member districts will review individual student records of children new to the district.

SECTION IV: Individualized Education Program (IEP) 34 C.F.R. 300.112; ARSD 24:05:27

The cooperative and all member schools/districts will ensure that an individualized education plan (IEP), or an individual family service plan (IFSP) that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with 34 C.F.R. §§ 300.320 – 300.324, except as provided in 300.300(b)(3)(ii). Specific reference must include:

- Content of the IEP; 300.320(a)(1-7); ARSD 24:05:27:01.03
- Transition services; 300.320(b); ARSD 24:05:27:13.02
- Transfer of rights at the age of majority; 300.320(c); ARSD 24:05:27:01.03
- The IEP team; 300.321; ARSD 24:05:27:01.01
- Parent participation in the IEP; 300.322; ARSD 24:05:25:16
- When the IEP must be in effect; 300.323; ARSD 24:05:25:22
- Development of the IEP; 300.324; ARSD 24:05:27:01.02
- Routine checking of hearing aids and external components of surgically implanted medical devices, 300.113; ARSD 24:05:27:05

District Narrative:

The North Central Cooperative member school districts follow the required content of IEPs as outlined in ARSD 24. Each district will be responsible to ensure that the proper procedures are followed in the development, review, and revision of each IEP.

The districts of the North Central Special Education Cooperative shall assess and develop a transition plan for students on an IEP prior to their 16th birthday. Transition plans will address post school outcomes and services. The IEP team will determine case by case the transition needs of the student and transition services. Students will be informed of his/her rights, as a student with a disability, one year prior to the age of majority.

The district shall ensure that the IEP team for each student with disabilities includes membership as listed below in ARSD 24:05:27:01.01.

One or both parents of a child with a disability will be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

All identified students with disabilities in member districts will have a current IEP in place at the beginning of the school year, and for eligible preschool students by their third birthday.

In developing, reviewing, and revising each student's individualized education program, the team shall consider the strengths of the student and the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, the academic, developmental, and functional needs of the student.

Each member school district shall ensure that the external components of surgically implanted medical devices are functioning properly. For a child with a surgically implanted medical device who is receiving special education and related services under this article, a school district is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

Administrative Rules for each bullet under Section IV are as follows:

The North Central Special Education Cooperative and member districts ensure that each identified student with a disability has a current IEP in place that meets the requirements of Section 636(d) of the IDEA, and that has been developed in accordance with the requirements at 34 CFR sections 300.320 through 324. All identified students with disabilities in our district will have a current IEP in place at the beginning of the school year, and for eligible preschool students, by their third birthday. Each eligible student's IEP will be reviewed periodically, but not less than annually, to review progress and determine whether annual goals are being met.

- **Content of the IEP; 300.320(a)(1-7); ARSD 24:05:27:01.03**

Each student's individualized education program shall include:

- (1) A statement of the student's present levels of academic achievement and functional performance, including:
 - (a) How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students); or
 - (b) For preschool student, as appropriate, how the disability affects the student's participation in appropriate activities;
- (2) A statement of measurable annual goals, including academic and functional goals, designed to:
 - (a) Meet the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
 - (b) Meet each of the student's other educational needs that result from the student's disability;

For students with disabilities who take alternate assessments aligned to alternate achievement standards, each student's IEP shall provide a description of benchmarks or short-term objectives;
- (3) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:
 - (a) To advance appropriately toward attaining the annual goals;
 - (b) To be involved and make progress in the general education curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and
 - (c) To be educated and participate with other students with disabilities and nondisabled students in the activities described in this section;
- (4) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in activities described in this section;
- (5) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments consistent with § 24:05:14:14. If the IEP team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:
 - (a) The student cannot participate in the regular assessment; and
 - (b) The particular alternate assessment selected is appropriate for the student;
- (6) The projected date for the beginning of the services and modification described in this section and the anticipated frequency, location, and duration of those services and modifications;
- (7) A description of how the student's progress toward the annual goals described in this section will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (8) 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 shall include:
 - (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills; and
 - (b) The transition services (including courses of study) needed to assist the student in reaching those goals; and
- (9) Beginning not later than one year before a student reaches the age of majority under state law, the student's individualized education program must include a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act, if any, that will transfer to the student on reaching the age of majority consistent with § 24:05:30:16.01.

- **Transition services; 300.320(b); ARSD 24:05:27:13.02**

On or before a student turns 16, the NCSEC member districts will work ensure that each student's IEP shall include transition services which are a coordinated set of activities for a student with a disability, designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, taking into account the student's strengths, preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

- **Transfer of rights at the age of majority; 300.320(c); ARSD 24:05:27:01.03**

Beginning not later than one year before a student reaches the age of majority under state law, the student's individualized education program must include a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act, if any, that will transfer to the student on reaching the age of majority consistent with § 24:05:30:16.01.

- **The IEP team; 300.321; ARSD 24:05:27:01.01**

The district shall ensure that the IEP team for each student with disabilities include the following members:

- (1) The parents of the student;
- (2) Not less than one regular education teacher of the student if the student is, or may be, participating in the regular education environment;
- (3) Not less than one special education teacher of the student or, if appropriate, at least one special education provider of the student;
- (4) A representative of Member Schools who:
 - (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
 - (b) Is knowledgeable about the general education curriculum; and
 - (c) Is knowledgeable about the availability of resources of Member Schools;
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subdivisions 2 to 6, inclusive, of this section;
- (6) At the discretion of the parent or Member Schools, other individuals who have knowledge or special expertise regarding the student including related services personnel as appropriate;
- (7) If appropriate, the student; and
- (8) Transition services participants as described in §§ 24:05:25:16.01 and 24:05:25:16.02.

- **Parent participation in the IEP; 300.322; ARSD 24:05:25:16**

Each district shall take steps to ensure that one or both parents of the child are present at each IEP team meeting or are afforded the opportunity to participate. The district shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed-upon time and place. The notice to the parents shall state the purpose, time, and location of the IEP team meeting and who will be in attendance and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child, including information related to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the IDEA.

If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, the notice must also address the provisions of § 24:05:25:16.01.

If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, and if the meeting is for a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also must:

- (1) Indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the student;
- (2) Indicate that the district will invite the student; and
- (3) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, identify any other agency that is likely to be responsible for providing or paying for transition services and that will be invited to send a representative.

Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If parents cannot attend, the district shall use other methods to ensure participation, including individual or conference telephone calls consistent with § 24:05:27:08.04.

- **When the IEP must be in effect; 300.323; ARSD 24:05:25:22**

At the beginning of each school year thereafter, the district must have in effect an IEP for each child with disabilities within its jurisdiction. For children beginning at age three, an IEP shall be in effect by that date. If a child's third birthday occurs during the summer, the IEP team shall determine the date when services under the IEP will begin. All IEPs shall be developed in accordance with the provisions of this article.

Written notice will be given to the parents five days before the district proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education the child. The five -day notice may be waived by the parents/guardians.

- **Development of the IEP; 300.324; ARSD 24:05:27:01.02**

In developing, reviewing, and revising each student's individualized education program, the team shall consider the strengths of the student and the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, the academic, developmental, and functional needs of the student. The individualized education program team also shall:

- (1) In the case of a student whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior;
- (2) In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's individualized education program;
- (3) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;
- (4) Consider the communication needs of the student and, in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications 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) Consider whether the student requires assistive technology devices and services.

The regular education teacher of a student with a disability, as a member of the individualized education program team, must, to the extent appropriate, participate in the development, review, and revision of the student's individualized education program, including the determination of appropriate positive behavioral interventions and supports and other strategies for the student and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student consistent with subdivision 24:05:27:01.03(3).

Nothing in this section requires the team to include information under one component of a student's individualized education program that is already contained under another component of the student's individualized education program. No additional information may be required to be included in a student's IEP beyond what is explicitly required in this section.

- **Routine checking of hearing aids and external components of surgically implanted medical devices, 300.113; ARSD 24:05:27:05**

Each school district shall ensure that the external components of surgically implanted medical devices are functioning properly.

For a child with a surgically implanted medical device who is receiving special education and related services under this article, a school district is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

SECTION V: Least Restrictive Environment (LRE), 34 C.F.R. §§ 300.114 – 300.120; ARSD 24:05:28

The cooperative and all member schools/districts will ensure that, to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Specific reference must include:

- A continuum of alternative placements; 300-115; ARSD 24:05:28:02
- Placements; 300.116; ARSD 24:05:28:03
- Non-academic settings, 300.117; ARSD 24:05:28:06
- Children in public or private institutions; 300.118; ARSD 24:05:28:07
- Teachers and administrators are provided with technical assistance and training; 300.119; ARSD 24:05:28:11
- Monitors placements, 300.120; ARSD 24:05:28:12

District Narrative:

The North Central Special Education Cooperative and member districts ensure the availability of a continuum, of alternative placements to provide each student with a disability the opportunity for education in the Least Restrictive Environment. Any removal of a student with a disability from the regular education environment may occur only when the nature and severity of the child's needs dictate that education in regular classes, with the use of supplementary aids and services cannot be achieved satisfactorily.

The districts ensure the provision of program options, nonacademic and extracurricular services, are available to children in need of special education or special education and related services through the development of the IEP.

The districts ensure that children placed in public or private institutions or other care facilities are educated with children who are not disabled to the maximum extent appropriate. The IEP team will consider the potential harmful effects of all placements and opportunities for community involvement. The team will address all program options, nonacademic and extracurricular, in the IEP when placing a student in a public or private institution or other care facilities.

Teachers and administrators participate in technical assistance and training necessary to assist them as provided by the Department of Education.

The North Central Special Education Cooperative member district will submit data to the State for the purpose of monitoring educational placements for students with disabilities.

Administrative Rules for each bullet under Section V are as follows:

The North Central Special Education Cooperative and its member districts ensure the availability of a continuum of alternative placements to provide each student with a disability the opportunity for education in the Least Restrictive Environment. Any removal of a student with a disability from the regular education environment may occur only when the nature and severity of the child's needs dictate that education in regular classes, with the use of supplementary aids and services cannot be achieved satisfactorily.

- A continuum of alternative placements; 300-115; ARSD 24:05:28:02

Alternative placements which must be made available include the following:

- (1) Regular educational programs with modification;
- (2) Resource rooms;
- (3) Self-contained programs;
- (4) Separate day school programs;
- (5) Residential school programs;
- (6) Home and hospital programs; and
- (7) Other settings.

For each of the programs listed in this section, the IEP team shall determine the extent to which related services are required in order for the child to benefit from the program. The length of the school day must be equal in duration to that of a regular public school day unless an adjusted school day is required to meet the individual needs of the child. The IEP team shall provide for

supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement, as applicable.

In those cases where placement is made in a separate day school program or residential school program, the district may abide by the school term of the facility in which the child is placed based on the individual needs of the child.

- **Placements; 300.116; ARSD 24:05:28:03**

Each school district shall establish and implement procedures which ensure that the following factors are addressed in determining placements:

- (1) Each child's educational placement must be individually determined at least annually and must be based on the child's individual education program;
- (2) Provisions are made for appropriate classroom or alternative settings necessary to implement a child's individual education program;
- (3) Unless a child's IEP requires some other arrangement, the child shall be educated in the school which that child would normally attend if not disabled. Other placement shall be as close as possible to the child's home;
- (4) Placement in the least restrictive environment will not produce a harmful effect on the child or reduce the quality of services which that child needs; and
- (5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

- **Non-academic settings, 300.117; ARSD 24:05:28:06**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities listed in this chapter, each school district shall develop and implement procedures which ensure that each child in need of special education or special education and related services participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of that child. The district shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

- **Children in public or private institutions; 300.118; ARSD 24:05:28:07**

Each school district through its IEP team and individual education program procedures, shall ensure that children placed in public or private institutions or other care facilities are educated with children who are not disabled to the maximum extent appropriate. The districts' IEP teams will review the student's placement no less than on an annual basis and will determine whether the student is benefiting from their IEP. The team will monitor progress to determine when the student may need to be considered for a less restrictive placement.

- **Teachers and administrators are provided with technical assistance and training; 300.119; ARSD 24:05:28:11**

The districts shall ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the provisions of this chapter and are provided with technical assistance and training necessary to assist them. Written technical assistance tools are available through the South Dakota Department of Education, Special Education Programs to support staff with the implementation of IDEA.

- **Monitors placements, 300.120; ARSD 24:05:28:12**

Member districts will submit data to the state for the purpose of monitoring educational placements for students with disabilities on an annual basis through the December 1 Child Count process.

- **Individual education programs for students placed in private schools (out of district placements) ARSD 24:05:27:10**

Prior to placing or referring a child in need of special education or related services to a private school, facility, or contracting district, the NCSEC member districts will initiate and conduct an IEP team meeting to develop an individual educational program for the child in accordance with district procedures.

The district shall ensure that a representative of the private school or facility attends the IEP team meeting. If the representative of the private school or facility cannot attend the IEP team meeting, the district shall use other methods to ensure participation, including individual or conference telephone calls or a Zoom meeting.

