

**JAMES RIVER  
SPECIAL EDUCATION UNIT**

**ASSURANCES, POLICY &  
PROCEDURES – IDEA**

**Fall 2016**

# James River Special Education Unit

## Definitions and Citation Form

### A. Definitions

1. "IDEA" means the Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446 [20 U.S.C. § 1400 et. seq.] (also referred to as "the Act").
2. "LEA" means a public school district, a multidistrict special education unit organized under North Dakota Century Code chapter 15.1-33, or other legally constituted public authority for administrative control or direction of, or to perform a service function for, public elementary or secondary schools ND Admin. Code Chapter 67-23-01
3. "NDDPI" means the North Dakota Department of Public Instruction.

### B. Citation Form

1. Where a section is cited without a further source reference, unless the context requires otherwise, the reference is made to federal regulations implementing IDEA 34 CFR Part 300.
2. The North Dakota Administrative Code, "N.D. Admin. Code" is the compilation of state rules that have the force and effect of law. It is the counterpart to the North Dakota Century Code for state statutes.
3. The **North Dakota Century Code, NDCC**, is the collection of all statutes passed by the **North Dakota Legislative Assembly** since the state's admission to the Union.

## I. RIGHT TO EDUCATION POLICY STATEMENT (20 U.S.C. 1412(a)(1); 34 CFR § § 300.101-300.102)

### A. Policy

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that all children with disabilities ages 3 through 21 have the right to a free appropriate public education (FAPE) including children with disabilities who have been suspended or expelled from school. This policy includes all children with disabilities in accordance with definitions as listed in IDEA 2004 (Public Law 108-446) and North Dakota Century Code (NDCC). FAPE means that an eligible student with a disability receives special education and related services at public expense, and that services are provided in conformity with an individualized education program (IEP). Special education includes specially designed instruction to meet the unique needs of the student which, in turn, involves adapting the content, methodology or delivery of instruction in order for the student to be involved in and make progress in the general curriculum, and to participate in extracurricular and other non-academic activities. Related services means transportation and developmental, corrective, and other supportive services that are necessary for a student with a disability to benefit from special education or to access the general curriculum.

In providing a free appropriate public education to a child with a disability, the **JAMES RIVER SPECIAL EDUCATION UNIT** assures that:

- if placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child (300.104);
- the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly (300.113 (a));
- it is taking steps to ensure that children with disabilities have available to them the variety of educational programs and services available to children who do not have disabilities, including art, music, industrial arts, consumer and homemaking education, and vocational education (300.110);
- it is taking steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities (300.107);
- it affords each child with a disability the opportunity to participate in the regular physical education program available to children who do not have disabilities, unless the child is enrolled full time in a separate facility, or the child needs specially designed physical education (300.108);
- assistive technology devices or services or both are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services (300.105); and
- extended school year services are available as necessary to provide a free appropriate public education, as determined by the child's individualized education program team (300.106).

### B. Definitions; FAPE for Children Beginning at Age 3

As defined by IDEA, 34 CFR § 300.8, a *child with a disability* means a child evaluated in accordance with § 300.304-300.311 as having an intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance ("emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

North Dakota Century Code Section 15.1-32-01(4) defines "student with a disability" and the age limits for providing special education programs to children with disabilities. This statute provides the basis for programming for children with disabilities ages 3 through 21. Federal regulations at 34 CFR 300.8 (b) state that the term *child with a disability* for children aged 3 through 9 or any subset of that age range, may include a child:

- (i) who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
- (ii) who, for that reason, needs special education and related services.

In North Dakota, the term "child with a disability" for a child ages 3 through 9 may include a child who is experiencing developmental delays. NDCC 15.1-32-24, defines the term "non-categorical delay" for children of this age range. "Non-categorical delays" are defined by State guidelines in *Guidelines: Identification and Evaluation of Students with Non-Categorical Delay* (NDDPI July 2007).

The **JAMES RIVER SPECIAL EDUCATION UNIT** ensures that:

1. the obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday;
2. an Individualized Education Program (IEP) is in effect for the child by that date, in accordance with §300.323; and
3. if a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin. The LEA must provide services during the summer if the IEP team determines the child needs Extended School Year (ESY) services in order to receive a free and appropriate public education.

### C. FAPE for Children Suspended or Expelled from School

1. A school district need not provide services during periods of removal under §300.530(b) to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.
2. In the case of a child with a disability who has been removed from his or her current placement for more than ten (10) school days in that school year, the school district, for the remainder of the removals, must
  - (i) provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is—
    - (a) under the school personnel's authority to remove for not more than ten (10) consecutive school days as long as that removal does not constitute a change of placement under §300.536, 300.530(d); or
    - (b) for behavior that is not a manifestation of the child's disability, consistent with §300.530(c); and
  - (ii) provide services consistent with §300.530(d), if the removal is—
    - (a) for drug, weapons, or serious bodily injury offenses under §300.530(g); or
    - (b) based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, pursuant to §300.531(b).
3. School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than ten (10) consecutive school days as long as that removal does not constitute a change of placement under §300.536 (§300.530(d)(4)).
4. The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, pursuant to §300.530(d)(5).

### D. Children Advancing from Grade to Grade (§ 300.101(c))

1. The **JAMES RIVER SPECIAL EDUCATION UNIT** ensures that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.
2. The determination that a child residing in North Dakota between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, is eligible under this part, must be made on an individual basis by the group responsible within the school district for making those determinations.

### E. Exception to FAPE for Certain Ages (§300.102)

NDCC §15.1-32-01(4) identifies age limits for provision of FAPE in North Dakota: an individual who is at least three years of age but who has not reached age twenty-one before August first of the year in which the individual turns twenty-one.

The obligation to make FAPE available to all children with disabilities does not apply to students with disabilities who have graduated from high school with a regular high school diploma. There is only one type of high school diploma in North Dakota, the "regular" diploma. Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

Federal regulations at §300.102(a) (2) state other exceptions to the requirement to provide FAPE that do not apply in North Dakota because North Dakota has not enacted the required foundational state statute.

## II. FULL EDUCATIONAL OPPORTUNITIES GOAL AND TIMELINES

**A. Goal Statement** (20 U.S.C. 1412(a)(2); 34 CFR 300.109)

The **JAMES RIVER SPECIAL EDUCATION UNIT** affirms the goal of providing full educational opportunity to all children with disabilities ages birth through 21.

The Department of Public Instruction's present special education mandate is to serve all children with disabilities ages 3 through 21. The provision of special education services to children with disabilities ages birth through two is the responsibility of the Department of Human Services (DHS), and by the appointment of DHS as lead agency by the Governor of North Dakota to carry out the provisions of IDEA Part C.

**III. CHILD IDENTIFICATION (20 U.S.C. 1412(a)(3)(A) and (B); 34 CFR 300.111)**

**A. Policy**

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that all children residing within its jurisdiction, including children with disabilities who are wards of the state or are attending private school, regardless of the severity of their disability, and who are in need of special education and related services will be identified, located, and evaluated. This assurance extends to highly mobile children with disabilities (such as migrant and homeless children) and children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade.

**B. Identification Procedures**

1. The **JAMES RIVER SPECIAL EDUCATION UNIT** is the central referral point for information regarding identified children with disabilities ages birth through 21.  
The **JAMES RIVER SPECIAL EDUCATION UNIT** annually reports data on identified children with disabilities ages 3-21 to the NDDPI. These data are included in the Child Information data collection system used for Child Count each December. The unit director works collaboratively with other community/regional agencies to develop a plan for location and identification of children ages birth through 5, to assure that selective screening is available and that children with disabilities identified as a result of the screening and subsequent evaluations are reported. The **JAMES RIVER SPECIAL EDUCATION UNIT** is responsible for unit-wide planning and implementation of child identification, location, and evaluation efforts.

**C. Child Find Activities**

1. Child Find

The **JAMES RIVER SPECIAL EDUCATION UNIT** participates in ongoing efforts to identify, evaluate, and serve children with disabilities. The unit provides follow-up screening and evaluative services. Child Find information is disseminated throughout the year using brochures, parent-teacher meetings, and professional organizations. The special education unit as the local coordinating agency begins the program planning process for children suspected of having disabilities, birth through 21. Referrals of children birth through two are made to the ND Department of Human Services, Early Intervention Program.

2. Preschool Screening

Children with disabilities, ages 3 through 5, are referred to special education units through child find activities, parents, public health nurses, and other agencies. The **JAMES RIVER SPECIAL EDUCATION UNIT** participates in interagency screening activities for at-risk children 3 through 5 years of age. Other agencies involved in the screening activities include Head Start, Maternal and Child Health, and other local programs. This selective screening process is available to young at-risk children year round and is closely coordinated with the ND Early Intervention Program.

3. Selective Screening

Selective screening is done to determine the significance of identified risk conditions to the child's growth and development or academic performance. The result of the screening process is a systematic collection of information for every student screened which helps determine whether there is a need for referral. For school-age children, follow-up services are provided through an intervention process. This could be through the Response to Intervention process (RTI) Multi-Tiered System of

Support (MTSS) or a building level team process such as the Building Level Support Team (BLST) or Teacher Assistance Team, (TAT).

Screening will be performed by qualified personnel and may include:

- a. vision screening performed to verify indicators of loss of sight, acuity, or other possible vision related problems;
- b. hearing screening to verify any hearing risk indicators;
- c. speech and language screening to verify problems in the formulation or articulation of speech or any delay in the development of language;
- d. preschool screening which typically includes vision, hearing, cognition, motor, speech-language, and health components to verify developmental delays;
- e. academic screening for school age children to determine the significance of academic delays; and
- f. screening for secondary level students who are at-risk of dropping out, or who have dropped out, to verify that the reasons for dropping out are not related to a previously unidentified disability.

#### 4. Identification of Students At-Risk of Dropping Out of School

The **JAMES RIVER SPECIAL EDUCATION UNIT** has established screening and identification procedures for secondary level students who may have dropped out or for other reasons have not received an adequate education program. Services include evaluations, programming, and referrals to other agencies when appropriate. An outcome of this activity is to identify students who may have disabilities and provide appropriate supports for them.

### D. Reporting Requirements to NDDPI

The **JAMES RIVER SPECIAL EDUCATION UNIT** submits reports to the NDDPI in accordance with N.D. Admin. Code § 67-23-03-02.

## IV. PROCEDURES FOR EVALUATION AND DETERMINATION OF ELIGIBILITY (20 U.S.C. 1412(a)(6)(B), (1412)(a)(7); 1414(a),(b), and (c); 34 CFR 300.122; 300.300-300.311)

The school district has in effect policies and procedures consistent with federal law and state guidelines that address initial evaluation, evaluation procedures, determination of needed evaluation data, determination of eligibility, procedures for determining eligibility, placement, and reevaluation. The school district understands that a student cannot be determined to be eligible for special education solely because of limited English proficiency, because the student fails to meet the school discipline code, or because the student lacks instruction in reading or math.

### A. Policy

The **JAMES RIVER SPECIAL EDUCATION UNIT** adheres to the policies, standards, and procedures relating to procedures for evaluation and determination of eligibility as set forth in *Guidelines: Evaluation Process* (North Dakota Department of Public Instruction Revised May, 2014) and ensures the requirements of §300.300 through 300.311 are implemented consistently. Specific evaluation procedures, including forms and instructions for their use, are found in the **JAMES RIVER SPECIAL EDUCATION SERVICE DELIVERY** Handbook.