After a child in need of special education or special education and related services enters a private school or facility, any meetings to review and revise the child's individual educational program may be initiated and conducted by the private school or facility at the discretion of the district.

If the private school or facility initiates and conducts these meetings, the district shall ensure that the parents and a district representative are involved in any decision about the child's individual educational program and agree to any proposed changes in the program before those changes are implemented.

Even if a private school or facility implements a child's individual educational program, responsibility for compliance with this section remains with the school district and the department. NCSEC's member district's Special Education Director and student's case manager will work in conjunction with any private school or facility to maintain accurate records and will maintain responsibility for compliance.

SECTION VI: Procedural Safeguards, 34 C.F.R. § 300.121; ARSD 24:05:30

The cooperative and all member schools/districts will ensure that all children with disabilities and their parents are afforded procedural safeguards required by 34 C.F.R. §§300.500 through 300.536, and consistent with South Dakota Administrative Rule. Specific reference must include:

- Opportunity to examine records; parent participation in meetings; 300.501(a)(b)(c); ARSD 24:05:30:02
- Independent educational evaluations; 300.502; ARSD 24:05:30:03
- Prior written notice; content of notice; 300.503; ARSD 24:05:30:04
- Procedural safeguards notice; 300.504; ARSD 24:05:30:06.01, ARSD 24:05:30:06.02
- Use of electronic mail; 300.505; ARSD 24:05:30:06.03
- Availability of mediation; 300.506; ARSD 24:05:30:09
- Filing of due process complaints; 300.507; 300.508; 300.509; ARSD 24:05:30:07.01
- Resolution process; 300.510; ARSD 24:05:30:08.09-.12
- Impartial due process hearing; 300.511; ARSD 24:05:30:09.04
- Hearing rights; 300.512; ARSD 24:05:30:12
- Hearing decisions; 300.513; 300.514; 300.515; 300.516; 300.517; ARSD 24:05:30:11
- Status of child during due process proceedings; 300.518; 24:05:30:14 ARSD.
- Surrogate parents; children who are wards of the state; homeless youth; 300.519; ARSD 24:05:30:15
- Transfer of rights at age of majority; 300.520; ARSD 24:05:30:16.01
- Discipline procedures and manifestation determination; 300.530; ARSD 24:05:26:09.03
- Determination of setting; 300.531; ARSD 24:05:26:09.2
- Right of appeal of the determination of setting; 300.532; ARSD 24:05:26:09.05
- Placement during appeals; 300.533; ARSD 24:05:26:09.06
- Protections for children not determined eligible for special education and related services; 300.534; ARSD 24:05:26:14
- Referral to action by law enforcement and judicial authorities; 300.535; ARSD 24:05:26:15
- Change of placement due to disciplinary removals; 300.536; ARSD 24:05:26:02.01

District Narrative:

North Central Special Education Cooperative and its member district ensure adherence to administrative rules, which govern procedural safeguards.

North Central Special Education Cooperative and its member district ensure parents the opportunity to examine records, and participate in meetings concerning the provision of FAPE.

Parents have the right to an independent education evaluation at public expense if the parent disagrees with the cooperative/district evaluation. Member districts will have IEE policies in place that follow ARSD 24:05:30:03.

Parents will be given notice five days before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. The five-day notice requirement may be waived by the parents. The procedural safeguards notice will include required elements according to ARSD 24:05:30:06:02. Parents may elect to receive required notices by electronic mail.

The North Central Special Education Cooperative and its member districts shall ensure that procedures are established and implemented to allow parties to dispute any matter under this article, including matters arising before the filing of a due process complaint, to resolve disputes through a mediation process. Procedures for mediation are as outlined in Administrative Rule 24:05:30:09 found below.

A parent or a school district may file a due process complaint on any matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

The North Central Special Education Cooperative and its member districts shall convene a meeting within 15 days of receiving a due process complaint. Members of the meeting shall include IEP team members who have knowledge of the facts identified in the complaint. The meeting may be waived if both parties agree in writing to waive the meeting or agree to use the mediation process described in ARSD Chapter 24

If a due process complaint is received under this chapter, chapter 24:05:26, or chapter 24:05:26.01, the parents or the district involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in this article.

The department of education is responsible for ensuring that a due process hearing is held.

Any party to a hearing, under this chapter or chapters 24:05:26 and 24:05:26.01, has the right to:

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training concerning the problems of children with disabilities, except that neither party has the right to be represented by a nonattorney at a hearing;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- (4) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing; and
- (5) Obtain written or, at the option of the parents, electronic findings of fact and decisions. The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the state advisory counsel and shall make those findings and decisions available to the public.

Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents.

Any party aggrieved by the decision of the hearing officer under this chapter or chapters 24:05:26 and 24:05:26.01 may bring a civil action with respect to a due process complaint notice requesting a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2). A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action has 30 days from the date of a hearing officer's decision to file a civil action. In any action brought under this section, the court:

- (1) Shall review the records of the administrative proceedings;
- (2) Shall hear additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in Part B of the Individuals with Disabilities Education Act restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 as amended to July 1, 2013, Title V of the Rehabilitation Act of 1973 as amended to July 1, 2013, or other federal laws protecting the rights of children with disabilities. However, before the filing of a civil action under these laws, seeking relief that is also available under section 615 of IDEA, the procedures under this chapter for filing a due process complaint must be exhausted to the same extent as would be required had the action been brought under section 615 of IDEA.

Any child involved in a due process hearing will remain in his/her current educational placement unless the state or district and parents agree otherwise or unless the child was served under Part C and is transitioning to Part B. A hearing officer's decision that agrees with a parent's claim for change of placement will result in the change of placement and will be treated as an agreement between the state and parents for purposes of pendency.

The districts will establish procedures for determining a surrogate parent to ensure the rights of a child are protected.

Districts will notify parents regarding the transfer of rights upon the child's 18th birthday unless the child has been determined incompetent.

Within 10 school days of a decision to change the placement of a child with a disability due to a violation of the code of student conduct, members of the IEP team shall review relevant information to determine if the conduct was related to the disability, a result of the school's failure to implement the IEP or neither. If the conduct is related to the disability or a result of failing to implement the IEP, the conduct will be determined to be a manifestation of the child's disability. The student's IEP team shall determine an alternative setting if the conduct

was not a manifestation of disability or the conduct involved weapons, drugs, or serious bodily injury. A change of placement is considered to occur if the removal is for more than 10 days or a series of removals constitute a pattern because they accumulate to 10 school days in a school year or removals are due to substantially the same behavior. An alternative placement must continue to meet the child's educational services. Additionally, a functional behavioral assessment or behavioral intervention services may be implemented. A parent who disagrees with an alternative setting may appeal the decision by requesting a hearing. The child must remain in the present educational placement unless the state or school district and the parents agree otherwise.

A student who has not been determined to be eligible for special education services and who has engaged in behavior that violated the code of student conduct may assert protections under this article if certain conditions are met: the parent submitted, in writing to the district administration, concern that the child is in need of special education services and related services; the parent has requested an evaluation; or staff have expressed, to the special education director or other supervisory personnel, specific concerns regarding a child's specific pattern of behavior.

The districts have the right to report a child with disabilities engaging in criminal activity to law enforcement.

Administrative Rules for each bullet under Section VI are as follows:

The North Central Special Education Cooperative and member districts ensure that all children with disabilities and their parents are afforded the required procedural safeguards of 34 CFR 300.500 through 300.356 as outlined in the *South Dakota Parental Rights and Procedural Safeguards* document.

The district will provide a copy of the procedural safeguards document to the parents of an eligible child with a disability at least one time each year, in addition to the following:

- Upon initial referral or parent request for an evaluation;
- Upon request by the parent;
- In accordance with discipline procedures outline in the procedural safeguards document;
- Upon receipt of the first state complaint or first due process complaint in a given school year.

- Opportunity to examine records; parent participation in meetings; 300.501(a)(b)(c); ARSD 24:05:30:02

The parents of a child in need of special education or special education and related services shall be afforded, in accordance with the procedures in chapter 24:05:29, an opportunity to inspect and review all education records concerning the identification, evaluation, and educational placement of the child and the provisions of a free appropriate public education to the child.

- Independent educational evaluations; 300.502; ARSD 24:05:30:03

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the district subject to the conditions in this section.

Each district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the district criteria applicable for independent educational evaluations specified in this section.

If a parent requests an independent educational evaluation, the district may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the district may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

If the parent requests an independent educational evaluation at public expense, the district must, without unnecessary delay, either file a due process complaint to request a hearing under this chapter to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet district criteria. If the district files a due process complaint to request a hearing

under this chapter and the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

A parent is entitled to only one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees.

If the parent obtains an independent educational evaluation at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation must be considered by the district, if it meets district criteria, in any decision made with respect to the provision of a free appropriate public education to the child and may be presented by any party as evidence at a hearing under this chapter regarding that child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. If an independent evaluation is made at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the district uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Each district shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

For the purposes of this section, the term, independent education evaluation, means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the child in question. For purposes of this section, the term, public expense, means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent consistent with §§ 24:05:14:01 to 24:05:14:01.05, inclusive.

Except for the criteria described in this section, a district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

A list of Independent Educational Evaluators can be found at the North Central Special Education Cooperative Central Office.

- **Prior written notice; content of notice; 300.503; ARSD 24:05:30:04**

Written notice which meets the requirements of § 24:05:30:05 must be given to the parents five days before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. The five-day notice requirement may be waived by the parents.

- **Procedural safeguards notice; 300.504; ARSD 24:05:30:06.01; ARSD 24:05:30:06.02**

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this article and the state complaint procedures relating to:

- (1) Independent educational evaluation;
- (2) Prior written notice;
- (3) Parental consent;
- (4) Access to educational records;
- (5) Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
 - (a) The time period in which to file a complaint;
 - (b) The opportunity for the district to resolve the complaint; and
 - (c) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (6) The child's placement during pendency of any due process complaint;
- (7) Procedures for students who are subject to placement in an interim alternative educational setting;
- (8) Requirements for unilateral placement by parents of children in private schools at public expense;
- (9) The availability of mediation;
- (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (11) Civil actions, including the time period in which to file those actions; and
- (12) Attorneys' fees.

The form of the notice must be consistent with § 24:05:30:06, including written evidence that the requirements in this section have been met.

- **Use of electronic mail; 300.505; ARSD 24:05:30:06.03**

A parent of a child with a disability may elect to receive notices required by this chapter by an electronic mail communication, if the district makes that option available.

- **Availability of mediation; 300.506; ARSD 24:05:30:09**

Each school district shall ensure that procedures are established and implemented to allow parties to disputes involving any matter under this article, including matters arising before the filing of a due process complaint, to resolve disputes through a mediation process. Procedures for mediation are as follows:

(1) The district shall ensure that mediation is viewed as voluntary and freely agreed to by both parties and is in no way used to deny or delay an aggrieved party's right to a hearing on a parent's due process complaint, or to deny any other rights afforded under this article; and

(2) The mediation conference is an intervening, informal process conducted in a nonadversarial atmosphere that is scheduled in a timely manner and held in a location that is convenient to the parties in the dispute.

The state shall bear the cost of the mediation process, including the costs of meetings described in § 24:05:30:09.02.

- **Filing of due process complaints; 300.507; 300.508; 300.509; ARSD 24:05:30:07.01**

A parent or a school district may file a due process complaint on any matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

- **Resolution process; 300.510; ARSD 24:05:30:08.09-.12**

Within 15 days of receiving notice of the parent's due process complaint, and before the initiation of a due process hearing under this chapter, the district shall convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint. The meeting:

- (1) Shall include a representative of the district who has decision-making authority on behalf of the district; and
- (2) May not include an attorney of the district unless the parent is accompanied by an attorney.

The parent and district shall determine the relevant members of the IEP team to attend the meeting.

The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the district has the opportunity to resolve the dispute that is the basis for the due process complaint.

The resolution meeting need not be held if:

- (1) The parent and the district agree in writing to waive the meeting; or
- (2) The parent and the district agree to use the mediation process described in this chapter

If the district has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in § 24:05:30:08.14, the timeline for issuing a final decision in a due process hearing begins at the expiration of the 30-day period.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding the above two paragraphs, the failure of the parent filing a due process complaint to participate in the resolution meeting delays the timelines for the resolution process and due process hearing until the meeting is held.

- **Impartial due process hearing; 300.511; ARSD 24:05:30:09.04**

If a due process complaint is received under this chapter, chapter 24:05:26, or chapter 24:05:26.01, the parents or the district involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in this article.

The department is responsible for ensuring that a due process hearing is held.

- **Hearing rights; 300.512; ARSD 24:05:30:12**

Any party to a hearing, under this chapter or chapters 24:05:26 and 24:05:26.01, has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training concerning the problems of children with disabilities, except that neither party has the right to be represented by a nonattorney at a hearing;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing; and

(5) Obtain written or, at the option of the parents, electronic findings of fact and decisions. The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the state advisory counsel and shall make those findings and decisions available to the public.

Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents.

- **Hearing decisions; 300.513; 300.514; 300.515; 300.516; 300.517; ARSD 24:05:30:11**

Any party aggrieved by the decision of the hearing officer under this chapter or chapters 24:05:26 and 24:05:26.01 may bring a civil action with respect to a due process complaint notice requesting a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2). A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action has 30 days from the date of a hearing officer's decision to file a civil action. In any action brought under this section, the court:

(1) Shall review the records of the administrative proceedings;

(2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in Part B of the Individuals with Disabilities Education Act restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 as amended to July 1, 2013, Title V of the Rehabilitation Act of 1973 as amended to July 1, 2013, or other federal laws protecting the rights of children with disabilities. However, before the filing of a civil action under these laws, seeking relief that is also available under section 615 of IDEA, the procedures under this chapter for filing a due process complaint must be exhausted to the same extent as would be required had the action been brought under section 615 of IDEA.

- **Status of child during due process proceedings; 300.518; ARSD 24:05:30:14**

Except as provided in chapters 24:05:26 and 24:05:26.01, during the pendency of any administrative hearing or judicial proceeding regarding a due process complaint notice requesting a due process hearing pursuant to this chapter, the child involved must remain in the present educational placement unless the state or school district and the parents agree otherwise. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

If the complaint involves an application for initial services under this article from a child who is transitioning from Part C of the IDEA to Part B and is no longer eligible for Part C services because the child has turned three, the district is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the district must provide those special education and related services that are not in dispute between the parent and the district.

If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of pendency.

- **Surrogate parents; children who are wards of the state; homeless youth; 300.519; ARSD 24:05:30:15**

Each school district shall establish procedures for the assignment of a surrogate parent to ensure that the rights of a child are protected if no parent, as defined in § 24:05:13:04, can be identified and the district, after reasonable effort, cannot locate a parent or if the child is a ward of the state or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2009. A district's method for determining whether a child needs a surrogate parent must include the following:

(1) The identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;

(2) The provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and

(3) The establishment of a referral system within the district for the appointment of a surrogate parent.

If a child is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, if the surrogate meets the requirements of this section.

The district superintendent or designee shall appoint surrogate parents.

The district shall ensure that a person selected as a surrogate has no personal or professional interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure adequate representation of the child. The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents.

A person assigned as a surrogate may not be an employee of the department, district, or any other agency that is involved in the education or care of the child.

If a child is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents, without regard to the nonemployee provision above, until a surrogate parent can be appointed who meets all of the requirements of this section.

A person who otherwise qualifies to be a surrogate under the provisions of this section is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement, and provision of FAPE to the students.

The department shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a district determines that the child needs a surrogate parent.

- **Transfer of rights at age of majority; 300.520; ARSD 24:05:30:16.01**

Consistent with state law, when a child with a disability reaches the age of majority that applies to all children, except for an eligible child who has been determined to be incompetent, the following shall occur:

- (1) Member Schools shall provide any notice required by this article to both the individual and the parents;
- (2) All other rights accorded to parents under this article transfer to the child; and
- (3) All rights accorded to parents under this article transfer to children who are incarcerated in an adult or juvenile, state, or local correctional institution.

If a state transfers rights under this section, Member Schools shall notify the individual and the parents of the transfer of rights. If, consistent with state law, an eligible child is determined not to have the ability to provide informed consent with respect to the educational program of the child, Member Schools shall appoint the parent or, if the parent is not available, another appropriate individual to represent the educational interests of the child throughout the child's eligibility under this article.

- **Discipline procedures and manifestation determination; 300.530; ARSD 24:05:26:09.03**

Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, Member Schools, the parent, and relevant members of the student's IEP team, as determined by the parent and the district, shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- (1) Whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- (2) Whether the conduct in question was the direct result of Member Schools's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the student's IEP team determine that a condition in either subdivision (1) or (2) of this section was met.

If the district, the parent, and relevant members of the student's IEP team determine that the condition described in subdivision (2) of this section was met, the district shall take immediate steps to remedy those deficiencies.

- **Determination of setting; 300.531; ARSD 24:05:26:09.2**

The student's IEP team shall determine the interim alternative educational setting in which a student is placed under §§ 24:05:26:08.01, 24:05:26:02.01, and 24:05:26:09.05.

- **Right of appeal of the determination of setting; 300.532; ARSD 24:05:26:09.05**

For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to this chapter, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in this section.

A student with a disability who is removed from the student's current placement pursuant to this section or § 24:05:26:08.01 must:

(1) Continue to receive educational services, as provided in this article, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(2) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur

- **Placement during appeals; 300.533; ARSD 24:05:26:09.06**

The parent of a student with a disability who disagrees with any decision regarding placement under this chapter or with the manifestation determination, or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to this article.

If an appeal under this chapter has been made by either the parent or Member Schools, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 24:05:26:08.01 or 24:05:26:09.05, whichever occurs first, unless the parent and the state education agency or school district agree otherwise.

- **Protections for children not determined eligible for special education and related services; 300.534; ARSD 24:05:26:14**

A student who has not been determined to be eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of Member Schools, including any behavior described in this chapter, may assert any of the protections provided for in this article if Member Schools had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. A school district is deemed to have knowledge that a student is a student with a disability if:

(1) The parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(2) The parent of the student has requested an evaluation of the student pursuant to this article; or

(3) The teacher of the student, or other personnel of the district or other public agency has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel of the district.

A district is not deemed to have knowledge that the student is a student with a disability under this section, if the parent of the student has not allowed an evaluation of the student pursuant to this article, or has refused services under this article, or the district conducted an evaluation consistent with this article and determined that the student was not a student with a disability.

If the district does not have knowledge that a student is a student with a disability before taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this chapter.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services in accordance with the provisions of this article including the discipline procedures and free appropriate public education requirements.

- Referral to action by law enforcement and judicial authorities; 300.535; ARSD 24:05:26:15

Nothing in Part B of the Individuals with Disabilities Education Act prohibits a school district or other public agency from reporting a crime committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

A school district or other public agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. A school district reporting a crime under this chapter may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, as amended to January 8, 2009.

- Change of placement due to disciplinary removals; 300.536; ARSD 24:05:26:02.01

For purposes of removal of a student with a disability from the student's current educational placement under this chapter, a change of placement occurs if:

- (1) The removal is for more than ten consecutive school days; or
- (2) The student is subjected to a series of removals that constitute a pattern because:
 - (a) They cumulate to more than ten school days in a school year;
 - (b) Of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another; and
 - (c) The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

SECTION VII: Evaluation 34 C.F.R. §300.122; ARSD 24:05:25

The cooperative and all member schools/districts will ensure that all children with disabilities are evaluated in accordance with 34 C.F.R. §§300.300 through 300.311. Specific references must include:

- Parental consent (for initial evaluation, services, and re-evaluations; 300.300; ARSD 24:05:25:02.01, ARSD 24:05:25:06.01
- Initial evaluations; 300.301; ARSD 24:05:25:03
- Screening for instructional purposes; 300.302; ARSD 24:05:25:03.03
- Re-evaluations; 300.303; ARSD 24:05:25:06
- Evaluation procedures; 300.304; 300.305; ARSD 24:05:25:04
- Determining eligibility; 300.306; ARSD 24:05:25:04.03
- Specific learning disabilities; 300.307 through 300.311; ARSD 24:05:25:07, ARSD 24:05:25:08, ARSD 24:05:25:11, ARSD 24:05:25:12

District Narrative:

The North Central Cooperative and its member districts ensure that reasonable efforts will be made to obtain consent to conduct an initial evaluation and re-evaluations. These efforts will be documented. Evaluations and reports will be completed in compliance with deadlines set forth by the SD Department of Education. Screenings are not considered evaluations. Multiple assessments will be used to determine eligibility for special education services, these will be given in the student's native language, be valid and reliable instruments, and be administered by trained personnel and be sufficiently comprehensive to identify all of the child's special education services and related services. The IEP team, using the results of assessments, will determine the child's eligibility for special education services and related services. A copy of the evaluation report shall be provided to parents at no cost.

For a child suspected of having a Specific Learning Disability, the documentation of the determination of eligibility will include the elements found in the Administrative Rule as listed below.

Administrative Rules for each bullet under Section VII are as follows:

The North Central Special Education Cooperative and member districts ensure that all children with disabilities are evaluated in accordance with the following regulatory provisions:

- Parental consent (for initial evaluation, services, and re-evaluations; 300.300; ARSD 24:05:25:02.01, ARSD 24:05:25:06.01 ARSD.

A school district shall ensure that a reevaluation of each child with a disability is conducted in accordance with this chapter if Member Schools determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or if the child's parents or teacher requests a reevaluation.

A reevaluation conducted under this section may occur not more than once a year, unless the parent and district agree otherwise, and must occur at least once every three years, unless the parent and the district agree that a reevaluation is unnecessary.

Reevaluations must be completed within 25 school days after receipt by the district of signed consent to reevaluate unless other time limits are agreed to by the school administration and the parents consistent with § 24:05:25:03.

Each school district shall follow the procedures under § 24:05:25:04.02 when reevaluating a student for the additional purposes of:

- (1) Determining whether the child continues to have a disability and determining the educational needs of the child;
- (2) Determining the present levels of academic achievement and related developmental needs of the child;
- (3) Determining whether the child continues to need special education and related services; and
- (4) Determining whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

If no additional data are needed to determine continuing eligibility and the child's educational needs, the district shall notify the parents of that determination and reasons for it and of the right of the parent to request an assessment, for purposes of

determining the child's educational needs under this article, and to determine continuing eligibility. Member Schools is not required to conduct an assessment unless requested to do so by the child's parents. However, a school district shall follow the procedures in this chapter before determining that the child is no longer a child with a disability. The evaluation procedures described in this chapter are not required before the termination of a child's eligibility under this article due to graduation from secondary school with a regular high school diploma, or exceeding the age eligibility for FAPE.

Before conducting a reevaluation of an eligible child, parental consent is required, unless:

(1) Member Schools can demonstrate that it has taken reasonable measures to obtain consent, and the child's parent has failed to respond; and

(2) Member Schools documents its efforts to obtain consent by using the procedures consistent with § 24:05:25:17.

If the parent refuses to consent to the reevaluation, Member Schools may, but is not required to, pursue the reevaluation by using the consent override procedures described in chapter 24:05:30 including mediation and due process hearing procedures.

- **Initial evaluations; (Preplacement evaluations, ARSD 24:05:25:03**

Before any action is taken concerning the initial placement of a child with disabilities in a special education program, a full and individual initial evaluation of the child's educational needs must be conducted in accordance with the requirements of this chapter. Initial evaluations must be completed within 25 school days after receipt by the district of signed parent consent to evaluate unless other timelines are agreed to by the school administration and the parents.

Written evaluation reports, determination of eligibility, and conducting an IEP team meeting must be completed within 30 days from the end of the 25 school day evaluation timeline. If another timeline for completing the evaluation process is agreed to by the parent and school administration, the written evaluation reports, determination of eligibility, and conducting an IEP team meeting must be completed within 30 days from the end of agreed upon evaluation timeline.

Consistent with the consent requirements in this section, either a parent of a child or a school district may initiate a request for an initial evaluation to determine whether the child is a child with a disability.

- **Screening for instructional purposes; 300.302; ARSD 24:05:25:03.03**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services.

Re-evaluations; 300.303; ARSD 24:05:25:06

A school district shall ensure that a reevaluation of each child with a disability is conducted in accordance with this chapter if Member Schools determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or if the child's parents or teacher requests a reevaluation.

A reevaluation conducted under this section may occur not more than once a year, unless the parent and district agree otherwise, and must occur at least once every three years, unless the parent and the district agree that a reevaluation is unnecessary.

Reevaluations must be completed within 25 school days after receipt by the district of signed consent to reevaluate unless other time limits are agreed to by the school administration and the parents consistent with § 24:05:25:03.

Each school district shall follow the procedures under § 24:05:25:04.02 when reevaluating a student for the additional purposes of:

(1) Determining whether the child continues to have a disability and determining the educational needs of the child;

(2) Determining the present levels of academic achievement and related developmental needs of the child;

(3) Determining whether the child continues to need special education and related services; and

(4) Determining whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

If no additional data are needed to determine continuing eligibility and the child's educational needs, the district shall notify the parents of that determination and reasons for it and of the right of the parent to request an assessment, for purposes of determining the child's educational needs under this article, and to determine continuing eligibility. Member Schools is not required to conduct an assessment unless requested to do so by the child's parents. However, a school district shall follow the procedures in this chapter before determining that the child is no longer a child with a disability. The evaluation procedures described in this chapter are not required before the termination of a child's eligibility under this article due to graduation from secondary school with a regular high school diploma, or exceeding the age eligibility for FAPE.