### B. Regulations

#### 1. Parental consent for initial evaluation; and reevaluations (§ 300.300(a), (c), (d))

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that it follows the requirements for parental consent stated in §300.300. This section addresses parent consent for initial evaluation, services, and reevaluations. Regulations addressing parental consent are discussed more fully at section VIII. Procedural Safeguards, E. Parental Consent below.

#### 2. Initial Evaluation (§ 300.301)

Each school district shall conduct a full and individual initial evaluation in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under IDEA Part B. The evaluation

must be conducted within 60 days of receiving parental consent for the evaluation. N.D. Admin. Code § 67-23-01-03 allows for two additional exceptions to the sixty-day timeframe for initial evaluation:

1. An extension is necessary because of extreme weather that prevented or interfered with the evaluation and the extreme weather condition is documented; or
2. Either party establishes to the satisfaction of the department that access to a qualified evaluator is so limited that the evaluation cannot occur in the initial sixty days.

### 3. Assessment Plan and Summary Report

Prior to conducting evaluations, the school district will develop a student profile and, if additional information is needed, an assessment plan for each child suspected of having a disability. At the conclusion of an evaluation, the school district will prepare an integrated written assessment report. The report considers all current and relevant data that has been gathered and reviewed to make eligibility determination decisions.

### 4. Evaluation Procedures (§ 300.304)

- (a) *Notice.* The school district must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the school district proposes to conduct.
- (b) *Conduct of evaluation.* In conducting the evaluation, the school district must—
  - (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining—
    - (i) Whether the child is a child with a disability under § 300.8; and
    - (ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
  - (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
  - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) *Other evaluation procedures.* Each school district must ensure that—
  - (1) Assessments and other evaluation materials used to assess a child under this part—
    - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
    - (ii) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
    - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
    - (iv) Are administered by trained and knowledgeable personnel; and
    - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
  - (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that 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 results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (4) 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;
  - (5) 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 § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
  - (6) In evaluating each child with a disability under §§ 300.304 through 300.306, 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.
  - (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

### 5. Multidisciplinary Team (§ 300.306(a)(1))

The determination of eligibility evaluation is made by a group of qualified professionals and the parent of the child.

## 6. Determination of Eligibility (§ 300.306)

- (a) *General.* Upon completion of the administration of assessments and other evaluation measures—
  - (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
  - (2) The school district provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
- (b) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this part—
  - (1) If the determinant factor for that determination is—
    - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
    - (ii) Lack of appropriate instruction in math; or
    - (iii) Limited English proficiency; and
  - (2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).
- (c) *Procedures for determining eligibility and educational need.*
  - (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each school district must—
    - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
    - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
  - (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.

## 7. Reevaluation (§ 300.303)

- (a) *General.* A school district must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—
  - (1) If the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
  - (2) If the child's parent or teacher requests a reevaluation.
- (b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—
  - (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
  - (2) Must occur at least once every 3 years, unless the parent and the school district agree that a reevaluation is unnecessary.

## 8. Additional group members (§ 300.308)

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.8, must be made by the child's parents and a team of qualified professionals, which must include—

- (a)
  - (1) The child's regular teacher; or
  - (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age;or
  - (3) For a child of less than school age, an individual qualified under ND law to teach a child of his or her age; and
- (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

## 9. Specific learning disabilities (§ 300.307)

- (a) *General.* A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State—
  - (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10);
  - (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and
  - (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10).
- (b) *Consistency with State criteria.* A school district must use the NDDPI criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability. A school district may adopt a response to

intervention process and may choose to use the process to determine if a child has a specific learning disability consistent with 34 CFR 300.301-311. Prior to implementation of response to intervention during the evaluation of a student suspected of having a specific learning disability, a school district must demonstrate the completeness of its response to intervention process as described in N.D. Admin. Code § 67-23-01-06.

#### 10. Determining the existence of a specific learning disability (§ 300.309)

- (a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if-
  - (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
    - (i) Oral expression.
    - (ii) Listening comprehension.
    - (iii) Written expression.
    - (iv) Basic reading skill.
    - (v) Reading fluency skills.
    - (vi) Reading comprehension.
    - (vii) Mathematics calculation.
    - (viii) Mathematics problem solving.
  - (2) (i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or
  - (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305; and
  - (3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—
    - (i) A visual, hearing, or motor disability;
    - (ii) Mental retardation;
    - (iii) Emotional disturbance;
    - (iv) Cultural factors;
    - (v) Environmental or economic disadvantage; or
    - (vi) Limited English proficiency.
- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306—
  - (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- (c) The school district must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.306(a)(1)—
  - (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
  - (2) Whenever a child is referred for an evaluation.

#### 11. Observation (§ 300.310)

- (a) The school district must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
- (b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to-
  - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

- (2) Have at least one member of the group described in § 300.306(a)(1) conduct an observation of the child’s academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.
- (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

**12. Specific documentation for the eligibility determination (§ 300.311)**

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must 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 § 300.306(c)(1);
  - (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—
    - (i) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and (ii)(A) The child does not make sufficient progress to meet age or State approved grade-level standards consistent with § 300.309(a)(2)(i); or (B) 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 consistent with § 300.309(a)(2)(ii);
  - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; Intellectual Disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child’s achievement level; and
  - (7) If the child has participated in a process that assesses the child’s response to scientific, research-based intervention—
    - (i) The instructional strategies used and the student-centered data collected; and
    - (ii) The documentation that the child’s parents were notified about— (A) 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; (B) Strategies for increasing the child’s rate of learning; and (C) The parents’ right to request an evaluation.
- (c) Each group member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusions.

**V. INDIVIDUALIZED EDUCATION PROGRAM (20 USC sec. 1414(d)-(f); 34 CFR §§ 300.320 – 300.328)**

**A. Policy and Standards**

The **JAMES RIVER SPECIAL EDUCATION UNIT** adheres to the policies, standards, and procedures relating to the individualized education program as set forth in *Guidelines: Individualized Education Program (IEP) Planning Process*, (North Dakota Department of Public Instruction 2007), and ensures that all requirements are implemented consistently. As defined at § 300.22, “individualized education program” or “IEP” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324. As defined at § 300.23, “individualized education program team” or “IEP team” means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

Specific IEP procedures, forms and instruction for their use are found in TIEnet and the **JAMES RIVER SPECIAL EDUCATION SERVICE DELIVERY MANUAL**. North Dakota Century Code §15.1-32-12, provides for the development of an individualized education program:

If a school district has evidence of a student’s disability, the school district shall convene a multidisciplinary team consisting of educational professionals, medical professionals, and the student’s parent to share assessment information related to the student’s suspected disability. If necessary, the team shall develop an individualized education program or services plan and make recommendations for the delivery of special education and related services to the student.

**B. Regulations and Procedures**

**1. Responsibilities to develop IEP (§300. 112, 300.124, 300.306(c)(2))**

Except as provided in §§300.130-300.144 (Children with Disabilities Enrolled by Their Parents in Private Schools), the NDDPI, school districts, all special education units, state operated programs, and programs in other public agencies shall ensure that an individualized education program (IEP), is developed and implemented for each child with a disability served by that entity or for whom that entity is responsible, and will review, and if appropriate, revise its provisions periodically and at least annually.

Children receiving early intervention services through IDEA Part C and who are referred to IDEA Part B will experience a smooth and effective transition into Part B services. Each school district will participate in transition planning conferences arranged by the lead agency. If a child is found eligible for Part B services, an IEP must be developed by the child's third birthday.

Procedures for this transition, including timelines, are specified in the NDDPI Guideline: *Understanding Early Childhood Transition: A Guide for Families and Professionals*.

2. Each school district in which the parent of an eligible child with a disability resides is responsible for a child's education whether in the local school (public, parochial, or other private) or in another school or facility through contract. The school district is responsible for initiating and conducting a planning conference before referring a child to a private school or facility and to ensure that an appropriate individualized education program will be implemented, reviewed periodically and revised at least annually.

**When the IEP Must Be in Effect (§300.323)**

3. If the child has been receiving special education the previous year, the school district must ensure that a planning meeting with parents and staff is held early enough in the school year to ensure that an IEP is in effect at the beginning of the school year. This meeting may have been held prior to the end of the previous school year.
4. An IEP must be in effect before placement is made in special education, and before special education and related services are provided to a child, and the IEP will be implemented as soon as possible following the IEP meeting.
5. Each school district shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and that each of these teachers and providers is informed of
- (a) his or her specific responsibilities related to implementing the child's IEP; and
  - (b) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

If a student transfers from another school district in North Dakota within the same school year, the new school district, in consultation with the parents, must provide services comparable to those described in the child's IEP from the previous school district until the new school district either adopts the child's IEP, or develops, adopts, and implements a new IEP. For a child who had an IEP in another state and transfers within the same school year, the new school district, in consultation with the parents, must provide services comparable to those described in the child's IEP from the previous school district until the new school district conducts an evaluation, if determined to be necessary by the new school district, and develops, adopts, and implements a new IEP, if appropriate.

**IEP Meetings (§300. 324)**

6. The school district is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with 300.323(b), an IFSP). However, any member of the team, including the parent or student, may initiate a meeting to review the IEP.
7. A meeting to develop an IEP for the child must be conducted within 30 days of a determination that the child is a child with a disability and needs special education and related services.
8. Each school district shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP as appropriate to address
- (a) any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general curriculum, if appropriate;
  - (b) the results of any reevaluation conducted under §300. 303;
  - (c) information about the child provided to, or by, the parents as described in §300. 305(a)(2);
  - (d) the child's anticipated needs; or
  - (e) other matters.

In a review of the IEP, the team must consider the special factors described in §300.324(a)(2) (behavior, language needs, blindness/visual impairment, communication needs, assistive technology).

### **IEP Meeting Attendance (§300.321)**

9. (a) *General.* The school district must ensure that the IEP Team for each child with a disability includes—
  - (1) The parents of the child;
  - (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
  - (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
  - (4) A representative of the public agency who—
    - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
    - (ii) Is knowledgeable about the general education curriculum; and
    - (iii) Is knowledgeable about the availability of resources of the public agency.
  - (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
  - (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
  - (7) Whenever appropriate, the child with a disability.
- (e) *IEP Team attendance.* (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- (2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—
  - (i) The parent, in writing, and the school district consent to the excusal; and
  - (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

### **Transition Services Participants on IEP Team (§ 300.321(b))**

10. The public agency must invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals of the student and the transition service needed to assist the student in reaching those goals under §300.320(b). If the student does not attend the IEP meeting, the school district shall take other steps to ensure that the student's preferences and interests are considered.
11. In implementing the requirements of §300.320(b), to the extent appropriate, the school district with consent of the parents or a child who has reached the age of majority, also must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain participation of the other agency in the planning of any transition services.

### **Parent and Student Participation (§§300.321, 300.328)**

12. Each school district shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place.

The required notice must indicate the purpose, time, and location of the meeting and who will be in attendance; and inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child).

For a student with a disability beginning at age 16, or younger, if appropriate, the notice to the student and the parent must also indicate that a purpose of the meeting will be the development of a statement of appropriate measurable postsecondary goals and transition services required in §300.320(b) indicate that the school district will invite the student; and indicate other participating agencies.

13. The parent and school district may agree to use alternative means of meeting participation, such as video conferences and telephone calls.
14. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case the school district must have a record of its attempts to arrange a mutually agreed on time

and place, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits.

15. The school district shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
16. The school district shall give the parent a copy of the child's IEP at no cost to the parent.

#### **Development, Review, and Revision of IEP (§ 300.320 (d), 300.324)**

17. In developing each child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.
18. The IEP team also shall consider the following special factors:
  - (a) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
  - (b) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
  - (c) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child'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 child;
  - (d) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.
  - (e) Consider whether the child requires assistive technology devices and services.
19. If, in considering the special factors described in items 19 and 20 above, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.
20. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in items 19 and 20 above.
20. The general education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of:
  - (a) appropriate positive behavioral interventions and strategies for the child; and
  - (b) supplementary aids and services, program modifications or supports for school personnel that will be provided for the child, consistent with §300.320(a)(4).
21. Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP, nor to require that additional information be included in a child's IEP beyond what is explicitly listed in section 614 of IDEA [20 U.S.C. §1414] (items 25 through 28 below).

#### **Content of IEP (§ 300.320)**

22. The IEP for each child with a disability must include:
  - (a) a statement of the child's present levels of academic achievement and functional performance, including
    - (i) how the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or
    - (ii) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
  - (b) a statement of measurable annual goals, including academic and functional goals designed to:
    - (i) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum or for preschool children, as appropriate, to participate in appropriate activities; and
    - (ii) meet each of the child's other educational needs that result from the child's disability;
    - (iii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.
  - (c) a description of:
    - (i) how the child's progress toward the annual goals described in item 25(b) will be measured; and
    - (ii) how the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of
      - (A) their child's progress toward the annual goals; and

- (B) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.
  - (d) 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 child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
    - (i) to advance appropriately toward attaining the annual goals;
    - (ii) to be involved and progress in the general curriculum in accordance with item 25(a) of this section and to participate in extracurricular and other nonacademic activities; and
    - (iii) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
  - (e) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in item 25(d);
  - (f) (i) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with section 612(a)(16) of IDEA [20 U.S.C. § 1412(a)(16)], and
    - (ii) if the IEP team determines that the child must take an alternate assessment instead of a particular state or district-wide assessment of student achievement (or part of an assessment), a statement of
      - (A) why the child cannot participate in the regular assessment, and
      - (B) why the particular alternate assessment selected is appropriate for the child.
  - (g) the projected date for the beginning of the services and modifications described in item 25(d), and the anticipated frequency, location, and duration of those services and modifications.
23. With regard to transition services, 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, and updated annually thereafter, the IEP must include-
- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training/education, employment, and, where appropriate, independent living skills; and
  - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
26. Beginning at least one year before a student reaches the age of majority under state law, the student's IEP must include a statement that the student has been informed of his or her rights under Part B, if any, that will transfer to the student on reaching the age of majority, consistent with §300.520. In North Dakota, the age of majority is 18.
27. Special rules concerning the content of IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in §300.324 (d). The following requirements do not apply to these students with disabilities:
- (a) the requirements contained in §300.320(a)(6) (relating to participation of children with disabilities in general assessments);
  - (b) the requirements in §300.320(b) (relating to transition planning and transition services), with respect to the students whose eligibility under Part B of IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release;
  - (c) subject to 28(d) below, the IEP team of a student with a disability, who is convicted as an adult under state law and incarcerated in an adult prison, may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated; and
  - (d) the requirements of §§300.320 relating to IEPs, and 300.112 relating to LRE, do not apply with respect to the modifications described in item 28(c) above.

**Agency Responsibilities for Transition Services (§ 300.324(c))**

28. If a participating agency, other than the school district, fails to provide transition services described in the IEP of a student with a disability, the school district responsible for the student's education shall, as soon as possible, reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

Nothing relieves any participating agency, including the state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

**IEP Development for Students Placed in Private School by Public Agency (§ 300.325)**

29. When a child with a disability is placed in a private school, institution, or in a public school district other than the child's district of residence, policies are established for development, maintenance, and evaluation of the individualized education program.
- (a) Before a school district places a child with a disability in, or refers a child to a private school or facility, the school district shall initiate and conduct a meeting to develop an IEP for the child in accordance with 300.320 and 300.324.

- (b) The school district shall insure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the school district shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.
- (c) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school, or facility in which the child is placed, at the discretion of the child's school district of residence.
- (d) If the private school or facility initiates and conducts these meetings, the school district of residence shall insure that the parents and a school district representative: (i) are involved in any decision about the child's IEP; and (ii) agree to any proposed changes in the IEP before those changes are implemented.
- (e) Even if a private school or facility implements a child's IEP, compliance responsibility remains with the child's school district of residence.

## VI. LEAST RESTRICTIVE ENVIRONMENT (20 U.S.C. 1412(a)(5); 34 CFR 300. 114 through 300. 120)

### A. Policy

The **JAMES RIVER SPECIAL EDUCATION UNIT** adheres to the policies, standards, and procedures for least restrictive environment (LRE) as set forth in *Guidelines: Individualized Education Program Planning Process* (North Dakota Department of Public Instruction 2007), and ensures that all requirements are implemented consistently. Specific procedures, including forms and instruction for their use, are included in the **JAMES RIVER SPECIAL EDUCATION SERVICE DELIVERY MANUAL**.

The **JAMES RIVER SPECIAL EDUCATION UNIT** ensures that to the maximum extent appropriate, children with disabilities, including students in public or private institution or other care facilities and those of preschool age, are educated with children who do not have disabilities, and that enrollment in special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily.

### B. Regulations

#### Continuum of Alternative Placements (§ 300.115)

1. Each school district shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include the alternative placements listed in the definition of special education under §300.28. For children ages 6-21 the categories of educational environments include:
  - Inside the regular class 80 percent or more of the day.
  - Inside the regular class no more than 79 percent of the day and no less than 40 percent of the day. Inside the regular class for less than 40 percent of the day.
  - Separate School.
  - Residential Facility.
  - Homebound/hospital.
  - Correctional facilities.
  - Parentally Placed in Private Schools.

For children ages 3-5, the categories of educational environments include:

  - Attending a regular early childhood environment at least 10 hours per week and
    - Receiving a majority of hours of special education and related services in the regular early childhood program or
    - Receiving a majority of hours of special education and related services in some other locations
  - Attending a regular early childhood environment less than 10 hours per week
    - Receiving a majority of hours of special education and related services in the regular early childhood program or
    - Receiving a majority of hours of special education and related services in some other locations
  - Special Education Class
  - Separate school
  - Residential facility
  - Home
  - Service provider location or some other location

The continuum must make provision for supplementary services (such as a resource room or itinerant instruction) to be provided in conjunction with regular class placement.

The selection of a particular alternative setting or arrangement is to be made by determining the least restrictive environment in which the appropriate educational goals for the child could be achieved.

### **Placements (§ 300.116)**

2. Educational placement decisions must be made (a) at least annually; (b) by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options, who consider carefully broad-based, documented information about the child; (c) based on the child's IEP; (d) as close as possible to the child's home; and (e) is made in conformity with the LRE provisions of §§ 300.114 through 300.118.
3. The school district must insure that the various placements included under §300.115 are available to the extent necessary to implement the IEP for each child with a disability.
4. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if he or she did not have a disability.
5. In selecting the LRE, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs.
6. The school district shall insure that a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

### **Nonacademic Settings (§ 300.117)**

7. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, and regardless of the core placement alternative selected the school district assures that a child with a disability participates with nondisabled children to the maximum extent appropriate to the needs of the child with a disability. The school district must 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.

To assure that providing or arranging for nonacademic and extracurricular services and activities is addressed, the student's individualized education program must respond to a specific question regarding the arrangements that will be made so that each child with a disability participates with children who do not have disabilities to the maximum extent appropriate to the needs of the child.

### **Children in Public or Private Institutions (§ 300.118)**

8. The school district assures the NDDPI of its implementation of the LRE requirements in 300.114, as required by 300.118. By state statute, the school district is responsible to ensure that the needs identified by an IEP team for the children with disabilities who reside in the school district and who are unable to attend a public school in the school district of residence unit or any child placed out of the school district are being met. N.D.C.C. § 15.1-32-15.

## **C. Procedures**

The NDDPI document, *Guidelines: Individualized Education Program Planning Process* (North Dakota Department of Public Instruction 2007) directs IEP teams to discuss the following when considering and justifying service options:

1. sites and settings for special education services that have been previously tried, where the student now receives service, and what sites and services are presently recommended to meet the student's needs.
2. sites and settings that were considered in current or previous meetings but were not chosen, and why these placements were not chosen.
3. supports used to facilitate previous placements, what considerations resulted in discontinuing these placements, and what efforts are planned to prepare the student to return to a less restrictive environment; and the special education interventions that have been tried in previous placements and the progress the student has or has not made with these interventions.
4. student learning characteristics as they relate to the placements considered: rate of skill acquisition and overall functioning level; need for social interaction and leisure skills training; need for limited environmental distractions; and need for restricted space within a building (ability to operate without definite boundaries or within an unstructured or less structured environment).

5. programmatic components in determining regular education options for the student: content of regular classroom; structure of the regular classroom; balance of regular education content areas with functional, social, and community skills training; and supports needed to facilitate social, physical, or academic integration/inclusion.
6. placement location chosen as it relates to the student's specific identified needs.
7. potential harmful effects and quality of services issues. A situation does not have a harmful effect if actions taken by a school official can prevent or diminish the effect (e.g., a principal disciplining peers who do not have disabilities who constantly tease or taunt a student with disabilities). Considerations may include: behavioral characteristics (effect of student behaviors on the learning of other students within his or her classroom, neighboring classrooms, and/or school building); potential damaging attitudes of nondisabled peers, staff, or others who do not have disabilities; special health or safety needs; and miscellaneous factors.

## **VII. PLACEMENT IN PRIVATE SCHOOLS (20 U.S.C. 1412(a)(10); 34 CFR 300.129-300.148)**

### **A. Policy**

IDEA addresses the subject of private school children with disabilities in three major categories:

1. Students with disabilities placed in private schools by public agencies (§§ 300.145 through 300.147).
2. Students with disabilities unilaterally placed in a private school by parents, due to disagreement about whether a student is receiving a free appropriate public education (FAPE) (referenced in IDEA regulations as “children with disabilities enrolled by their parents in private schools when FAPE is at issue” at § 300.148) .
3. Students with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.36 (referenced in IDEA regulations as “parentally placed private school children with disabilities” at § 300.130).

Policy for students with disabilities placed in private school by a public agency: A student with a disability who is placed in or referred to a private school or facility by a public agency will (1) be provided with special education and related services in conformance with an individualized education program which meets the requirements under 300.320-300.325; and at no cost to parents, and (2) will be provided an education that meets all applicable federal, state, and local standards.

If a student with a disability is placed in a private school or facility by the school district, the **JAMES RIVER SPECIAL EDUCATION UNIT** assures that the student has all the rights he/she would have if served by a public school.

Policy for parentally placed private school children with disabilities: When parents choose to enroll their child in a private school, either nonsectarian or religiously affiliated, the student has no individual right to receive the special education and related services the child would receive if enrolled in the public school. Parentally placed private school students are entitled to some special education and related services according to a proportionate share of funding based on a consultative process for allocating that proportionate share.

### **B. Regulations**

The **JAMES RIVER SPECIAL EDUCATION UNIT** follows guidance provided through policy paper, *IDEA 2004, Students with Disabilities who Attend Private Schools* (North Dakota Department of Public Instruction, December 2005), and ensures compliance with the regulations. NDDPI has developed a checklist, *ND DPI Special Education Procedural Checklist for Placements at Approved Private Residential Facilities/Schools Delivering Special Education and Related Services*, to assist in determining who will carry out procedural safeguard responsibilities. The **JAMES RIVER SPECIAL EDUCATION UNIT** assures the NDDPI of the compliant completion of all procedures documented as responsibilities on the checklist.

Requirements related to state funding for special education provided to public agencies are addressed by rules in ND Admin. Code Chapter 67-23-02.