- **Evaluation procedures; 300.304; 300.305; ARSD 24:05:25:04**

School districts shall ensure, at a minimum, that evaluation procedures include the following:

(1) Assessments and other evaluation materials are provided and administered in the child's native language or by another 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 so provide or administer. In addition, assessments and other evaluation materials:

(a) Are used for the purposes for which the assessments or measures are valid and reliable; and

(b) Are administered by trained and knowledgeable personnel in conformance with the instructions provided by their producer;

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment accurately reflects the child's aptitude or achievement level or whatever other factors the assessment purports to measure, rather than the child's impaired sensory, manual, or speaking skills except where those skills are the factors which the assessment purports to measure;

(4) No single measure or assessment is used as the sole criterion for determining eligibility or an appropriate educational program for a child;

(5) A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parents, that may assist in determining:

(a) Whether the child is a child with a disability; and

(b) The content of the child's IEP, including information related to enabling the child:

(i) To be involved in and progress in the general education curriculum; or

(ii) For a preschool child, to participate in appropriate activities;

(6) Technically sound instruments, assessment tools, and strategies are used that:

(a) May assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(b) Provide relevant information that directly assists persons in determining the educational needs of the child;

(7) The child is assessed 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; and

(8) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

Assessments of children with disabilities who transfer from one school district to another school district in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 24:05:25:03.01, to ensure prompt completion of full evaluations.

- **Determining eligibility; 300.306; ARSD 24:05:25:04.03**

Upon completing the administration of assessments and other evaluation measures as required by this chapter, the individual education program team and other qualified individuals required by § 24:05:25:04.02 shall determine whether the student is a student with a disability, and shall determine the educational needs of the child, as defined in this article. Member Schools shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. A student may not be determined to be a student with a disability if the determinant factor for that decision is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in ESEA, or lack of appropriate instruction in math or limited English proficiency and if the student does not otherwise meet the eligibility criteria under chapter § 24:05:24.01.

Member districts will ensure information used to determine eligibility was drawn from a variety of sources and these sources are documented and carefully considered. Placement decisions will be made by a group of people with

knowledge of the child, including parents of the child. If a determination is made that a child is disabled and needs special education and related services, and individual education program will be developed for the child.

- Specific learning disabilities; 300.307 through 300.311; ARSD 24:05:25:07, ARSD 24:05:25:08, ARSD 24:05:25:11, ARSD 24:05:25:12

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall contain a statement of:

- (1) Whether the child has a specific learning disability;
- (2) The basis for making the determination, including an assurance that the determination has been made in accordance with this section;
- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally relevant medical findings, if any;
- (5) Whether:
 - (a) The child does not achieve adequately for the child's age or does not meet state-approved grade-level standards; and
 - (b) The child does not make sufficient progress to meet age or 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;
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level;
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
 - (a) The instructional strategies used and the student-centered data collected; and
 - (b) The documentation that the child's parents were notified about:
 - (i) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (ii) Strategies for increasing the child's rate of learning; and
 - (iii) The parents' right to request an evaluation;
- (8) If using the discrepancy model, the group finds that the child has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the eligibility areas, the group shall consider regression to the mean in determining the discrepancy; and
- (9) If using the response to intervention model for eligibility determination, the group shall demonstrate that the child's performance is below the mean relative to age or state approved grade level standards.

SECTION VIII: Confidentiality 34 C.F.R. 300.123; ARSD 24:05:29, ARSD 24:05:21:05

The cooperative and all member schools/districts will ensure compliance with all regulations regarding the confidentiality of records and information, as noted in 34 C.F.R. §§300.610 through 300.626. Specific references must include:

- Notice requirements to parents; 300.612; ARSD 24:05:29:18
- Access rights; 300.613; ARSD 24:05:29:04
- Record of access; 300.614; ARSD 24:05:29:05
- Records on more than one child; 300.615; ARSD 24:05:29:06
- List of types and locations of information; 300.616; ARSD 24:05:29:07
- Fees for copies of records; 300.617; ARSD 24:05:29:08
- Amendments to records at parent's request; 300.618; ARSD 24:05:29:09
- Opportunity for a hearing; 300.619; ARSD 24:05:29:10
- Result of hearing and hearing procedures; 300.620-621; ARSD 24:05:29:12
- Parental consent for the release of records; 300.622; ARSD 24:05:29:13
- Safeguarding of records; 300.623; ARSD 24:05:29:14
- Destruction of information; 300.624; ARSD 24:05:29:15
- Children's rights; transfer at the age of majority; 300.625; ARSD 24:05:29:16
- Enforcement; policies and procedures; 300.626; ARSD 24:05:29:17
- Transfer of records for migratory children with disabilities; 300.213; ARSD 24:05:21:05
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District Narrative:

The North Central Special Education Cooperative and its member school districts will inform parents about the requirements of Chapter 24, the protection of identifiable information and will permit parents to inspect and review any education records of their child in relation to Chapter 24. Parents have the right to request explanations and interpretation of records. A record of access shall be maintained, which documents all parties obtained access to education records, which may be inspected by the parent or eligible child upon request. Parents may only access information that pertains to their child.

Districts will have policies in place regarding types and location of education records that are used by the district. Districts may charge a fee, in accordance with their policies, to make copies of educational records. No fee shall be charged to review and inspect records. Parents may request districts to amend information contained in records if they believe the records are inaccurate, misleading, or violates privacy rights of the student. The district may provide an opportunity for a hearing to challenge the information in all the student's records to ensure the information is accurate and correct. If the district determines the information is inaccurate, it shall amend the information accordingly and inform the parents in writing. If the district determines the information is accurate, the parents will be notified of their right to place documentation into the student's record regarding their disagreement.

The North Central Special Education Cooperative and its member districts ensure that parental consent will be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this article, or used for any purpose other than meeting a requirement in this chapter. Personally identifiable student information will be protected. Districts will notify parents when information collected under this chapter is no longer needed. At the parents' request, this information must be destroyed. All districts are monitored by the Department of Education regarding confidentiality of student information. Information pertaining to migrant children will be linked with other agencies as needed.

The North Central Special Education Cooperative and its member school districts implement policies and procedures to ensure protection of the confidentiality of any personally identifiable information collected, used or maintained under Part B of the Individuals with Disabilities Education Act (IDEA) and the Family Education Rights and Privacy Act (FERPA).

All of the parental rights in this chapter are extended to the child upon reaching the age of 18 unless the child has been declared incompetent by the courts, including taking into consideration the type or severity of a child's disability.

Destruction of information: Member Schools or educational agency shall inform parents when personally identifiable information collected, maintained, or used under this section is no longer needed to provide educational services to the student. The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the student's name, addresses, phone number, the student's grades, attendance record, classes attended, and grade level completed may be maintained without time limit.

To ensure compliance with all regulations, at a minimum each member district will:

1. Adopt an education records policy and implements procedures that meet the standards of FERPA 99.6.
2. Annually notify parents and students in attendance of their rights pertaining to student records according to FERPA 99.7.
3. Maintain a permanent file on each student.
4. Maintain special education records.
5. Provide public notice of directory information and provide parents an opportunity to refuse to disclose such information.
6. Provide annual training to school staff and cooperative staff on records and confidentiality.
7. School Psychologists' administered test protocols and other raw data will be stored at the North Central Special Education Cooperative. Additional NCSEC service providers' assessment protocols and the raw data they collect will be stored in the individual schools in which they serve. These documents will be returned to the district's permanent file upon the student's graduation. The district is then responsible for the notification and subsequent destruction of such documents in accordance with state law for records retention and destruction.

- **SCL-133. TEST FILE, DIAGNOSTIC OR ACHIEVEMENT: 13-012**
This series is used to maintain results of diagnostic or achievement tests completed by the student and used to monitor progress and determine the need for special services. Information may include: name of student, test name, score received, date of test, and percentile ranking.
RETENTION: Retain in office through students' last year in school and/or after 5 years of continuous absence from school, then destroy after notice of intention to destroy has been given
SOUTH DAKOTA LOCAL SCHOOLS RECORDS RETENTION AND DESTRUCTION SCHEDULE, State of South Dakota, Bureau of Administration, Records Management Program, December 24, 2014
- **SCL-130. SPECIAL EDUCATION MONITORING FILES: 13-012**
This series contains Special Education monitoring information. Information may include: working papers, criteria's, school district's name, administration, rules, findings, and compliance. The information is used for reference, audit, and monitoring compliance purposes.
RETENTION: Retain 5 years in office, then destroy after notice of intention to destroy has been given and provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.
SOUTH DAKOTA LOCAL SCHOOLS RECORDS RETENTION AND DESTRUCTION SCHEDULE, State of South Dakota, Bureau of Administration, Records Management Program, December 24, 2014
- **TEST PROTOCOL STORAGE:**
The school is responsible for ensuring that test protocols are accessible regardless of where they are stored. FERPA defines educational records as those which are "(1) directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution." A school psychologist would be considered "a party acting for" Member Schools; therefore, records maintained by a school psychologist would be accessible
[Maintaining Student Records and Meeting Confidentiality Requirements under the FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT— F E R P A; HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT— H I P A A; INDIVIDUALS WITH DISABILITIES EDUCATION ACT— I D E A; SECTION 504 OF THE REHABILITATION ACT— 5 0 4]
https://doe.sd.gov/oess/.../sped_ferpa_maintainingrecords.pdf

Administrative Rules for each bullet under Section VIII are as follows:

The North Central Special Education Cooperative and its member districts ensure the compliance with all regulations regarding the confidentiality of personally identifiable information and all records according to 34 CFR 300.610 through 300.626.

- **Notice requirements to parents; 300.612; ARSD 24:05:29:18**

The department shall give notice that fully informs parents about the requirements under this chapter, including the following:

- (1) A description of the extent to which the notice is given in the native languages of the various population groups in the state;

- (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including sources from whom information is gathered, and the uses to be made of the information;

- (3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

- (4) A description of all the rights of parents and children regarding this information, including the rights under 34 C.F.R. Part 99, Family Educational Rights and Privacy Act, as amended to July 1, 2013.

Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

- **Access rights; 300.613; ARSD 24:05:29:04**

Each school district shall permit parents to inspect and review any education records relating to their student which are collected, maintained, or used by the agency under this chapter. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individual education program or hearing relating to the identification, evaluation, or placement of the student, or discipline hearing, or resolution session, and in no case more than 45 calendar days after the request has been made.

The right to inspect and review education records under this section includes the following:

- (1) The right to response from the district to reasonable requests for explanations and interpretations of the records;

- (2) The right to request that the district provide copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records; and

- (3) The right to have a representative of the parent inspect and review the records.

The district may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, divorce, or custody.

- **Record of access; 300.614; ARSD 24:05:29:05**

Each school district shall keep a record of parties obtaining access to education records collected, maintained, or used under this chapter, except access by parents and authorized employees of the district, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. A parent or eligible student may inspect this record on request.

- **Records on more than one child; 300.615; ARSD 24:05:29:06**

If any education record includes information on more than one child, the parents of those children may inspect and review only the information relating to their child or may be informed of that specific information.

- **List of types and locations of information; 300.616; ARSD 24:05:29:07**

Each school district shall provide parents on request a list of the types and location of education records collected, maintained, or used by the district.

- **Fees for copies of records; 300.617; ARSD 24:05:29:08**

A school district may charge a fee for copies of records which are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The district may not charge a fee to search for or to retrieve information under this chapter.

- **Amendments to records at parent's request; 300.618; ARSD 24:05:29:09**

A parent who believes that information in education records collected, maintained, or used under this article is inaccurate or misleading or violates the privacy or other rights of the student may request the district which maintains the information to amend the information.

The district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

If the district decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

- **Opportunity for a hearing; 300.619; ARSD 24:05:29:10**

The district shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

- **Result of hearing and hearing procedures; 300.620-621; ARSD 24:05:29:12**

If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and inform the parents in writing.

If, as a result of the hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parents of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the district.

Any explanation placed in the records of the student under this section must be maintained by the district as part of the records of the student as long as the record or contested portion is maintained by the district. If the records of the student or the contested portion is disclosed by the district to any party, the explanation must also be disclosed to the party

- **Parental consent for the release of records; 300.622; ARSD 24:05:29:13**

Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this article or used for any purpose other than meeting a requirement under this chapter, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA. The district may not release information from education records to participating agencies without parental consent except as follows:

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is to other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests or to officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in subdivision (2) of this section; and

(2) An educational agency or institution that discloses the education records of a student pursuant to subdivision (1) of this section shall make a reasonable attempt to notify the parent of the student or the eligible student at the last known address of the parent or eligible student, unless the disclosure is initiated by the parent or eligible student.

If the agency or institution includes in its annual notice of parent's rights that it is the policy of the public agency to forward education records on request to a school in which a student seeks or intends to enroll, then the public agency does not have to provide any further notice of the transfer of records.

Notwithstanding the FERPA exceptions for releasing information from education records without parental consent including the annual notice provision, if a student is enrolled, or will enroll in a private school that is not located in the district of the parent's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the district where the private school is located and officials in the district of the parent's residence.

An educational agency receiving personally identifiable information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of the parent or eligible student if the conditions of subdivisions (1) and (2) of this section are met and if the educational agency informs the party to whom disclosure is made of these requirements.

- **Safeguarding of records; 300.623; ARSD 24:05:29:14**

Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official in the district shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the provisions of this chapter concerning personally identifiable information.

Each district shall maintain for public inspection a current listing of the names and positions of those employees within the district who may have access to personally identifiable information on students in need of special education or special education and related services.