#### **Placement of Children by Parents if Free Appropriate Public Education (FAPE) is at Issue (§ 300.148)**

1. *General.* IDEA does not require a school district to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the school district made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the school district must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

2. If a parent contends that an appropriate program for the student does not exist and hence is forced to seek private schooling and the school district disagrees, that disagreement and the question of financial responsibility is a matter to which due process procedures under §§ 300.504 through 300.520 apply.
3. Reimbursement for private school placement. If the parents of a child with a disability, 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 the school district, a court or a hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district had not made FAPE available to the child in a timely manner prior to that enrollment and 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 education agency (SEA) and the local education agencies (LEA).
4. Limitation on reimbursement. The cost of reimbursement described in item 3 may be reduced or denied if
  - (a) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide FAPE 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 (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the school district of the information described in item 4 (a).
5. The cost of reimbursement described in item 3 may be reduced or denied if, prior to the parents' removal of the child from the school district, the school district informed the parents, through the notice requirements described in §300.503(a)(1), 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 upon a judicial finding of unreasonableness with respect to actions taken by the parents.
6. Notwithstanding the notice requirement in item 4, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:
  - a. compliance with item 4 of this section would likely result in physical or serious emotional harm to the child;
  - b. the school prevented the parent from providing the notice; or
  - c. the parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph 4 of this section.
7. Notwithstanding the notice requirement in item 4, 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
  - a. The parents are not literate or cannot write in English, or
  - b. Compliance with item 4 would likely result in serious emotional harm to the child.

The regulations set out below in the remainder of section VII.B apply to parentally placed private school children with disabilities.

#### **Child Find for Private School Children with Disabilities (§ 300.131)**

8. Each school district must locate, identify, and evaluate all children with disabilities, in accordance with §300.111 and 300.201. The child find process must be designed to ensure the equitable participation of parentally-placed private school children and an accurate count of those children. The activities undertaken to carry out this responsibility for private school children with disabilities must be similar to activities undertaken for children with disabilities in public schools.
9. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if a school district has met its obligation under §300.133. The child find process must be completed in a time period comparable to that for students attending public schools in the school district consistent with §300.301. Each school district in which private, including religious, elementary schools and secondary schools are located must, 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.

#### **Provision of Services—Basic Requirement (§ 300.132)**

10. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of IDEA by providing them with special education and related services including direct services determined in accordance with §300.137, unless the secretary of the United States Department of Education has arranged for services to those children under the by-pass provisions of §§300.190 through 300.198.

11. The **JAMES RIVER SPECIAL EDUCATION UNIT** ensures that, in accordance with item 10 of this section and §§300.137 through 300.139, a services plan will be developed and implemented for each private school child with a disability who has been designated by the school district in which the private school is located to receive special education and related services under Part B of IDEA. Each school district must maintain in its records, and provide to the NDDPI, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:
  - (1) The number of children evaluated;
  - (2) The number of children determined to be children with disabilities; and
  - (3) The number of children served.

### **Expenditures and Child Count (§ 300.133)**

12. To meet the requirement of §300.132(a), each school district must spend on providing special education and related services (including direct services) to parentally-placed private school children with disabilities—
  - a. for children aged 3 through 21, an amount that is the same proportion of the school district total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district, is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and
  - b. for children aged 3 through 5, an amount that is the same proportion of the school district total subgrant under section 619(g) of the Act as the number of parentally placed private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district.
  - c. As described in item 13(b) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13. “*Elementary school* means a nonprofit institutional day or residential school...that provides elementary education, as determined under State law.” North Dakota state law sets out the minimum requirements for operation of a school at N.D.C.C. §15.1-06-06, approval of public and nonpublic schools.

If school district has not expended for equitable services all of the funds described in items 13(a) and 13(b) of this section by the end of the fiscal year for which Congress appropriated the funds, the school district must 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.

- d. *Calculating proportionate amount.* In calculating the proportionate amount of federal funds to be provided for parentally-placed private school children with disabilities, the school district, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the school district.
13. Each school district must after timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with § 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the school district; and ensure that the count is conducted on December 1 of each year.
14. The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.
15. 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.

### **Consultation (§ 300.134)**

16. To ensure timely and meaningful consultation, a school district, or, if appropriate, the NDDPI, must 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:
  - (a) Child find. The child find process, including—
    - (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
    - (2) How parents, teachers, and private school officials will be informed of the process.
  - (b) *Proportionate share of funds.* The determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities under § 300.133(b), including the determination of how the proportionate share of those funds was calculated.

- (c) *Consultation process.* The consultation process among the school 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.
- (d) *Provision of special education and related services.* 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—
  - (1) The types of services, including direct services and alternate service delivery mechanisms; and
  - (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and
  - (3) How and when those decisions will be made;
- (e) *Written explanation by school district regarding services.* How, if the school 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 school district will provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

**Written affirmation (§ 300.135)**

- 17. (a) When timely and meaningful consultation, as required by § 300.134, has occurred, the school district must obtain a written affirmation signed by the representatives of participating private schools.
- (b) If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the NDDPI.

**Compliance (§ 300.136)**

- 18. (a) *General.* A private school official has the right to submit a complaint to the NDDPI that the school district—
  - (1) Did not engage in consultation that was meaningful and timely; or
  - (2) Did not give due consideration to the views of the private school official.
- (b) *Procedure.*
  - (1) If the private school official wishes to submit a complaint, the official must provide to the NDDPI the basis of the noncompliance by the school district with the applicable private school provisions in this part; and
  - (2) The school district must forward the appropriate documentation to the NDDPI.
  - (3)(i) If the private school official is dissatisfied with the decision of the NDDPI, the official may submit a complaint to the secretary of the United States Department of Education by providing the information on the basis of the noncompliance and
    - (ii) The NDDPI must forward the appropriate documentation to the secretary.

**Equitable Services Determined (§ 300.137)**

- 19. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities under §§300.130-300.144, must be made in accordance with items 16 and 25 of this section.
- 20. The school district shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school children.
- 21. If a child with a disability is enrolled in a religious or other private school by the child’s parents and will receive special education or related services from a school district, the school district must:
  - a. initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
  - b. ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

**Equitable Services Provided (§ 300.138)**

- 22. 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 do not have to meet the highly qualified special education teacher requirements of §300.18.

23. Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
24. 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.
25. Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the school district will provide to the child in light of the services that the school district has determined, through the process described in §§ 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
26. The services plan must, to the extent appropriate, meet the requirements of §300.320 or for a child ages three through five, requirements of §300.323(b) with respect to the services provided; and be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.

The provision of services pursuant to section §300.138 and §§300.139 through 300.143 must be provided by employees of an LEA; or through contract by the LEA 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, must be secular, neutral, and nonideological.

#### **Location of Services; Transportation (§ 300.139)**

27. Services provided to parentally-placed private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law.
28. If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation:
  - a. from the child's school or the child's home to a site other than the private school; and
  - b. from the service site to the private school, or to the child's home, depending on the timing of the services.
29. School districts are not required to provide transportation from the child's home to the private school.
30. The cost of the transportation described in item 28 may be included in calculating whether the school district has met the requirement of §300.133.

#### **Due Process and State Complaints (§ 300.140)**

Except as provided below regarding child find requirements, the procedures in §§300.504 through 300.518 [procedural safeguards and dispute resolution] do not apply to complaints that a school district has failed to meet the requirements of §§300.132 through 300.139 [provision of services for parentally-placed private school children with disabilities] including the provision of services indicated on the child's services plan. The procedures in §§300.504 through 300.519 apply to complaints that a school district has failed to meet the child find requirements in §300.131, including the requirements in §§300.300 through 300.311 [evaluations]. Any due process complaint regarding the child find requirements (as described in item 8) must be filed with the school district in which the private school is located and a copy must be forwarded to the NDDPI.

Any complaint that NDDPI or a school district has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through 300.153 [state complaint]. A complaint file by a private school official under §300.136(a) [complaint about consultation] must be filed with the NDDPI in accordance with the procedures in §300.136(b).

#### **Separate Classes Prohibited (§ 300.143)**

31. A school district may not use funds available under section 611 or 619 of IDEA 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.

#### **Requirement that Funds not Benefit A Private School (§ 300.141)**

32. A school district may not use funds provided under section 611 or 619 of IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.

33. The school district must use funds provided under Part B of IDEA to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for the needs of a private school; or the general needs of the students enrolled in the private school.

#### **Use of Public School Personnel (§ 300.142)**

34. A school district may use funds available under sections 611 and 619 of IDEA to make public school personnel available in other than public facilities to the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities, and if those services are not normally provided by the private school.

#### **Use of Private School Personnel (§ 300.142)**

35. A school district may use funds available under sections 611 or 619 of IDEA to pay for the services of an employee of a private school to provide services under §§300.130-300.144 if the employee performs the services outside of his or her regular hours of duty; and the employee performs the services under public supervision and control.

#### **Requirements Concerning Property, Equipment, and Supplies for the Benefit of Private School Children with Disabilities (§ 300.144)**

36. An LEA must control and administer the funds used to provide special education and related services under §§ 300.137 through 300.139, and keep title to and, administer materials, equipment, and property that the LEA purchases with those funds for the uses and purposes provided in IDEA.
37. The LEA may place equipment and supplies in a private school for the period of time needed for the Part B program.
38. The LEA must ensure that the equipment and supplies placed in a private school are used only for Part B purposes; and can be removed from the private school without remodeling the private school facility.
39. The LEA must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes; or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
40. No funds under Part B of IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

#### **C. Procedure**

1. Whenever a student with a disability is to be placed in a private school at school district expense, the NDDPI will require the appropriate contract between the school district and the private school with approval by the NDDPI as required by state law.N.D.C.C.§15.1-32-15..
2. Each private school must make accessible for review, to the NDDPI upon request, each services plan for a student with a disability.

#### **D. Monitoring**

1. The JAMES RIVER SPECIAL EDUCATION UNIT has established an internal monitoring system that ensures compliance with requirements relating to students with disabilities who attend private schools, as well as attention to issues of quality. The obligation to conduct internal monitoring for proper administration of a program supported by federal funds extends to parentally-placed private school students with disabilities who receive special education and related services from the school district and students who are placed by the school district in a private school or facility. NDCC §15.1-32-02 requires the setting of standards that will apply to school districts receiving state special education funding. In addition to state standards, the IDEA (2004) requires adherence to specific federal regulations to assure that free and appropriate services are made available to all children with disabilities in the least restrictive educational environment. To maintain compliance with these requirements, JAMESTOWN SPECIAL EDUCATION UNIT will conduct internal monitoring and report results as necessary.
2. Placement is approved and attendance verified annually for each publicly-placed student attending a private school in or out-of-state by the State Director of Special Education and payment authorized by the Director of Finance, NDDPI.

### **VIII. PROCEDURAL SAFEGUARDS (20 U.S.C. 1412(a)(6), 1414(a)(1)(D), 1414(c)(3), 1414(f); 1415; 34 CFR 300.150, 300.300,**

## 300.500 through 300.537

The **JAMES RIVER SPECIAL EDUCATION UNIT** adheres to the policies, standards, and procedures as set forth in *Guidelines: Procedural Safeguards: Prior Notice and Parental Consent Procedures* (2007), and *Parental Rights for Public School Students Receiving Special Education Services*. The unit ensures that procedural safeguards requirements are consistently implemented. Specific procedures, including forms and instruction in their use, are found in the **JAMES RIVER SPECIAL EDUCATION SERVICE DELIVERY MANUAL**.

The terms "consent," "evaluation," and "personally identifiable" are defined as follows:

*Consent* as defined in §300.9 means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of revocation of consent.

*Evaluation* as defined in §300.15 means procedures used in accordance with §§300.304-300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

*Personally identifiable* as defined in §300.32 means that information includes the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

### A. Opportunity to Examine Records; Parent Participation in Meetings (§ 300.501)

#### 1. Policy

The school district ensures that the parent of a child with a disability must be afforded, in accordance with §§300.613-300.621, an opportunity to (1) inspect and review all educational records pertaining to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education (FAPE) to such a child, and (2) participate in meetings with respect to the identification, evaluation, and educational placement of the child, and provision of FAPE to the child.

#### 2. Regulations (§ 501(b) and (c))

- a. A school district must afford the parents of a child with a disability an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of free appropriate public education to the child, in accordance with the procedures of sections 300.613 through 300.621.
- b. Each school district must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, as well as the provision of FAPE to the child. A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- c. Each school district must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. In implementing these requirements, the school district must use procedures consistent with the procedures described in §300.322(a) through (b)(1).  
If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
- d. A placement decision may be made by a group without the involvement of the parents, if the school district is unable to obtain the parents' participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

## **B. Independent Educational Evaluation (§ 300.502)**

### **1. Policy**

The parents of a child with a disability have the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with an evaluation obtained by the school district, subject to item 2 below.

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question.

*Public expense* means that the school 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 §300.103.

### **2. Regulations**

- a. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.
- b. The school district shall provide to parents, on request for an independent educational evaluation, information about where an independent evaluation may be obtained, and the school district criteria applicable for independent educational evaluations.
- c. If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay, either (1) file a due process complaint to request a hearing to show that its evaluation is appropriate, or (2) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.518 that the evaluation obtained by the parent did not meet school district criteria. If 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.
- d. If a parent requests an independent educational evaluation, the school 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 school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.
- e. If the parent obtains an independent educational evaluation at private expense, or shares with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the school district, if it meets school district criteria, in any decision made with respect to the provision of FAPE to the child; and may be presented as evidence at a hearing under this subpart regarding that child.
- f. A hearing officer may request an independent educational evaluation as part of a hearing. If so, the evaluation must be conducted at public expense.
- g. If an independent educational evaluation is 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 that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
- h. A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

## **C. Prior Notice by the School District; Content of Notice (§ 300.503)**

### **1. Policy**

Written prior notice which meets the requirements of § 300.503(b) and 300.504 must be given to parents a reasonable time before the school district proposes to initiate or change, 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. If this notice is related to an action proposed by the school district that also requires parental consent under §300.300, the school district may give notice at the same time it requests parent consent.

### **2. Regulations**

- a. The written notice must include:

- (1) the action proposed or refused by the school district and an explanation of why the school district proposes or refuses to take action;
  - (2) a description of any other options considered by the school district and the reasons for rejecting those options,
  - (3) a description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action, and
  - (4) a description of any other factors that are relevant to the school district's proposal or refusal;
  - (5) a statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
  - (6) sources for parents to contact to obtain assistance in understanding procedural safeguards.
- b. The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. It is not feasible to give parents written notice if the native language or other mode of communication of the parent is not a written language. In this case, the school district shall take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that the above requirements have been met.

#### **D. Procedural Safeguards Notice (§ 300.504, 300.505)**

##### **1. Policy**

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents upon initial referral or parent request for evaluation; upon receipt of the first state complaint under §§300.151 through 300.153; upon receipt of the first due process complaint under §300.507 in a school year, in accordance with the discipline procedures in §300.530(h); and upon request by a parent. A school district may place a current copy of the procedural safeguards notice on its internet website if a website exists.

##### **2. Regulations**

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§ 300.151 through 300.153, § 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, § 300.520, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to the following: independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including the time period in which to file a complaint; the opportunity for the school district to resolve the complaint; and 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; the child's placement during pendency of any due process complaint; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents of children in private schools at public expense; mediation; due process hearings, including requirements for disclosure of evaluation results and recommendations; civil actions including the time period in which to file those actions; and attorneys' fees.

The notice must meet the requirements of §300.503(c) with regard to understandable language. The notice must be written in language understandable to the general public and must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence of the requirements of this item have been met.

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

#### **Parental Consent (§ 300.300)**

##### **1. Policy**

Ensures that written parental consent is obtained prior to conducting an initial evaluation or reevaluation; and initial provision of special education and related services to a child with a disability. Consent for initial evaluation may not be construed as consent for initial placement.

## 2. Regulations

- a. Parental consent is not required before reviewing existing data as part of an evaluation or a reevaluation; or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
  - (1) For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if-
    - (i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;
    - (ii) The rights of the parents of the child have been terminated in accordance with North Dakota law; or
    - (iii) The rights of the parents to make educational decisions have been subrogated by a judge in accordance with North Dakota law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- b. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the school district may continue to pursue those evaluations by using the due process procedures under §§300.507-300.516, or the mediation procedures under §300.506 if appropriate, except to the extent inconsistent with North Dakota law relating to parental consent. The school district does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation.
- c. Consent to services. The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

If the parent of a child fails to respond to the request to provide consent of the initial provision of special education and related services or refuses to consent to the initial provision of special education and related services the school district.

  - (i) May not use the procedures in the procedural safeguards (including the mediation procedures under §300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.
  - (ii) Will not be considered to be in violation of the requirement to make available FAPE to the child because of the failure to provide the child with the special education and related services for which the for which the parent refuses to or fails to provide consent; and
  - (iii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child
- d. If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services the school district:
  - (i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;
  - (ii) May not use the procedures in subpart E of this part (including mediation under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
  - (iii) Will not be consider to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with special education and related services;
  - (iv) Is not required to convene an IEP Team meeting or develop an IEP under § 300.320 and § 300.324 for the child for further provision of special education and related services.
- e. The school district must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. Informed parental consent need not be obtained for reevaluation if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. To meet the reasonable measures requirement, the school district must use procedures consistent with those in §300. 322(d). If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override procedures described in item b. The school district does not violate its obligation under § 300.111 and §§ 300.301 if it declines to pursue the evaluation or reevaluation.

- f. A school district may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the public agency, except as required by 34 CFR Part 300.
- g. If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district may not use the consent override procedures (described in item b); and the school district is not required to consider the child as eligible for services under §§ 300.132 through 300.144.

**F. Mediation (20 U.S.C. 1415(e); §300.506)**

**1. Policy**

The NDDPI has established and implemented procedures to allow parties to disputes involving any matter under IDEA Part B, including matters arising prior to the filing of a due process complaint, to resolve the disputes through a mediation process that, at a minimum is provided by NDDPI whenever a hearing is requested under §§300.507 or 300.508-300.520. Mediation is addressed by administrative rules at ND Admin. Code §§ 67-23-05.

*IDEA Special Education Mediation: A Guide for Parents of Children and Youth ages 3 to 21*, provides a description of the mediation process and procedures. The school district regularly informs school personnel of the Guide and the availability of mediation.

**2. Regulations and Procedures**

- a. The procedures must ensure that the mediation process is voluntary on the part of the parties; is not used to deny or delay a parent's right to a hearing on the parent's due process hearing complaint, or to deny any other rights afforded under Part B of IDEA; and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- b. The NDDPI shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. If a mediator is not selected on a random (e.g., a rotation) basis from the list, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.
- c. An individual who serves as a mediator (1) may not be an employee of any LEA or any state agency described under §300.228; or an SEA that is providing direct services to a child who is the subject of the mediation process; and (2) must not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.
- d. The NDDPI shall bear the cost of the mediation process, including the costs of meetings described in item h.
- e. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- f. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and is signed by both the parent and a representative of the agency who has the authority to bind such agency. A written, signed mediation agreement under this paragraph is enforceable in any state court of competent jurisdiction or in a district court of the United States.
- g. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.
- h. A school district may establish procedures to offer to parents and schools who elect not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center in ND established under section 671 or 672 of IDEA, or an appropriate alternative dispute resolution entity; and who would explain the benefits of the mediation process, and encourage the parents to use the process. A school district may not deny or delay a parent's right to a due process hearing under §300.507 if the parent fails to participate in this meeting.

**Facilitated IEP**

Facilitated IEP meetings are addressed by administrative rules at N.D. Admin. Code § 67-23-05-03. They are an additional service provided by the NDDPI.

A school or a parent of a student with a disability may request a facilitated IEP meeting in the form and manner prescribed by the department. The brochure, *IEP Facilitation*, provides a description of the facilitation process and procedures.

A facilitated IEP meeting may be requested after an IEP meeting has occurred in which a facilitator did not participate. If both the school and a parent of a student with a disability agree to participate in a facilitated IEP, the department shall select and compensate a facilitator for the meeting.

#### **G. Complaint Procedure (20 U.S.C.1221e-3; 34 CFR § 300.151-300.153)**

The NDDPI has a procedure to investigate and act on complaints made against the state, special education unit or school district relative to compliance with Part B of IDEA. The intent of this complaint procedure is to address matters of a public agency (state, unit or district) allegedly violating a requirement of Part B of IDEA. Complaint procedures are addressed by administrative rules at N.D. Admin. Code §§ 67-23-05.

An organization or individual may file a signed, written complaint that must include a statement that a requirement of Part B of IDEA has been violated and the facts on which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151. The complaint must include the signature and contact information for the complainant; and if alleging violations with respect to a specific child, the name and address of the residence of the child; the name of the school the child is attending; 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; a description of the nature of the problem of the child, including facts relating to the problem; and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. The party filing the complaint must forward a copy of the complaint to the school district serving the child at the same time the party files the complaint with NDDPI. The complaint is to be addressed to the Director of Special Education, Department of Public Instruction, 600 East Boulevard Avenue, Dept. 201, Bismarck, ND 58505-0440.

A time limit of 60 calendar days after the complaint is filed is allowed to investigate and issue a written decision. An extension of the 60 day time limit may be granted only if exceptional circumstances exist with respect to a particular complaint, or the parent and the other party involved agree to extend the time to engage in mediation or in other alternative means of dispute resolution. Within 20 working days of receipt of the complaint, the investigator will interview the complainant by phone or in person to give the complainant an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The investigator will also interview other parties involved and make a determination of whether an on-site investigation of the complaint is necessary. The NDDPI makes an independent determination as to whether the public agency is violating a requirement of Part B of IDEA and issues a written decision to the complainant that addresses each allegation in the complaint that meets criteria for investigation. The written decision will contain the findings of fact and conclusions and the reasons for the final decision. Procedures for effective implementation of the NDDPI final decision, if needed, may include technical assistance activities, negotiations and corrective actions to achieve compliance.

At any time during the complaint process, a request for due process hearing procedures may be initiated.

#### **H. Due Process and Review (20 U.S.C. §1415(b)(6), §300.507 - 300.518)**

Due process hearings are addressed by administrative rules at N.D. Admin. Code §§ 67-23-05-02.

A due process hearing, which is a formal legal proceeding, may be requested if the parent of a child with disabilities or a child who may have a disability, disagrees with the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. The school district may also request a due process hearing when a parent has refused consent for evaluation or to demonstrate that the school district has conducted an appropriate evaluation, or offered a free appropriate public education to a student with a disability.

Hearing requests are made to: Director of Special Education, ND Department of Public Instruction, 600 East Boulevard Avenue, Dept. 201, Bismarck, ND 58505-0440.

IDEA 04 has added the requirement of a resolution process after the school district receives a parent's due process complaint, pursuant to §300.510. The purpose of the resolution process is to provide an opportunity for the parent and school district to discuss the issues presented in the due process complaint and resolve the dispute.