Destruction of information; 300.624; ARSD 24:05:29:15

Member Schools shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the student.

The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the student's name, address, and phone number, the student's grades, attendance record, classes attended, and grade level completed may be maintained without time limit.

- **Children's rights; transfer at the age of majority; 300.625; ARSD 24:05:29:16**

All of the parental rights in this chapter are extended to the child upon reaching the age of 18 unless the child has been declared incompetent by the courts, consistent with § 24:05:30:16.01, including taking into consideration the type or severity of a child's disability.

- **Enforcement; policies and procedures; 300.626; ARSD 24:05:29:17**

The department shall ensure that all school districts in this state comply with the requirements on confidentiality of information through on-site monitoring, approval of comprehensive plans, and complaint resolution. Sanctions for noncompliance include the disapproval of local special education programs and the withholding of state and federal funds.

- **Transfer of records for migratory children with disabilities; 300.213; ARSD 24:05:21:05**

A school district shall cooperate in the U.S. Secretary of Education's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children.

SECTION IX: Transition from Part C to Part 34 C.F.R. § 300.124;

The cooperative and all member schools/districts will ensure that children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under Part B, experience a smooth and effective transition to those preschool programs. By the third birthday of such a child, an individualized education program (IEP) or, if consistent with 34 C.F.R. § 300.323(b), in individualized family service plan (IFSP), has been developed and is being implemented for the child. The local education agency (LEA) will participate in transition planning conferences arranged by the designated lead agency.

District Narrative:

The North Central Special Education Cooperative and its member districts ensure that children participating in early intervention programs under Part C, and who will receive Part B services, experience a smooth and effective transition to district preschool programs. Further, each eligible child with a disability will have, at the time of their third birthday, an appropriate IEP written and implemented for the provision of special education and related services. The district participates in transition meetings as coordinated by the local Part C agency.

The district participates in transition planning conferences as coordinated by the local Part C agency. Prior to the child's third birthday, the district will work in conjunction with the local agency to determine potential eligibility for Part B and will hold an eligibility meeting at least 90 days, but no more than nine months prior to the child turning three. The evaluation planning includes contact and input from the child's parents/guardians.

SECTION X: Private School Placements; 34 C.F.R. §§ 300.129 – 300.148; 24:05:31, ARSD 24:05:32

The cooperative and all member schools/districts will ensure that all responsibilities to children placed in private schools within the jurisdiction of the LEA are met. Consistent with the number and location of children with disabilities within the jurisdiction of the cooperative, such students enrolled in private elementary and secondary schools will have provisions made for the participation in programs assisted or carried out under Part B for the purpose of providing special education and related services. Specific references must include:

- Definition of parentally-placed private school children; 300.130; ARSD 24:05:32:01
- Child find for parentally-placed private school children with disabilities; 300.131; ARSD 24:05:32:01.01
- Provision of services for parentally-placed private school children with disabilities; 300.132; ARSD 24:05:32:03.01, ARSD.
- Expenditures for parentally-placed private school children with disabilities; 300.133; ARSD 24:05:32:01:02
- Consultation process with private schools attended by children with disabilities; 300.134; ARSD 24:05:32:01:05
- Written affirmation by private school officials of meaningful consultation; 300.135; ARSD 24:05:32:01.06
- Compliance; rights of private school officials to submit a state complaint; 300.136; ARSD 24:05:32:01.07
- Determination of equitable services for parentally-placed private school students with disabilities; 300.137; ARSD 24:05:32:03.02,
- Provision of equitable services for parentally-placed private school students with disabilities; 300.138; ARSD 24:05:32:03.02
- Location of services and transportation; 300.139; ARSD 24:05:32:03.03
- Due process complaints and state level complaints; 300.140; ARSD 24:05:32:03.04
- Requirements that funds not benefit a private school; 300.141; ARSD 24:05:32:12
- Use of personnel for the provision of services to parentally-placed private school students with disabilities; 300.142; ARSD 24:05:32:13
- Prohibition on separate classes; 300.143; ARSD 24:05:32:11
- Property, equipment, and supplies used to provide special education and related services to parentally-placed private school students with disabilities; 300.144; ARSD 24:05:32:15, ARSD 24:05:32:16
- Children with disabilities in private schools placed or referred by public agencies; 300.145 – 300.147; ARSD 24:05:34:02
- Placement of children with disabilities by their parents in private schools when FAPE is an issue; 300.148; ARSD 24:05:31:01-07

District Narrative:

The North Central Special Education Cooperative and its member districts will ensure that eligible children with disabilities who are parentally placed in private schools, including religious schools, or placed in schools or facilities that meet the state definition of elementary school or secondary school shall receive services. If a child with a disability is enrolled in a private school, the public school district will be responsible for developing a service plan. A representative from the religious or private school shall attend all meetings, either in person or via electronic device, including telephone.

Child find activities will be conducted by the Cooperative and its member districts to locate, identify, and evaluate all private school children with disabilities within their school district boundaries. Services provided to children in private schools shall be equitable to those services offered to children with disabilities in the public school district.

The North Central Special Education Cooperative and its member districts will follow rules and regulations regarding provision of services to children parentally placed in private schools, including religious schools, as stated in the following administrative rules:

Administrative Rules for each bullet under Section X are as follows:

The North Central Special Education Cooperative and member districts ensure compliance with 34 CFR 300.129 through 300.148, governing private school placements within the boundaries of the district, Through consultation with private school representatives, the district ensures that it will locate, identify and evaluate all children with disabilities who are enrolled by their parents in a private school within the district's boundaries. For all eligible students with disabilities enrolled in private schools by their parents, a service plan will be developed in accordance with 300.132, and records maintained documenting the number of students evaluated and served in these settings.

Definition of parentally-placed private school children; 300.130; ARSD 24:05:32:01

The department is responsible for ensuring the participation of eligible parentally-placed private school children in the program assisted or carried out under this article consistent with their number and location by providing them with special education and related services in accordance with this chapter including direct services, unless the U.S. Secretary of Education has arranged for services under the by-pass procedures in Part B of IDEA. The department shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated by the district in which a private school is located to receive special education and related services under this chapter. For purposes of this chapter, the term, parentally-placed private school children with disabilities, means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the state definition of elementary school or secondary school, other than children with disabilities covered under chapter 24:05:31.

- **Child find for parentally-placed private school children with disabilities; 300.131; ARSD 24:05:32:01.01**

Each district shall establish a child find process to locate, identify, and evaluate all private school children with disabilities, including religious elementary and secondary school children and children receiving alternative instruction under SDCL 13-27-3 in schools located in Member Schools served by the district. The activities undertaken to carry out the responsibility for private school children with disabilities must be similar to activities undertaken for children with disabilities in public schools.

The child find process shall be designed to ensure:

- (1) The equitable participation of parentally-placed private school children; and
- (2) An accurate count of those children.

The child find process shall be completed in a time period comparable to that for students attending public schools in the district consistent with this article.

Each school district in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than the state in which the private schools that they attend are located.

Each school district shall maintain in its records, and provide to the department, the following information related to parentally-placed private school children covered under this chapter: the number of children evaluated; the number of children determined to be children with disabilities; and the number of children served.

- **Provision of services for parentally-placed private school children with disabilities; 300.132; ARSD 24:05:32:03.01**

If a child with a disability is enrolled in a religious or other private school, by the child's parent, and will receive special education or related services from the district, the district shall:

- (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 24:05:32:03.02; and
- (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the district shall use other methods to ensure participation by the private school, including individuals or conference telephone calls.

- **Expenditures for parentally-placed private school children with disabilities; 300.133; ARSD 24:05:32:01:02**

To meet the requirements of § 24:05:32:01, each school district must spend the following amounts on providing special education and related services including direct services to parentally-placed private school children with disabilities:

(1) For children aged 3 to 21, inclusive, an amount that is the same proportion of Member Schools's total subgrant under Part B of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 21, inclusive, who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in Member Schools served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 21, inclusive; and

(2) For children aged 3 to 5, inclusive, an amount that is the same proportion of Member Schools's total subgrant under Section 619, Preschool, of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 5, inclusive, who are enrolled by their parents in private, including religious, elementary schools located in Member Schools served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 5, inclusive.

If a district has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the district shall obligate the remaining funds for special education and related services,

including direct services, to parentally-placed private school children with disabilities during a carry-over period of one additional year.

In calculating the proportionate amount of federal funds to be provided for parentally-placed private school children with disabilities, the district, after timely and meaningful consultation with representatives of private schools, shall conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.

State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally-placed private school children with disabilities under this chapter.

- **Consultation process with private schools attended by children with disabilities; 300.134; ARSD 24:05:32:01.05**

To ensure timely and meaningful consultation, a school district, or, if appropriate, the department shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- (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 determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities under this chapter, including the determination of how the proportionate share of those funds was calculated;
- (3) The consultation process among the district, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- (4) How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
 - (a) The types of services, including direct services and alternate service delivery mechanisms;
 - (b) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
 - (c) How and when those decisions will be made; and
- (5) How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

Written affirmation by private school officials of meaningful consultation; 300.135; ARSD 24:05:32:01.06

When timely and meaningful consultation, as required by § 24:05:32:01.05, has occurred, the district shall obtain a written affirmation signed by the representatives of participating private schools.

If the representatives do not provide the affirmation within a reasonable period of time, the district shall forward the documentation of the consultation process to the department.

- **Compliance; rights of private school officials to submit a state complaint; 300.136; ARSD 24:05:32:01.07**

A private school official has the right to submit a complaint to the department that Member Schools did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint, the official shall provide to the department the basis of the noncompliance by the district with the applicable private school provisions in this chapter. The district shall forward the appropriate documentation regarding its consultation process to the department.

If the private school official is dissatisfied with the decision of the department, the official may submit a complaint to the U. S. secretary of education by providing the information on noncompliance described in this section. The department shall forward the appropriate documentation regarding the state's decision on the complaint to the U.S. Secretary of Education.

- **Determination of equitable services for parentally-placed private school students with disabilities; 300.137; ARSD 24:05:32:03.02**

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities are not required to meet the highly qualified special education teacher requirements of this article. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school. Each private school child with a disability who has been designated to receive services under this chapter, must have a services plan that describes the specific special education and related services that the district will provide to the child in light of the services that the district has determined, through the process described in this chapter, it will make available to private school children with disabilities. The services plan must to the extent appropriate:

- (1) Meet the IEP content requirements with respect to the services provided; and
- (2) Be developed, reviewed, and revised consistent with the IEP provisions in this article.

The provision of services pursuant to this chapter shall be provided by employees of a school district, or through contract by Member Schools with an individual, association, agency, organization, or other entity.

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

- **Provision of equitable services for parentally-placed private school students with disabilities; 300.138; ARSD 24:05:32:03.02**

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities are not required to meet the highly qualified special education teacher requirements of this article. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school. Each private school child with a disability who has been designated to receive services under this chapter, must have a services plan that describes the specific special education and related services that the district will provide to the child in light of the services that the district has determined, through the process described in this chapter, it will make available to private school children with disabilities. The services plan must to the extent appropriate:

- (1) Meet the IEP content requirements with respect to the services provided; and
- (2) Be developed, reviewed, and revised consistent with the IEP provisions in this article.

The provision of services pursuant to this chapter shall be provided by employees of a school district, or through contract by Member Schools with an individual, association, agency, organization, or other entity.

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

Location of services and transportation; 300.139; ARSD 24:05:32:03.03

Services provided to eligible parentally-placed private school children may be provided on the premises of a child's private school, including a religious school, to the extent consistent with state law. If necessary for the child to benefit from or participate in the services provided under this chapter, a private school child with a disability must be provided transportation:

- (1) From the child's school or the child's home to a site other than the private school; and
- (2) From the service site to the private school, or to the child's home, depending on the timing of the services.

Districts are not required to provide transportation from the child's home to the private school. The cost of transportation described in this section may be included in calculating whether the district has met the requirement of § 24:05:32:01.02.

- Due process complaints and state level complaints; 300.140; ARSD 24:05:32:03.04

The due process hearing and mediation procedures in chapter 24:05:30 do not apply to complaints that a school district has failed to meet the requirements of this chapter, including the provision of services indicated on the child's service plan. The due process hearing and mediation procedures in chapter 24:05:30 apply to complaints that the district has failed to meet the child find requirements in § 24:05:32:01.01, including the parent consent and evaluation requirements in this article. Any due process complaint regarding the child find requirements shall be filed with Member Schools in which the private school is located and a copy shall be forwarded to the department. Complaints that the department or a school district has failed to meet the requirements of this chapter may be filed under the procedures in chapter 24:05:15 consistent with the procedures in § 24:05:32:01.07

- Requirements that funds not benefit a private school; 300.141; ARSD 24:05:32:12

A school district may not use IDEA Section 619 Preschool or Part B funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. Member Schools shall use funds provided under Part B of the Individuals with Disabilities Education Act to meet the special education and related services needs of students enrolled in private schools, but not for:

- (1) The needs of a private school; or
- (2) The general needs of the students enrolled in the private school.