#### **I. Surrogate Parents (§ 300.519)**

## 1. Policy

The **JAMES RIVER SPECIAL EDUCATION UNIT** ensures that the child's rights are protected whenever no parent can be identified; the school district, after reasonable efforts, cannot locate a parent; the child is an unaccompanied youth, or the child is a ward of the state, through the assignment of an individual to act as a surrogate for the parent or guardian. *Ward* is defined as "a person for whom a guardian or limited guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority. NDCC § 30.1-26-01.

The **JAMES RIVER SPECIAL EDUCATION UNIT** adheres to policies and procedures set forth in NDDPI *Guidelines: Educational Surrogate Parent* (November 2007). The **JAMES RIVER SPECIAL EDUCATION UNIT** has established specific procedures for determining whether a child needs a surrogate parent and for assigning such a surrogate parent for the purpose of special education and related services. The surrogate parent may be selected in any way permitted under North Dakota law.

## 2. Regulations (§ 300.519)

- a. The following criteria apply to the selection of surrogate parents.
  1. The surrogate parent may have no personal or professional interest that would conflict with the interest of to the child he/she represents.
  2. The surrogate parent must have knowledge and skills to ensure adequate representation of the child. The school district must provide training to assure these skills and knowledge. If appropriate, training may be provided to foster parents.
  3. The surrogate parent may not be an employee of any state or local governmental agency that is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. If deemed appropriate, a surrogate parent may receive some remuneration for serving in this role.
- b. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.
- c. In the case of a child who 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 requirements of non-employment by the NDDPI, LEA, or other agency, until a surrogate parent can be appointed that meets all of the requirements of this section.

## J. Transfer of Parental Rights at Age of Majority (§ 300.520)

### 1. Policy

When a student with a disability reaches the age of 18 years (N.D.C.C. § 14-10-01) (except for a student with a disability who has been determined to be incompetent under North Dakota law), the school district shall provide any notice required by IDEA Part B to both the individual and the parents; and all other rights accorded to parents under Part B of IDEA transfer to the student; and all rights accorded to parents under Part B of IDEA transfer to students who are incarcerated in an adult or juvenile North Dakota or local correctional institution.

Procedures regarding transfer of rights are included in *Guidelines: Procedural Safeguards: Prior Written Notice and Parental Consent Procedures* (2007), which is disseminated to all special education personnel.

### 2. Regulations

Whenever rights are transferred under this part, the school district shall notify the individual and the parents of the transfer of rights.

## IX. DISCIPLINE PROCEDURES (20 U.S.C. 20 1415 (k); 34 CFR 300.530-300.536)

The school district adheres to policies and all requirements related to discipline as set forth in the policy paper, *Discipline Regulations for Students with Disabilities* (rev. September 2007) which is available to all special education personnel and school administrators.

## Change of Placement for Disciplinary Removals (§ 300.536)

For purposes of removals of a child with a disability from the child's current educational placement under §§300.530-300.535, a change of placement occurs

- a. if the removal is for more than 10 consecutive school days; or
- b. the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year; because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. The school district 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.

## Authority of School Personnel (§ 300.530)

1. *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
2. School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536). After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under item 4.
3. For disciplinary changes in placement that would exceed 10 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 child's disability pursuant to item 7, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in item 4.
4.
  - (a) A child with a disability who is removed from the child's current placement pursuant to items 3 or 9 must continue to receive educational services, as provided in § 300.101(a) [free appropriate public education], so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and 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.
  - (b) The services required by this item may be provided in an interim alternative educational setting.
  - (c) A school district is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
  - (d) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a) [free appropriate public education], so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
  - (e) If the removal is a change of placement under § 300.536, the child's IEP team determines appropriate services under item 4(a).
5. For purposes of this section (IX Discipline Procedures), the following definitions apply.
  - a. *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  - b. *Illegal drug* means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.
  - c. *Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
  - d. *Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### **Determination of Setting (§ 300.531)**

6. The child's IEP team determines the interim alternative education setting for services under items 3, 4, and 9.

### **Manifestation Determination Review (§ 300.530 (e))**

7. (a) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—
  - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.(b) The conduct must be determined to be a manifestation of the child's disability if the school district, the parent, and relevant members of the child's IEP team determine that a condition in either item 7(a)(i) or item 7(a)(ii) was met.
  - (c) If the school district, the parent, and relevant members of the child's IEP team determine the conduct was a direct result of the school district failure to implement the IEP, the school district must take immediate steps to remedy those deficiencies.
8. If the school district, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must either
  - (a) conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
  - (b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
  - (c) Except as provided in item 9, return the child to the placement from which the child was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.
9. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—
  - (a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a state education agency or an L school district
  - (b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a state education agency or an school district; or
  - (c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state education agency or an school district
10. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.

### **Parent Appeal (§ 300.532)**

11. The parent of a child with a disability who disagrees with any decision regarding placement under items 3 and 9 or the manifestation determination under item 7 or an school district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).
12. (a) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under item 11. In making the determination, the hearing officer may—
  - (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or
  - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
13. The appeal procedures may be repeated, if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.
14. Whenever a hearing is requested under item 11, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing. The SEA or school district is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing. Unless the parents and school

district agree in writing to waive the resolution meeting or agree to use the mediation process described in § 300.506, a resolution meeting must occur within seven days of receiving notice of the due process complaint; and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. The decisions on expedited due process hearings are appealable consistent with § 300.514.

#### **Placement During Appeals (§ 300.533)**

When an appeal has been made by either the parent or the school district, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period of the removal, whichever occurs first, unless the parent and the state education agency or school district agree otherwise.

#### **Protections for Children Not Yet Eligible for Special Education and Related Services (§ 300.534)**

15. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct may assert any of the protections provided for in this part if the school district had knowledge (as determined in accordance with item 17) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
16. A school district must be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred,
  - a. the parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or a teacher of the child, that the child is in need of special education and related services;
  - b. the parent of the child has requested an evaluation of the child pursuant to §§300.300-300.311; or
  - c. the teacher of the child, or other personnel of the local educational agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.
17. A school district would not be deemed to have knowledge under item 16 if the parent of the child has not allowed an evaluation of the child, or has refused services to the child, or if the child has been evaluated in accordance with §§ 300.300 through 300.311 and determined not to be a child with a disability.
18. If a school district does not have knowledge that a child is a child with a disability (in accordance with items 16 and 17) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with items 19, 20, and 21 of this section.
19. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.
20. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
21. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the school district must provide special education and related services in accordance with §§300.530 through 300.536 and section 612(a)(1)(A) of IDEA.

#### **Referral to and Action by Law Enforcement and Judicial Authorities (§ 300.535)**

22. Nothing in this part prohibits a school district from reporting a crime committed by a child 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 child with a disability.
23. A school district reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. A school district reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

### **X. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION (20 U.S.C. 1412(a)(8), 1417(c); §300.500, 300.610-300.627)**

#### **A. Policy**

The school district affirms the policy of confidentiality of any personally identifiable information collected, used, or maintained under IDEA Part B. The school district further affirms its adherence to the Family Educational Rights and Privacy Act (20 U.S.C.

§ 1232g) which protects students' and parents' rights to privacy in and access to educational records. Specific procedures including forms and instruction for their use are included in this manual.

## **B. Regulations**

### **Notice to Parents (§ 300.612)**

1. The school district ensures that notice as required below in item 1(e) is adequate to fully inform parents about the requirements of confidentiality of personally identifiable information, including
  - a. a description of the extent that the notice is given in the native languages of the various population groups in the unit;
  - b. a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the school intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
  - c. a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
  - d. a description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act and implementing regulations in 34 CFR part 99.
  - e. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the unit of the activity.

### **Access Rights (§ 300.613)**

2. Each school district must permit parents (or young adults with disabilities for whom transfer of rights has occurred at age 18) to inspect and review any education records relating to their children that are collected, maintained, or used by the school district under this part. The school district must comply with a request without unnecessary delay and before any meeting regarding an individualized education program, or any hearing pursuant to §300.507 and §§300.530-300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.
3. The parents' right to inspect and review education records related to the identification, evaluation and placement of a child and the provision of FAPE under this section includes:
  - a. the right to a response from the school district to reasonable requests for explanations and interpretations of the records;
  - b. the right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
  - c. the right to have a representative of the parent inspect and review the records.
4. A school district may presume that the parent has authority to inspect and review records relating to his or her child unless the school district has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

### **Records of Parties Obtaining Access (Record of Inspection) (§ 300.614)**

5. Each school district must keep a record of parties obtaining access to education records collected, maintained, or used under IDEA Part B (except access by parents and authorized employees of the school 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.

### **Records on More than One Child (§ 300.615)**

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

### **List of Types and Location of Information (Record Locator) (§ 300.616)**

7. Each school district must provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency.

### **Fees (§ 300.617)**

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

### **Amendment of Records at Parent's Request (§ 300.618)**

9. A parent who believes that information in education records collected, maintained or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child may request the school district that maintains the information to amend the records.
10. If the school district receives a request to amend records, the agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the school 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 under §300.619.

### **Opportunity for a Hearing (§ 300. 619)**

11. The school district must, 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 child.

### **Result of Hearing (§ 300. 620)**

12. If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.
13. If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district.
14. Any explanation placed in the records of the child under this section must:
  - a. be maintained by the school district as part of the records of the child as long as the record or contested portion is maintained by the school district; and
  - b. if the records of the child or the contested portion is disclosed by the school district to any party, the explanation must also be disclosed to the party.

### **Hearing Procedures (§ 300. 621)**

15. A hearing held under § 300.619 must be conducted according to the procedures under section 34 CFR 99.22 of the Family Educational Rights and Privacy Act (FERPA).

### **Consent (§ 300.622)**

16. Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies as described below, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99. Except as provided in items 17 and 18, consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of IDEA Part B.
17. Parental consent, or the consent of an eligible child who has reached age 18, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with § 300.321(b)(3).
18. If a child is enrolled, or is going to enroll in a private school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the private school is located and officials in the school district of the parent's residence.

### **Safeguards (§ 300.623)**

19. Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
20. One official at each school district shall assume responsibility for ensuring the confidentiality of any personally identifiable information. Within the **JAMES RIVER SPECIAL EDUCATION UNIT**, the following person(s) is/are assigned this responsibility: Amber Hartmann, Administrative Assistant, James River Special Education Office.
21. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under 300.123 and 34 CFR Part 99 (FERPA). Each school district must provide training to new staff members.

22. Each school district shall maintain, for public inspection, a current listing of the names and positions of those employees within the school district who may have access to personally identifiable information.

#### **Destruction of Information (§ 300.624)**

23. The school district must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.
24. The information which is no longer needed must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

#### **Children's Rights (Transfer of Rights) (300.625)**

25. Children for whom personally identifiable information is collected, maintained, or used under this policy are afforded rights of privacy similar to those afforded to parents previous to the child's 18<sup>th</sup> birthday, taking into consideration the age of the child and the type or severity of disability. Under the regulations for the Family Educational Rights and Privacy Act in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18. In North Dakota, the rights of parents regarding educational records are transferred to their child at age 18 unless the parents have sought and obtained legal guardianship for that child.

### **XI JAMES RIVER SPECIAL EDUCATION UNIT INTERNAL MONITORING PROCEDURES ( 34 CFR §§ 300.200, 300.201, 300.600, 300.601)**

#### **A. Policy**

The North Dakota Department of Public Instruction (NDDPI) is responsible for developing and implementing methods to ensure public agencies comply with requirements of the Individuals with Disabilities Education Act (IDEA) 2004. IDEA requires adherence to specific federal regulations to assure that free and appropriate services are made available to all children with disabilities. Monitoring procedures have evolved toward an emphasis on broader accountability issues aligned with the total educational accountability system. The duties of the NDDPI include developing and implementing effective methods to identify noncompliance and to ensure noncompliance is corrected as soon as possible, but no later than one year after identification. The duties of the NDDPI also include developing and implementing effective methods to conduct and monitor program improvement.