- Use of personnel for the provision of services to parentally-placed private school students with disabilities; 300.142; ARSD 24:05:32:13

A school district may use IDEA Section 619 Preschool and Part B funds to make public personnel available in other than public facilities to the extent necessary to provide services designed for students enrolled in a private school if those services are not normally provided by the private school.

- Prohibition on separate classes; 300.143; ARSD 24:05:32:11

A school district may not use IDEA Section 619 Preschool or Part B 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 and students enrolled in private schools.

- Property, equipment, and supplies used to provide special education and related services to parentally-placed private school students with disabilities; 300.144; ARSD 24:05:32:15, ARSD 24:05:32:16

Member Schools shall remove equipment and supplies from a private school if the equipment and supplies are no longer needed for the purposes of the program authorized under Part B of the IDEA or if removal is necessary to avoid unauthorized use of the equipment or supplies for other than Part B program purposes.

- Children with disabilities in private schools placed or referred by public agencies; 300.145 – 300.147; ARSD 24:05:34:02

Member Schools in which the child under care and custody of the state resides is responsible for the identification, evaluation, and placement of the child pursuant to the rules in this article governing children in need of special education or special education and related services. The state is responsible for the costs of special education or special education and related services.

- Placement of children with disabilities by their parents in private schools when FAPE is an issue; 300.148; ARSD 24:05:31:01-07

The provisions of this chapter apply to eligible children who are or have been placed in or referred to a private school or facility by a school district as a means of providing special education or special education and related services and to eligible children placed in private schools by their parents when FAPE is at issue.

The department shall ensure that an eligible child who is placed in or referred to a private school or facility by a school district is provided special education or special education and related services in conformance with an individual educational program which meets the requirements of this article at no cost to the parents and is provided an education which meets the standards that apply to state and local school districts, including the requirements in this chapter, with the exception of requiring highly qualified special education teachers. The eligible child has all of the rights of a child with a disability served by a school district. The department shall do the following to implement this chapter:

(1) Monitor compliance with this chapter through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of this chapter to each private school and facility to which a public agency has referred or placed an eligible child; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards which apply to them.

If an eligible child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this chapter to pay for the child's education, including special education and related services, at the private school or facility. However, the public agency must include the child in the population whose needs are addressed consistent with chapter 24:05:32.

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures.

If the parents of an eligible child, who previously received special education and related services under the authority of a school district, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by Member Schools, a court or a hearing officer may require Member Schools to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that Member Schools has not made a free appropriate public education available to the child in a timely manner before that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the state and districts.

The cost of reimbursement described in § 24:05:31:05 may be reduced or denied if:

(1) At the most recent individualized education program team meeting that the parents attended before removal of the child from the public school:

(a) The parents did not inform the individualized education program team that they were rejecting the placement proposed by Member Schools to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(b) At least ten business days, including any holidays that occur on a business day, before the removal of the child from the public school, the parents did not give written notice to Member Schools of the information described in subsection (a);

(2) Before the parents' removal of the child from the public school, Member Schools informed the parents, through the notice requirements described in chapter 24:05:30, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Notwithstanding the notice requirements in § 24:05:31:06, the cost of reimbursement may not be reduced or denied for failure to provide notice if:

(1) Compliance with § 24:05:31:06 would likely result in physical harm to the child;

(2) The school prevented the parent from providing the notice; or

(3) The parents had not received notice, pursuant to chapter 24:05:30, of the notice requirement in § 24:05:31:06.

In addition, the cost of reimbursement, may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if the parents are not literate or cannot write in English or if compliance with this section would likely result in serious emotional harm to the child.

SECTION XI: Compliance with SEA General Supervision Requirements and Implementation of Procedural Safeguards; 34 C.F.R. §§ 300.149 – 300.150; ARSD 24:05:30:01, ARSD 24:05:20:18; State Complaint Procedures; 34 C.F.R. §§ 300.151 – 300.153; ARSD 24:05:15

The cooperative and all member schools/districts will ensure compliance with all SEA procedures under general supervision and that programs meet the standards of the SEA. Specific references must include:

- Responsibility for general supervision and procedural safeguards; 300.149-150; ARSD 24:05:20:18; ARSD 24:05:30:01
- State complaint procedures; 300.151-153; ARSD 24:05:15

District Narrative: Review cited regulation to describe local implementation.)

The North Central Special Education Cooperative and member school districts will comply with any and all requests for information from the South Dakota Department of Education, Special Programs Office related to its obligation to provide general supervision over LEAs in the state. This includes any and all requests for information or data related to monitoring and compliance with regulations as established by the SEA.

Administrative Rules for each bullet under Section XI are as follows:

- Responsibility for general supervision and procedural safeguards; 300.149-150; ARSD 24:05:30:01

Each school district shall establish, maintain, and implement procedural safeguards which meet the requirements of this chapter.

- State complaint procedures; 300.151-153; ARSD 24:05:15

A complaint is a written signed statement by an individual or organization, including an individual or organization from another state, containing a statement that the department of education or a school district has violated a requirement of federal or state statutes, rules, or regulations that apply to a program and a statement of the facts on which the complaint is based. The complaint must allege a violation that occurred not more than one year before the date the complaint is received by the department. The written signed statement shall also include:

- (1) The signature and contact information for the complainant; and
- (2) If alleging violations with respect to a specific child:
 - (a) The name and address of the residence of the child;
 - (b) The name of the school the child is attending;
 - (c) In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
 - (d) A description of the nature of the problem of the child, including facts related to the problem; and
 - (e) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

In resolving a complaint in which it has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part B of the IDEA, shall address:

- (1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the student such as compensatory services or monetary reimbursement; and
- (2) Appropriate future provision of services for all students with disabilities.

An organization or individual may file a written, signed complaint with the state director of special education. The party filing the complaint shall forward a copy of the complaint to Member Schools serving the child at the same time the party files the complaint with the department.

If the complaint is against a school district, the following steps shall be taken:

(1) The state director of special education shall appoint a complaint investigation coordinator from the department's special education programs. The coordinator and any consultants may conduct an independent on-site investigation if it determines that one is necessary;

(2) The complainant may submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Member Schools may respond to the complaint, including, at a minimum:

(a) At the discretion of Member Schools, a proposal to resolve the complaint; and

(b) An opportunity for a parent who has filed a complaint and Member Schools to voluntarily engage in mediation consistent with this article;

(4) The complaint coordinator and any consultants shall make a recommendation to the state director of special education;

(5) After reviewing all relevant information, the state director of special education shall make an independent determination as to whether the complaint is valid, what corrective action is necessary to resolve the complaint, and the time limit during which corrective action is to be completed. The state director of special education shall submit a written report of the final decision to all parties involved;

(6) The written report shall address each allegation in the complaint, contain findings of fact and conclusions, and include reasons for the final decision;

(7) If the complaint is valid, the state director of special education shall find Member Schools out of compliance with federal and state statutes and rules;

(8) If corrective action is not completed within the time limit set, including technical assistance and negotiations, the department shall withhold all federal funds applicable to the program until compliance with applicable federal and state statutes and rules is demonstrated by Member Schools;

(9) When Member Schools demonstrates completion of required correction action, the department's Office of Finance and Management shall be notified by the state director of special education, and all moneys withheld shall be paid to Member Schools; and

(10) Documentation supporting the corrective actions taken by a school district shall be maintained by the department's special education programs and incorporated into the state's monitoring process.

All complaints must be resolved within 60 days after receipt of the complaint by the state director of special education except as stated in this section. The time limit of 60 days may be extended only under exceptional circumstances as determined by the state director of special education, such as the need for additional time to provide necessary information. Under these circumstances, an extension of time may not exceed 30 days in any one instance.

In addition, the 60-day time limit may be extended, if the parent, individual, or organization and Member Schools involved in the complaint agree to engage in mediation in order to attempt to resolve the issues specified in the complaint.

The department's special education programs shall inform parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities about the state's complaint procedures by taking the following actions:

(1) Conducting parent surveys through the state's monitoring process;

(2) Providing copies of the state's procedures to parent and advocacy groups across the state;

(3) Notifying local school districts through statewide memoranda;

(4) Presenting state procedures at statewide conferences; and

(5) Disseminating copies to parent training and information centers, independent living centers, protection and advocacy agencies, and other appropriate entities.

If a written complaint is received that is also the subject of a due process hearing under this article or contains multiple issues, of which one or more are part of that hearing, the department shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this chapter.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties the hearing decision is binding on that issue and the department shall inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision must be resolved by the department.

SECTION XII: FAPE Methods of Ensuring Services 34 C.F.R. § 300.154; ARSD 24:05:14:01.03, ARSD 24:05:14:01.06

The cooperative and all member schools/districts will ensure that public and/or private benefits available to a student with a disability are used appropriately, and that parents incur no cost in the provision of those services necessary for FAPE. Specific references must include:

- Restrictions and requirements on accessing public benefits (Medicaid); 300.154(d); ARSD 24:05:14:01.03
- Restrictions and requirements on accessing private benefits; 300.154(e); ARSD 24:05:14:01.03
- Use of Part B funds for services when parent consent is unable to be obtained; 300.154(f); ARSD 24:05:14:01.06

District Narrative:

The North Central Special Education Cooperative member school districts ensure that public and/or private benefits available to a student with a disability are used appropriately, and that parents incur no cost in the provision of those services necessary for FAPE.

The North Central Special Education Cooperative member school districts ensure procedures for the use of public benefits or insurance/private insurance are in accordance with ARSD 24:05:14:01.03.

Administrative Rules for each bullet under Section XII are as follows:

The North Central Special Education Cooperative and member districts ensure that public and private benefits available to a student with a disability will be used appropriately to support the provision of FAPE at no cost or harm to the parents.

- Restrictions and requirements on accessing public benefits (Medicaid); 300.154(d); ARSD 24:05:14:01.03

A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this article as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under this article the public agency:

- (1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;
- (2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.06, may pay the cost that the parent otherwise would be required to pay;
- (3) May not use a student's benefits under a public benefits or insurance program if that use would:
 - (a) Decrease available lifetime coverage or any other insured benefit;
 - (b) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
 - (c) Increase premiums or lead to the discontinuation of benefits or insurance; or
 - (d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;
- (4) Must provide written notification to the student's parents pursuant to § 24:05:14:01.04; and
- (5) Must obtain written parental consent consistent with § 24:05:29:13 before accessing a student's or parent's public benefits or insurance for the first time specifying:
 - (a) Personally identifiable information, as defined in § 24:05:29:02(12), that may be disclosed (e.g., records or information about the services that may be provided to a particular student);
 - (b) The purpose of the disclosure (e.g., billing for services under this article);
 - (c) That disclosure will be made to the state Medicaid agency; and
 - (d) That the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this article.

- Restrictions and requirements on accessing private benefits; 300.154(e); ARSD 24:05:14:01.03

A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this article as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under this article the public agency:

- (1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.06, may pay the cost that the parent otherwise would be required to pay;

(3) May not use a student's benefits under a public benefits or insurance program if that use would:

(a) Decrease available lifetime coverage or any other insured benefit;

(b) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(c) Increase premiums or lead to the discontinuation of benefits or insurance; or

(d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

(4) Must provide written notification to the student's parents pursuant to § 24:05:14:01.04; and

(5) Must obtain written parental consent consistent with § 24:05:29:13 before accessing a student's or parent's public benefits or insurance for the first time specifying:

(a) Personally identifiable information, as defined in § 24:05:29:02(12), that may be disclosed (e.g., records or information about the services that may be provided to a particular student);

(b) The purpose of the disclosure (e.g., billing for services under this article);

(c) That disclosure will be made to the state Medicaid agency; and

(d) That the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this article.

- **Use of Part B funds for services when parent consent is unable to be obtained; 300.154(f); ARSD 24:05:14:01.06**

If a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance if the parent would incur a cost for a specified service required under this article, to ensure FAPE, the public agency may use funds obtained through Part B of IDEA to pay for the service.

To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use funds obtained through Part B of IDEA to pay the cost the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

Proceeds from public benefits or insurance or private insurance may not be treated as program income for purposes of 34 C.F.R. § 80.25.

If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this article, those funds are not considered "state or local" funds for purposes of the maintenance of effort provisions in this article.

SECTION XIII: Hearings Related to LEA Eligibility 34C.F.R. § 300.155; ARSD 24:05:2023:01

The cooperative and all member schools/districts understand their right to a hearing regarding any final determination of the SEA on eligibility for funding under Part B.

District Narrative:

The North Central Cooperative and its member districts understand they have a right to a hearing before the State Department of Education makes a final determination regarding eligibility for funding under Part B. The applicant's chief executive office may file a hearing request as outlined in the administrative rule that follows:

The North Central Special Education Cooperative and member districts understand they have a right to a hearing before the SEA makes any final determination regarding eligibility for funding under Part B.

The applicant's chief executive officer may file a hearing request as follows:

- (1) The applicant must request the hearing within 30 days after the action of the department;
- (2) Within 30 days after it receives a request, the department shall hold a hearing on the record pursuant to SDCL chapter 1-26 and shall review its action;
- (3) No later than 10 days after the hearing the department shall issue its written ruling, including findings of fact and reasons for the ruling;
- (4) If the department determines that its action was contrary to state or federal statutes or rules that govern the applicable program, the department shall rescind its action;
- (5) If the department does not rescind its final action after a review, the applicant may appeal to the U. S. secretary of education. The applicant shall file a notice of the appeal with the U. S. secretary of education within 20 days after the applicant has been notified by the department of the results of the department's review. If supported by substantial evidence, the decision of the department is final;
- (6) The U.S. secretary of education may also issue interim orders to the department as necessary and appropriate pending appeal or review; and
- (7) If the U.S. secretary of education determines that the action of the department was contrary to the Individuals with Disabilities Education Act and implementing regulations, the secretary shall issue an order to the department to take appropriate action.

The department shall make available to the applicant during regular business hours all records of the department pertaining to any review or appeal it is conducting under this section, including records of other applicants.

If the department does not comply with any provision of this section, or with any order of the U.S. secretary of education, the secretary shall immediately terminate all assistance to the department under the Individuals with Disabilities Education Act or issue such other orders deemed appropriate to achieve compliance.

SECTION XIV: Personnel Qualifications 34 C.F.R. § 300.156; ARSD 24:05:16:16 & ARSD 24:05:16:01

The cooperative and all member schools/districts will ensure that personnel necessary to carry out the provision of special education and related services are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities, including related service personnel and paraprofessionals. Each cooperative will take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities (24:05:16:05, ARSD).

District Narrative:

The North Central Special Education Cooperative and its member school districts ensure only certified, licensed, or otherwise highly-qualified personnel will provide special education and related services. The districts will follow the same procedure for other certified staff, making sure staff work only in those areas where they are properly endorsed. Staff seeking endorsement will follow a plan of intent properly filed with the Department of Education.

Paraprofessionals will be hired by Member Schools. Paraprofessionals who are properly trained and supervised must have a high school diploma or GED and work within defined roles of Member Schools.

Administrative Rules for Section XIV are as follows:

The North Central Special Education Cooperative and member districts ensure that only appropriately certified and/or licensed professionals will be employed to provide services to students with disabilities. In addition, the district will provide ongoing training to all staff and paraprofessionals to assist all in the provision of services to students with disabilities. Further, the district ensures that each special education teacher at the elementary, middle, and high school level is highly-qualified per the standards of the ESEA. The district will take steps to recruit, hire, train and retain highly qualified personnel as specified under SD administrative rule.

- Personnel qualifications; ARSD 24:05:16:16

To ensure that all personnel necessary to carry out the purposes of Part B and Part C of the Individuals with Disabilities Education Act are appropriately and adequately prepared and trained, including ensuring that those personnel have the content knowledge and skills to serve children with disabilities, the department shall determine that all personnel providing special education or related services, including related services, paraprofessionals and assistants, early intervention, and early childhood personnel, perform these functions under state-approved or state-recognized certification or licensure or other comparable requirements that apply to the area in which the person is providing special education or related services. The department shall ensure that related services personnel who deliver services in their discipline or profession meet the requirements of this section and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

- Paraprofessionals and assistants; ARSD 24:05:16:16:01

Paraprofessionals and assistants who are appropriately trained and supervised in accordance with this section may be used to assist in the provision of special education and related services to children with disabilities under Part B of the Individuals with Disabilities Education Act. At a minimum, the following standards must be met:

- (1) Paraprofessionals must have a high school diploma or GED;
- (2) Paraprofessionals must work within defined roles and responsibilities as identified by Member Schools;
- (3) Paraprofessionals must work under the supervision of, and be evaluated by, certified staff; and
- (4) Each school district must describe the training to be provided paraprofessionals in the staff development component of the district's comprehensive plan under § 24:05:16:05.

SECTION XV: Performance Goals and Indicators 34 C.F.R. § 300.157; ARSD 24:05:14:13

The cooperative and all member schools/districts will ensure the implementation of state established performance goals and indicators for students with disabilities within their jurisdiction. Specific reference must include:

- Student information management system (SIMS)

District Narrative:

The North Central Special Education Cooperative member school districts will provide data for the state established performance goals and indicators to the Department of Education as required.

Administrative Rules for Section XV are as follows:

The North Central Special Education Cooperative and member districts will comply with all requests by the SEA for data submission that is instrumental in monitoring the performance of the student population with respect to state established performance goals and indicators, and will submit such data on a timely basis.

The department shall have in effect established goals for the performance of children with disabilities in the state that:

- (1) Promote the purposes of Part B of the Individuals with Disabilities Education Act;*
- (2) Are the same as the state's objectives for progress by children in its definition of adequate yearly progress, including the state's objectives for progress by children with disabilities, under the ESEA;*
- (3) Address graduation rates and dropout rates, as well as such other factors as the state may determine; and*
- (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the state.*

The department shall have in effect established performance indicators that the state shall use to assess progress toward achieving the above goals including measurable annual objectives for progress by children with disabilities under the ESEA. Annually, the department shall report to the U.S. Secretary of Education and the public on the progress of the state, and of children with disabilities in the state, toward the goals established under this section, which may include elements of the reports required under the ESEA.

SECTION XVI: Participation in Assessments 34 C.F.R. § 300.160; ARSD 24:05:14:14, ARSD 24:05:14:14.01

The cooperative and all member schools/districts will ensure that all children with disabilities are included in all general State and districtwide assessment programs, including those assessments described under section 1111 of the Elementary and Secondary Education Act (ESEA), with appropriate accommodations and alternate assessments where necessary, and as indicated in their respective individual education programs (IEP).

District Narrative:

The North Central Special Education Cooperative member school districts ensure all children with disabilities shall be included in all general state- and district-wide assessment programs, including assessments described in the ESEA, with appropriate accommodations and alternate assessments if necessary, and as indicated in their respective IEPs. Parents will be a part of the decision-making team that will determine which accommodations or alternate assessments are necessary. If alternate assessments are deemed necessary, parents will be informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

The districts will provide all necessary data to the state Department of Education regarding the participation of students with disabilities in state- and district-wide testing programs.

Administrative Rules for Section XVI are as follows:

The North Central Special Education Cooperative and member districts ensure that all students with disabilities will be included in state and district assessments, with appropriate accommodations and alternate assessments when necessary. Parents will be informed of their child's participation during the course of the IEP meeting, including any necessary accommodations or any assessment that will be based on alternate or modified achievement standards.

The district will provide all necessary data to the SEA on the participation of students with disabilities in state and district wide testing programs and will, to the extent possible, utilize universal design principles in the development and administration of any assessments.

All children with disabilities shall be included in all general state and district-wide assessment programs, including assessments described in the ESEA, with appropriate accommodations and alternate assessments if necessary and as indicated in their respective IEPs. As appropriate, the department or local educational agencies shall develop guidelines for the provision of appropriate accommodations.

The department's or local educational agencies' guidelines for the provision of appropriate accommodations shall:

- (1) Identify only those accommodations for each assessment that do not invalidate the score; and
- (2) Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

As appropriate, the department or local educational agency shall develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments even with accommodations as indicated in their respective individualized education programs. The alternate assessments and guidelines shall provide for alternate assessments that:

- (1) Are aligned with the state's challenging academic content standards and challenging student academic achievement standards;
- (2) If the state has adopted modified academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with disabilities against those standards; and
- (3) If the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with the most significant cognitive disabilities against those standards.

As appropriate, the department or local educational agency shall provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards, such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma.

As appropriate, the department or local educational agency shall ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

SECTION XVII: Supplementation of State, local, and other Federal Funds 34 C.F.R. §§ 300.162-163; ARSD 24:05:19:0

The cooperative and all member schools/districts will ensure the appropriate use of funds under Part B, consistent with 34 C.F.R. § 300.202(a)(1)(2)(3), to pay for the excess costs of providing special education and related services to children with disabilities within their jurisdiction and that such funds will be used to supplement state, local, and Federal funds, not supplant those funds.

- Maintenance of effort; 300.163; ARSD 24:05:19:08.03

District Narrative:

The North Central Special Education Cooperative member school districts ensure Part B funds are used in a manner consistent with federal and state statutes, rules, and regulations; in accordance with the districts' approved annual application for federal funds.

Administrative Rules for Section XVII are as follows:

The North Central Special Education and member districts ensure appropriate use of funds under Part B to pay for the excess costs of providing special education and related services to children with disabilities. Available funding will be used to supplement state, local, and federal funds, and not supplant those funds.

From the total amount of funds received by the state education agency under the Individuals with Disabilities Education Act, Part B, for any fiscal year, the department shall distribute any funds not reserved under §§ 24:05:19:09, 24:05:19:10, and 24:05:19:11 to local education agencies that have established their eligibility under this article for use in accordance with Part B of the IDEA. Beginning with funds that became available on July 1, 2009, the department shall distribute funds to eligible local education agencies, even if the local education agency is not serving any children with disabilities. The department shall distribute these federal funds to local education agencies according to the following criteria:

- (1) Local education agencies shall receive 75 percent of the amount they would have received under section 611 of IDEA for fiscal year 1999, as that section was then in effect;
- (2) Eighty-five percent of remaining funds shall be allocated to local education agencies based on the relative numbers of children enrolled in public and private elementary and secondary schools within each local education agency's jurisdiction; and
- (3) Fifteen percent of remaining funds shall be allocated to local education agencies based on their relative numbers of children living in poverty, as determined by the state education agency.

For any fiscal year after 1999, the base payment described in subdivision 24:05:19:01(1) shall be adjusted under the following circumstances:

- (1) If a new local education agency is created, the department shall divide the base allocation determined under this section for the local education agencies that would have been responsible for serving children with disabilities now being served by the new local education agency, among the new local education agency and affected local education agencies based on the relative numbers of children with disabilities ages 3 through 21;
- (2) If one or more local education agencies are combined into a single new local education agency, the department shall combine the base allocations of the merged local education agencies; and
- (3) If, for two or more local education agencies, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected local education agencies shall be redistributed among affected local education agencies based on the relative numbers of children with disabilities ages 3 through 21.

If a local education agency received a base payment of zero in its first year of operation, the department shall adjust the base payment for the first fiscal year after the first annual child count in which the local education agency reports that it is serving any children with disabilities. The department shall divide the base allocation determined under § 24:05:19:01 for the local education agencies that would have been responsible for serving children with disabilities now being served by the local education agency, among the local education agency and affected local education agencies based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the local education agencies. This requirement takes effect with funds that became available on and after July 1, 2009.

If the department determines that a local education agency is adequately providing a free appropriate public education to all certified children with disabilities residing within the legal boundaries of the district with state and local funds, the department may reallocate a portion or all of a district's Individuals with Disabilities Education Act, Part B funds that are not needed by that

district to provide FAPE to other districts in the state which are not adequately providing special education and related services to all its resident certified children with disabilities.

After the department distributes funds to an eligible local education agency that is not serving any children with disabilities, the department shall determine, within a reasonable period of time before the end of the carryover period for the use of federal Part B funds, whether the local education agency has obligated the funds. The department may reallocate any of those funds not obligated by the local education agency to other local education agencies in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local education agencies.

A local education agency may only use funds under the Individuals with Disabilities Education Act, Part B, for excess costs of providing special education and related services to certified children with disabilities.

Each local education agency must use Individuals with Disabilities Education Act, Part B funds to supplement other federal, state, and local funds expended for the education of certified children with disabilities. Federal IDEA Part B funds may not be used to supplant state, other federal, and local funds.

Except as provided in §§ 24:05:19:05.01 and 24:05:19:05.05, Individuals with Disabilities Education Act, Part B funds may not be used to reduce the level of expenditures made by a local education agency from local funds below the level of expenditures for the fiscal year immediately preceding the fiscal year for which the local education agency is applying for funds for the education of children with disabilities.

A school district complies with this section for purposes of establishing Member Schools's eligibility for an award for a fiscal year if the district budgets, for the education of students with disabilities, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:

- (1) Local funds only; or
- (2) The combination of state and local funds.

A district that relies on subdivision (1) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of students with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available, and must ensure that the standard in subdivision (1) of this section was used to establish compliance.

The department may not consider any expenditures made from funds provided by the federal government for which the department is required to account to the federal government or for which the district is required to account to the federal government directly or through the department in determining a district's compliance with the requirements of this section.

Notwithstanding the restrictions in § 24:05:19:05, a school district may reduce the level of expenditures by the district under Part B of the Individuals with Disabilities Education Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

- (1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;
- (2) A decrease in the enrollment of students with disabilities;
- (3) The termination of the obligation of the district, consistent with this chapter, to provide a program of special education to a particular student with a disability that is an exceptionally costly program as determined by the state, because the student:
 - (a) Has left the jurisdiction of the district;
 - (b) Has reached the age at which the obligation of the district to provide a free appropriate public education to the student has terminated; or
 - (c) No longer needs the program of special education;
- (4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities; or
- (5) The assumption of cost by the extraordinary costs fund operated by the department under chapter 24:05:33.01.