Both federal and state law contemplate that a school district will conduct internal monitoring of its provision of special education and related services. Internal monitoring may also be conducted at the special education unit level; however, all data submitted must be at the school district level. North Dakota law at N.D.C.C. § 15.1-32-02 requires the setting of standards that will apply to school districts receiving state special education funding.

The **JAMES RIVER SPECIAL EDUCATION UNIT** is responsible for internally monitoring the implementation of its procedures to ensure consistent compliance with applicable law, address issues of quality of services, and plan, develop and carry out strategies that will result in improved outcomes for students with disabilities. The **JAMES RIVER SPECIAL EDUCATION UNIT** is responsible for internally monitoring the implementation of its procedures to ensure consistent compliance with applicable law, address issues of quality of services, and plan, develop and carry out strategies that will result in improved outcomes for students with disabilities.

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that it monitors compliance with the requirements of IDEA Part B. The internal monitoring system consists of random TIEnet checks done throughout the year by four special education case managers. The office administrative assistant and coordinators are responsible for Indicator checks and reporting. Staff trainings are scheduled to address any noncompliance issues. The **JAMES RIVER SPECIAL EDUCATION UNIT** further assures that it complies with federal and state policy as stated in *General Requirements for Federal Programs* (NDDPI, April 2013) and any successor to that document. The **JAMES RIVER SPECIAL EDUCATION UNIT** makes internal monitoring records available to the NDDPI for review at the agency or institution site.

#### **B. Procedures**

The primary focus of the state's monitoring activities, which in turn shape the school district and special education unit monitoring activities, must be on:

1. Improving educational results and functional outcomes for all children with disabilities; and
2. Ensuring that school districts meet the program requirements for IDEA Part B, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities. Those requirements have been identified by the U.S. Department of Education as:
  - a. Provision of FAPE in the least restrictive environment;
  - b. State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services;
  - c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

Focused monitoring is one component of the State's general supervision system. A detailed description of this process is provided in the NDDPI manual, *Procedures for Focused Monitoring*. Other monitoring/verification components include random monitoring, self-assessment monitoring (SAM), assigning unit levels of determination, and the consolidated DPI Accountability Reports. Each of these components occurs annually in varying districts ensuring each district is thoroughly monitored within the five years monitoring cycle.

Each school district must have an internal monitoring system in place which includes policies, practices and procedures to ensure that students are being appropriately identified for special education and related services and appropriately identified within specific disability categories. As part of this effort, NDDPI created a toolkit for special education units in North Dakota to assure special education staff comply with the requirements of the IDEA.

Additional information on requirements for administering programs supported by federal funds is available in the document, *General Requirements for Federal Programs* (NDDPI, April 2013), accessible on the NDDPI website. This document covers areas such as records retention, allowable costs, property management, and other aspects of program administration.

The obligation to conduct internal monitoring for proper administration of a program supported by federal funds extends to parentally-placed private school students with disabilities who receive special education and related services from the school district and students who are placed by the school district in a private school or facility.

The JAMES RIVER SPECIAL EDUCATION UNIT assures that it monitors compliance with the requirements of IDEA Part B. A description of the internal monitoring system is located in A. of this section. The JAMES RIVER SPECIAL EDUCATION UNIT further assures that it complies with federal and state policy as stated in internal monitoring records available to the NDDPI for review at the agency or institution site.

## **XII. PERFORMANCE GOALS AND INDICATORS (20 U.S.C. 1412(a)(15); 34 CFR §§ 300.157; 300.211)**

IDEA 2004 established a requirement that all states develop and submit to the U.S. Department of Education, Office of Special Education Programs (OSEP) a performance plan designed to improve the educational and functional outcomes for children with disabilities. Pursuant to §300.157, the state performance plan (SPP) establishes goals for the performance of children with disabilities, establishes performance indicators that are used to assess progress toward achieving the goals, and provides for performance reporting. The state performance plan must encompass baseline data (where available), projected targets, and activities to achieve those targets. The state is required to submit an annual performance report (APR) OSEP and the public on the progress toward meeting those goals. The SPP contains 17 performance indicators. The NDDPI collects data on the performance of local school districts on these indicators:

**Indicator 1: Graduation Rate:** Percent of youth with IEPs graduating with a regular diploma.

**Indicator 2: Dropout Rate:** Percent of youth with IEPs dropping out of high school.

**Indicator 3: Assessments:** Participation and Performance.

**Indicator 4: Suspension and Expulsion:** Suspension and Expulsion rates.

**Indicator 5: School Age LRE:** Percent of children with IEPs removed from regular classrooms, served in public/private separate school, residential, homebound, or hospital.

**Indicator 6: Preschool LRE:** Percent of preschool children who receive services in settings with typically developing peers.

**Indicator 7: Preschool Outcomes:** Percent of preschool children with improved social/emotional skills, acquisition and use of knowledge and skills, and use of appropriate behaviors.

**Indicator 8: Parent Involvement:** Percent of parents who report schools facilitated parental involvement.

**Indicator 9: Disproportionate Representation:** Percent of districts with disproportionality due to inappropriate

identification.

**Indicator 10: Disproportionate Representation- Disability Category:** Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories as a result of inappropriate identification.

**Indicator 11: Evaluation Timelines:** Percent of children who were evaluated within 60 days of parental consent.

**Indicator 12: Preschool Transition:** Percent of children referred by Part C, determined eligible and have an IEP developed and implemented by their third birthday.

**Indicator 13: Secondary Transition:** Percent of youth age 16+ with IEP and measureable, annual IEP goals and transition services.

**Indicator 14: Secondary Outcomes:** Percent of youth who had IEPs; are no longer in secondary school; and who have been employed, enrolled in postsecondary school, or both, within one year of leaving high school.

**Indicator 17: State Systemic Improvement Plan (SSIP):** A comprehensive multiyear plan that focuses on improving results for children and youth with disabilities.

Consistent with the requirements of §300.211, the **JAMES RIVER SPECIAL EDUCATION UNIT** assures that its member school districts will comply with NDDPI information requests and will conduct required data collection and submission activities related to performance goals and indicators in a timely and accurate manner.

### **XIII. PARTICIPATION IN ASSESSMENTS (20 U.S.C. 1412(a)(16); §300.320(a)(6) (§300.160)**

#### **A. Policy**

Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations in administration, and alternate assessments, if necessary, as indicated by the child's IEP. If a child's IEP team determines that a child must take an alternate assessment of student achievement, the child's IEP must ensure that the parents of the student is informed that their child will be assessed based on alternate or modified academic standards.

#### **B. Procedures**

The school district utilizes guidance documents developed or disseminated by the NDDPI to ensure compliance with regulations relating to participation in state and alternate assessments. This guidance provides assistance for school personnel on identifying and selecting appropriate assessment accommodations for children with disabilities. In addition, guidelines are provided for the participation of children with disabilities in an alternate assessment as indicated on their IEPs. The NDDPI is a member of the Smarter Balance Assessment Consortium and participated in the development of the guide, *The Smarter Balanced Assessment Consortium: Usability, Accessibility and Accommodations Guideline*. This guidebook describes the universal tools, designated supports, and accommodations available for the Smarter Balanced assessments and are intended for school-level personnel and decision-making teams, particularly Individualized Education Program (IEP) teams, as they prepare for and implement the Smarter Balanced Assessment.

The North Dakota Alternate Assessment for ELA and Math is for students with significant cognitive disabilities and was developed with the Dynamic Learning Maps Consortium, DLM. The DLM assessment is a computer-delivered alternate assessment for students with significant cognitive disabilities in grades 3-12. To determine students eligible for the alternate assessment, IEP Teams should use the *ND Alternate Assessment Participation Guidelines*.

The school district assures that it conducts all assessments, general and alternate, in compliance with federal and state standards, and that it will implement ongoing NDDPI guidance on assessment accommodations as it is provided by the NDDPI.

### **XIV. METHODS OF ENSURING SERVICES - INTERAGENCY AGREEMENTS (20 U.S.C. 1412(a)(12)(A), (B) and (C); 1401 (8); 34 CFR 300.154)**

#### **A. Policy**

The **JAMES RIVER SPECIAL EDUCATION UNIT** collaborates with appropriate state and local agencies to ensure services that are needed to provide FAPE are delivered to individuals with disabilities.

#### **B. Interagency Agreements**

The **JAMES RIVER SPECIAL EDUCATION UNIT** has in place Interagency Agreements (IAAs) with the following public agencies:

**JAMES RIVER SPECIAL EDUCATION UNIT has one formal written Interagency Agreement with Community Action Region VI, 0-5 Head Start.**

**C. Other Working Relationships with Community Agencies §300.154(e)**

In addition to Interagency Agreements, the **JAMES RIVER SPECIAL EDUCATION UNIT** has informal working relationships (i.e., no written formal relationship) with the following agencies:

**SC Human Service Center, Counseling referrals, Assessments**

**Anne Carlsen Center, Assistive Technology**

**Anne Carlsen Center - Early Intervention Program, Ages 0-2**

**HEADSTART – Preschool Services**

**Division of Juvenile Services**

**D. Use of Private Insurance (§ 300.154(e) through (h))**

1. With regard to children with disabilities who are covered by public insurance:
  - a. a school district may use the Medicaid or other public insurance or benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph b(ii) of this section.
  - b. with regard to services required to provide FAPE to an eligible child under this part, the school district
    - (i) may not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of IDEA;
    - (ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph 3 of this section, may pay the cost that the parent otherwise would be required to pay; and
    - (iii) may not use a child'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 child outside of the time the child 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.
    - (iv) Prior to accessing a child's or parent's public benefits of insurance for the first time, and after providing notification to the child's parents consistent with paragraph (V) must obtain written, parental consent that
      - (A) Meets the requirements of § 99.30 and § 300.622, which consent must specify the personally identifiable information that may be disclosed, the purpose of the disclosure, and the agency to which the disclosure may be made. And
      - (B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public or benefits or insurance to pay for services under part 300.
    - (v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification consistent with 300.503(c) to the child's parents, that includes
      - (A) A statement of the parental consent provisions in paragraph (iv)
      - (B) A statement of the "no cost" provisions in paragraphs (d) (2) (i) through (iii) of this section
      - (C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program at any time;
      - (D) A statement of withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits and insurance program does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.
2. With regard to services required to provide FAPE to an eligible child with a disability who is covered by private insurance, a school district may access a parent's private insurance proceeds only if the parent provides informed consent consistent with §300.309. Each time the school district proposes to access the parent's private insurance proceeds, it must obtain parent consent, and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

3. If a school district is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the school district may use its Part B funds 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 school district may use its Part B funds 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).
4. Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If a school district spends reimbursements from federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.
5. Nothing in this part should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj or any other public insurance program.

## **XV. SUSPENSION AND EXPULSION RATES (20 U.S.C.1412 (a)(22); 34 CFR § 300.170)**

### **A. Policy**

The school district assures that it regularly reviews suspension and expulsion rates of children with disabilities.

### **B. Procedures § 300.170**

1. The school district examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities compared to the rates for nondisabled children in the school district.
2. If the discrepancies described in item 1 are occurring, the school district reviews and, if appropriate, revises its policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the act.