Notwithstanding federal requirements governing excess cost, use of Part B funds to supplement state, local and other federal funds and not supplant those funds, maintenance of effort, and commingling requirements, IDEA Part B funds provided to a school district may be used for the following activities:

(1) For the costs of special education and related services and supplementary aids and services provided in a regular class or other education related setting to a student with a disability in accordance with the individual education program of the student, even if one or more nondisabled students benefit from these services;

(2) To develop and implement coordinated, early intervening educational services in accordance with this chapter; and

(3) To establish and implement cost or risk sharing funds, consortia, or cooperatives for Member Schools itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

A school district may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

Notwithstanding the excess cost and maintenance of effort requirements, and the exception regarding early intervening services in this chapter, for any fiscal year for which the allocation received by a district exceeds the amount the district received for the previous fiscal year, the district may reduce the level of expenditures, otherwise required, by not more than 50 percent of the amount of that excess.

If a school district exercises the authority under this section, the district must use an amount of local funds equal to the reduction in expenditures under this section to carry out activities that could be supported with funds under the ESEA regardless of whether the district is using funds under the ESEA for those activities.

Notwithstanding the requirements of this section, if the department determines that a district is unable to establish and maintain programs of FAPE that meet the requirements of this article or the department has taken action against the district under chapter 24:05:20, the department must prohibit the district from reducing the level of expenditures under this section for that fiscal year.

The amount of funds expended by a district for early intervening services under this chapter shall count toward the maximum amount of expenditures that the district may reduce under this section.

A district may not use more than 15 percent of the amount the district receives under Part B of the IDEA for any fiscal year, less any amount reduced by the district pursuant to § 24:05:19:05.05, if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

Nothing in this section either limits or creates a right to FAPE under Part B of the IDEA or delays appropriate evaluation of a child suspected of having a disability.

Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

In implementing coordinated, early intervening services, a school district may carry out activities that include:

(1) Professional development, which may be provided by entities other than school districts, for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions, including scientifically-based literacy instruction, and, if appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction..

Each school district that develops and maintains coordinated, early intervening services must annually report to the department on:

(1) The number of children served who received early intervening services; and

(2) The number of children served who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two-year period.

Notwithstanding the provisions of excess cost and maintenance of effort, or any other provision of Part B of the IDEA, a school district may use funds received under Part B of the IDEA for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed the amount received by the district under Part B of the IDEA for that fiscal year divided by the number of children with disabilities in the jurisdiction of the district and multiplied by the number of children with disabilities participating in the schoolwide program.

The funds described in § 24:05:19:05.09 are subject to the following conditions:

- (1) The funds must be considered as federal Part B IDEA funds for purposes of the calculations required under excess cost, supplementing, and supplanting; and
- (2) The funds may be used without regard to the other requirements of this chapter.

Except as provided in § 24:05:19:05.10, all other requirements of Part B of the IDEA must be met by a school district using Part B funds in accordance with § 24:05:19:05.09, including ensuring that children with disabilities in schoolwide program schools:

- (1) Receive services in accordance with a properly developed IEP; and
- (2) Are afforded all of the rights and services guaranteed to children with disabilities under the IDEA.

Nothing in this article relieves an insurer or a similar third party from an otherwise valid obligation to provide or pay for services provided to a child with disabilities.

Consistent with the IEP requirements in this article regarding the provision of services in a timely manner, the department shall 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.

If placement in an approved public or private residential program is necessary to provide special education and related services to a child with disabilities, the program, including nonmedical care and room and board, must be provided at no cost to the parent of the child.

Funds under Part B of IDEA may not be commingled with state funds.

Except as provided in § 24:05:19:05, federal funds paid to the state under Part B of the Individuals with Disabilities Education Act, shall be used to supplement and in no case supplant, federal, state, and local funds (including funds that are not under the direct control of the state or local education agencies) expended for special education and related services provided to students with disabilities.

The state may not reduce the amount of state financial support for special education and related services for students with disabilities, or financial support otherwise made available because of the excess costs of educating those students, below the amount of that support for the preceding fiscal year.

In complying with state requirements for commingling, nonsupplanting and maintenance of effort, the state may not use funds paid to it under Part B of IDEA to satisfy state-law mandated funding obligations to school districts, including funding based on student attendance, enrollment, or inflation.

The state for each fiscal year may set aside an amount equal to or less than \$850,000 adjusted cumulatively for inflation for state administration under Part B of the IDEA.

Before the expenditure of funds under this section, the state must certify to the U.S. Secretary of Education that the arrangements to establish responsibility for services pursuant to chapter 24:05:14 are current.

The department may use funds under § 24:05:19:09 for the following costs:

- (1) Administering the Part B, Part C, and preschool section 619 programs under the IDEA; and
- (2) Coordinating activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities.

The state may use an amount equal to nine and one-half percent, adjusted cumulatively for inflation each fiscal year, of its allocation that it does not use for administration under §§ 24:05:19:09 and 24:05:19:10 for other state-level activities. Some portion of these funds shall be used to carry out monitoring, enforcement, complaint investigation, and the establishment and implementation of the mediation process required by this article, including providing for the costs of mediators and support personnel.

Funds reserved under this section also may be used to carry out the following activities:

- (1) For support and direct services, including technical assistance, personnel preparation, and professional development and training;
- (2) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

(3) To assist school districts in providing positive behavioral interventions and supports and mental health services for children with disabilities;

(4) To improve the use of technology in the classroom by children with disabilities to enhance learning;

(5) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(6) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

(7) To assist districts in meeting personnel shortages;

(8) To support capacity building activities and improve the delivery of services by school districts to improve results for children with disabilities;

(9) To provide alternative programming for students with disabilities who have been expelled from school, and services for students with disabilities in correctional facilities or students enrolled in state-operated or state-supported schools;

(10) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with the ESEA; and

(11) To provide technical assistance to schools and school districts and direct services, including supplemental educational services as defined in the ESEA to children with disabilities, in schools or school districts identified for improvement under the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically-based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the state under the ESEA.

- Maintenance of Effort; ARSD 24:05:19:08.03

Member districts ensure appropriate use of funds under Part B to pay for the excess costs of providing special education and related services to children with disabilities. Available funding will be used to supplement state, local, and federal funds, and not supplant those funds.

SECTION XVIII: Public Information 34 C.F.R. § 300.165; ARSD 24:05:20:02

The cooperative and all member schools/districts will ensure that prior to the adoption of any policies necessary to comply with the requirements under Part B, including any amendments to policies and procedures, there will be public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of individuals with disabilities. The cooperative will make available to parents of children with disabilities and the general public all documents relating to the cooperative eligibility under Part B of the IDEA.

District Narrative:

The North Central Special Education Cooperative and its member districts ensure that the public will have an opportunity to provide input prior to the adoption of any policies or procedures with regard to Part B. The annual Part B application will be on the board agenda prior to submission, with public input heard at this time. The notice will include the components found in § 24:05:20:01 found below.

The North Central Special Education Cooperative and its member districts ensure that prior to the adoption of any policies or procedures that are needed to comply with Part B regulations, that there will be an opportunity for public input at a hearing with adequate notice of the hearing and the opportunity to provide input.

The annual submission of the Part B application will be preceded by adequate notice of a public hearing as part of the school board agenda, with an opportunity for public comment. All Part B applications are available to the public at their request through the district office and are available on the district's website.

The notice in § 24:05:20:01 shall include the following:

- (1) Procedures for applicants to follow in completing and submitting requests for Individuals with Disabilities Education Act, Part B funds;
- (2) The objectives of the Individuals with Disabilities Education Act, Part B program;
- (3) An offer of technical assistance in completing the request for funds;
- (4) A general description of the state's procedures for reviewing and approving requests; and
- (5) A statement of a local education agency's obligation to make all documents relating to the eligibility of the district, including the request for funds and any evaluations, periodic program plans, or reports required by the state for the Individuals with Disabilities Education Act, Part B project available to parents of children with disabilities and to the general public.

SECTION XIX: State Advisory Panel 34 C.F.R. § 300.167-169; ARSD 24:05:14:18-19

The cooperative and all member schools/districts support the work of the State Advisory Panel to provide policy guidance to the SEA with respect to special education and related services for children with disabilities.

District Narrative:

The North Central Special Education Cooperative and its member districts support the work of the State Special Education Advisory Panel and will refer parents who are interested in serving on this panel to the appropriate state contact.

Components of the panel are found below in the administrative rules.

The North Central Special Education Cooperative and its member district support the work of the State Special Education Advisory Panel and will refer interested parents to the appropriate state contact if they are interested in serving on the panel.

The department shall establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state.

The advisory panel must consist of members appointed by the Governor, or any other official authorized under state law to make such appointments, be representative of the state population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including:

- (1) Parents of children with disabilities, ages birth through 26;
- (2) Individuals with disabilities;
- (3) Teachers;
- (4) Representatives of institutions of higher education that prepare special education and related services personnel;
- (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2007;
- (6) Administrators of programs for children with disabilities;
- (7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
- (8) Representatives of private schools;
- (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- (10) A representative from the state child welfare agency responsible for foster care; and
- (11) Representatives from the state juvenile and adult corrections agencies.

A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities, ages birth through 26.

SECTION XX: Other Required Provisions 34 C.F.R. § 300.170 through 300.174.

The cooperative and all member schools/districts will ensure the following specific provisions have consistent policies for implementation at the local level. Specific references must include:

- Suspension and expulsion rates; 300.170; ARSD 24:05:14:16
- Annual description of Part B funds; 300.171; ARSD 24:05:21:03
- Access to instructional materials (NIMAC); 300.172; ARSD 24:05:14:17
- Over-identification and disproportionality; 300.173; ARSD 24:05:17:10
- Prohibition on mandatory medication; 300.174; ARSD 24:05:14:21

District Narrative:

The North Central Special Education Cooperative and its member districts permit the Department of Education to review its data to determine if discrepancies exist regarding children with disabilities and suspension/expulsion rates as compared to their non-disabled peers. Data regarding race and ethnicity may also be reviewed for discrepancies.

The North Central Special Education Cooperative completes the IDEA Federal Application for Funds (Part B and Section 619), and reports to the State accordingly.

Districts will work with the state DOE to obtain resources for children who are visually impaired.

The North Central Special Education Cooperative member districts will submit child count data to the Department of Education on the identification of students with disabilities to determine over identification and disproportionality.

Neither the Cooperative nor its member districts may require parents to obtain a prescription for their child for certain controlled substances as a condition of attending school or receiving an evaluation.

The NCSEC and its member districts will update their comprehensive plan annually.

Administrative Rules for Section XX are as follows:

The North Central Special Education Cooperative and its member districts ensure that the specific provisions of 300.170 through 300.173 and 24:05:21:04, ARSD have been implemented at the district level, consistent with state policy.

- Suspension and expulsion rates; 300.170; ARSD 24:05:14:16

The department shall examine data, including data disaggregated by race and ethnicity, from local education agencies and other state agencies, as appropriate, to determine whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local educational agencies in the state or compared to the rates for nondisabled children within the agencies. If discrepancies are occurring, the department shall review and, if appropriate, revise or require the affected local education agency or state agency to revise its policies, procedures, and practices relating to:

- (1) The development and implementation of individualized education programs;
- (2) The use of positive behavioral interventions and supports; and
- (3) Procedural safeguards to ensure that these policies, procedures, and practices comply with the Individuals with Disabilities Education Act, Part B.

- Annual description of Part B funds; 300.171; ARSD 24:05:21:03

The information required in an agency's comprehensive plan coupled with statements of expenditures, descriptions of the annual use of IDEA, Part B funds, and certification of federal assurances establish a local education agency's eligibility for funds under the Individuals with Disabilities Education Act, Part B.

Access to instructional materials (NIMAC); 300.172; ARSD 24:05:14:17

The department shall adopt the National Instructional Materials Accessibility Standard (NIMAS), for the purposes of providing instructional materials to blind persons or other persons with print disabilities. Blind persons or other persons with print disabilities means children served under this article who qualify to receive books and other publications produced in specialized formats in accordance with the federal Act to Provide Books for Adults who are Blind, in accordance with 2 U.S.C. 135a, as amended to January 1, 2007.

In implementing NIMAS, the department shall coordinate with the National Instructional Materials Accessibility Center (NIMAC), and the department:

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to:

(a) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(b) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats;

(2) Shall provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

In carrying out this section, the department, to the maximum extent appropriate, shall work collaboratively with the state agency responsible for assistive technology programs.

- **Over-identification and disproportionality; 300.173; ARSD 24:05:17:10**

The department shall provide for the collection and examination of data to determine whether any inappropriate overidentification or significant disproportionality based on race and ethnicity is occurring in the state and in districts of the state with respect to:

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in chapter 24:05:24.01;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

In the case of a determination of inappropriate overidentification or significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular settings of these children, the department shall provide for the review of and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure compliance with the requirements of Part B of the Individuals with Disabilities Education Act; require any district identified under this section to reserve the maximum amount of funds allowable to provide comprehensive coordinated early intervening services to serve children in the district, particularly, but not exclusively, children in those groups that were significantly overidentified under this section; and require the district to publicly report on the revision of policies, practices, and procedures described under this section.