## **XVI. ACCESS TO INSTRUCTIONAL MATERIALS (20 U.S.C. § 1412(a)(23); 34 CFR § 300.172)**

### **A. Policy**

IDEA 04 requires states to address the critical difficulty in obtaining accessible textbooks for students with disabilities by adopting a file format, the National Instructional Materials Accessibility Standard (NIMAS). North Dakota has chosen to adopt the file format, for the purpose of providing instructional materials to blind persons or other persons with print disabilities in a timely manner.

The school district assures that it takes all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

### **B. Procedures**

The NDDPI has published a document for the implementation of the NIMAS and coordination with the National Instructional Materials Access Center (NIMAC),. *National Instructional Materials Accessibility Standard (NIMAS) and the National Instructional Materials Accessibility Center (NIMAC), April 2009*. The document is based on federal regulations and reflects changes in the IDEA 2004. The document provides guidance to individuals who are responsible for the provision of accessible instructional materials to students with disabilities.

The school district assures that it will implement the requirement to provide instructional materials in accessible formats in a timely fashion consistent with federal and North Dakota requirements.

## **XVII. PROHIBITION ON MANDATORY MEDICATION (20 U.S.C. § 1412(a)(25), 34 CFR § 300.174)**

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that it complies with federal requirements prohibiting unit and

school district personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under § § 300.300 through 300.311, or receiving services under IDEA Part B. The **JAMES RIVER SPECIAL EDUCATION UNIT** recognizes that the prohibition may not be construed as prohibiting teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under § 300.111 (related to child find).

**XVIII PROHIBITION AGAINST COMMINGLING (20 U.S.C. 1412(a)(17)(B) 34 CFR 300.162(b))**

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that the funds under Part B of IDEA are not commingled with funds from other sources.

**XIX. EXCESS COST AND NONSUPPLANTING (34 CFR §162(c); 20 U.S.C. 1401(8), 1413(a)(2)(A); 34 CFR §300.16, 300.202,**

**Appendix A to Part 300- Excess Costs Calculation )**

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that funds received under IDEA Part B will be used solely for excess costs for special education and related services for students with disabilities and in no way will be used to supplant any special education costs from other sources including state and local funds.

**A. Use of Amounts. (20 U.S.C. 1401(8), 1413(a)(2)(A); 34 CFR §300.16, 300.202, Appendix A to Part 300- Excess Costs Calculation; ND Admin. Code § 67-23-03-04)**

1. **General.** Amounts provided to a school district under Part B of IDEA--
  - (1) Must be expended in accordance with the applicable provisions of IDEA Part B and federal and state rules implementing IDEA Part B;
  - (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities; and
  - (3) Must be used to supplement state, local, and other federal funds and not to supplant those funds.
2. **Definition.** The term “excess costs” means those costs that are in excess of the average annual per-student expenditure in a school district during the preceding school year for an elementary or secondary school student, as may be appropriate. Excess costs must be computed after deducting—
  - (1) Amounts received—
    - (i) Under IDEA Part B;
    - (ii) Under Part A of title I of the Elementary and Secondary Education Act of 1965 (“ESEA”); or
    - (iii) Under Parts A and B of title III, of the ESEA; and
  - (2) Any state or local funds expended for programs that would qualify for assistance under any of those parts, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)
3. **Limitation on use of Part B funds.** (1) The excess cost requirement prevents a school district from using funds provided under Part B of IDEA to pay for all of the costs directly attributable to the education of a child with a disability; however, the excess cost requirement does not prevent a school district from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or state funds are available for nondisabled children in that age range. However, the school district must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

**B. Meeting the Excess Cost Requirement (34 CFR §§ 300.202 (b)(2), 300.202(b)(3), 300.223; ND Admin. Code § 67-23-03-05)**

1. **General.** A school district meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of IDEA are used. This amount is determined in accordance with the definition of excess costs. This amount may not include capital outlay or debt service.

**Joint establishment of eligibility.** If two or more school districts jointly establish eligibility in accordance with §300.223 Joint establishment of eligibility, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those agencies for elementary or secondary school students, as the case may

be.

- C. **Computation for excess cost requirement.** To meet the excess cost requirement, a unit must have spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of IDEA are used. The amount may not include capital outlay or debt service.

The James River Special education Cooperative assures that funds received under IDEA Part B will be used solely for excess costs for special education and related service for students with disabilities and in no way will be used to supplant any special education costs from other sources including state and local funds.

**XX. MAINTENANCE OF EFFORT (34 CFR§ 300.203, 300.204, Appendix D to Part 300 – Maintenance of Effort and Early Intervening Services)**

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that, except for the conditions stated in § 300.203 and as excepted under § 300.204 and 300.205, IDEA Part B funds will not be used to reduce the level of expenditures for the education of children with disabilities made by the school district from local funds below the level of those expenditures for the preceding fiscal year.

If the NDDPI determines that a school district is not meeting the requirements of IDEA Part B, including the targets in the North Dakota State Performance Plan (provision of FAPE in the least restrictive environment; state exercise of general supervision including child find, effective monitoring, use of resolution meetings, mediation, and a system of transition services; and disproportionate representation of racial and ethnic groups in special education and related services as the result of inappropriate identification), the school district may not reduce its maintenance of effort under § 300.203 for any fiscal year.

**XXI. PERMISSIVE USE OF FUNDS (20 U.S.C. 1413(a)(4) 34 CFR 300.208)**

IDEA Part B funds may be used for the following activities:

1. Services and aids that also benefit nondisabled children. 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 child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.
2. Early intervening services. To develop and implement a coordinated early intervening educational services system in accordance with 300.226.
3. *Administrative case management.* A school district may use funds received under Part B of 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.

**XXII. EARLY INTERVENING SERVICES (20 U.S.C. §1413 (f), 34 CFR § 300.226)**

1. A school district may not use more than 15 percent of the amount the school district receives under Part B of IDEA for any fiscal year, less any amount reduced by the school district pursuant to § 300.205, 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. (Appendix D to Part 300 contains examples of how § 300.205(d), regarding local maintenance of effort, and § 300.226(a) affect one another.)
2. *Activities.* In implementing coordinated, early intervening services under this section, a school district may carry out activities that include-
  - (1) Professional development (which may be provided by entities other than school district's) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where 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.

3. *Reporting.* Each school district that develops and maintains coordinated, early intervening services under this section must annually report to the NDDPI on
  - (1) The number of children served under this section who received early intervening services; and
  - (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.
4. *Coordination with ESEA [No Child Left Behind Act of 2001]:* 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.

**XXIII. OVER IDENTIFICATION AND DISPROPORTIONALITY (20 U.S.C. § 1412(a)(24), 34 CFR §§ 300.173, 300.600(a), 300.646)**

**A. Policy**

IDEA prohibits the inappropriate over identification or disproportionate representation by race or ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in § 300.8, definition of child with a disability. The NDDPI has developed guidance for school district use to accomplish the identification of children with disabilities and to find and correct inappropriate over identification or disproportionality. This guidance consists of a disproportionality state plan, a local policy review template, a student file review template, and guidance on local investigation and best practice.

IDEA requires the NDDPI to monitor for and report on the existence of disproportionate representation as a result of inappropriate identification. The **JAMES RIVER SPECIAL EDUCATION UNIT** participates in this monitoring and reporting process as set out in this Eligibility Document at section IX. Internal Monitoring Procedures.

**B. Consequence of determination of over identification or disproportionality:**

If the NDDPI determines that significant disproportionality exists in a school district that is a member of **JAMES RIVER SPECIAL EDUCATION UNIT** with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, the **JAMES RIVER SPECIAL EDUCATION UNIT** assures that the school district will review and revise, if appropriate, its policies, procedures, and practices used in the identification or placement to ensure that its policies, procedures, and practices comply with the requirements of IDEA. The **JAMES RIVER SPECIAL EDUCATION UNIT** further assures that the school district will publicly report on the revision of policies, practices, and procedures reviewed or revised. The **JAMES RIVER SPECIAL EDUCATION UNIT** further assures that if significant disproportionality is determined to exist, the school district will reserve the maximum amount of funds under section 613(f) of IDEA to provide comprehensive coordinated early intervening services to serve children in the school district, particularly but not exclusively, children in those groups that were significantly over identified under § 300.646(a).

**XXIV. RECOVERY OF FUNDS FOR MISCLASSIFIED CHILD (20 U.S.C. 1234(a))**

**A. Policy**

The North Dakota Department of Public Instruction will seek to recover any funds made available under Public Law 108-446 for services to any child who has been determined erroneously classified as eligible to be counted through the annual child count by the **JAMES RIVER SPECIAL EDUCATION UNIT**.

**B. Procedures for Implementing and Monitoring Child Count**

Recovery of funds for misclassified children is addressed by ND Admin. Code § 67-23-03-03.

1. The NDDPI will review annually the regulations for conducting a statewide child count.
2. The NDDPI will send letters annually explaining child count procedures to all special education units.
3. Each special education unit will respond to the request by submitting required data in a format prescribed by the NDDPI.
4. Each individual responsible for collecting child count information will verify to the best of his/her knowledge that the count is a true, accurate count by submitting a sworn affidavit.

5. Data are edited through computer checks as well as visual scanning to identify errors. Each apparent error and data element is checked with the special education unit from which it was submitted, and changes are entered into the unduplicated child count database.
6. The NDDPI compiles all child count information in required report forms.
7. Child count information submitted by special education units will be analyzed, comparing data to other records containing numbers of served students with disabilities collected by the NDDPI.
8. The NDDPI monitoring procedure to verify accuracy of the special education unit child count is as follows:
  - a. A sample of students from the current child count is selected. An attempt is made to include all categories of disability.
  - b. The files for these students are reviewed on site for timeliness and completeness.
  - c. Student eligibility will be determined based on the following criteria:
    - (1) IEP was in effect and child was receiving special education and related services on IEP at the time of the count (December 1);
    - (2) evidence that child has been evaluated and determined to be a child with a disability eligible to receive special education and related services; and
    - (3) evidence of enrollment in school at the time of the count.

**C. Procedures to Recover Funds Made Available for Children Erroneously Classified as Eligible to be Counted**

1. The NDDPI will request the special education unit to return federal funds for all misclassified children who were included in the child count. These funds must be returned to the NDDPI within 30 days of notification.
2. It is the policy of the NDDPI to request return of federal per pupil allocations in a direct ratio to the percentage of error found during monitoring.

Example: If 20 files are reviewed and it is found that two of the students should not have been counted, the NDDPI will assume the special education units count has a 10% error; if the child count for that year is 500 students, the NDDPI will request the return of .10 X 500 X per pupil allocation.

A request for return of funds will not be made without first affording the unit a review after reasonable notice has been given and the unit has had an opportunity to present information and data relating to the error calculation.

If the error is substantiated, the funds in question must be returned within 30 days of request.

3. If the special education unit does not return the funds, the NDDPI will suspend federal financial assistance immediately until the situation is clarified.
4. The NDDPI will return all funds to the Department of Education, Office of Special Education Programs for misclassified children who were included in the child count.

**XXV. HEARINGS RELATED TO LEA ELIGIBILITY (20 U.S.C. 1412(a)(13); 1413(c) and (d); 34 CFR § 76.401,300.155)**

**A. Policy**

Before taking any final action regarding any application submitted by a local education agency, the NDDPI provides reasonable notice and opportunity for a hearing.

**B. Procedure**

**Disapproval of an Application, Opportunity for a Hearing (34 CFR 76.401)**

School district or organization opportunity for a hearing under Part B of IDEA is addressed in N.D. Admin. Code section 67-23-03-07.

1. Final disapproval action will not be taken by the NDDPI on any application submitted by a special education unit without first affording the applicant reasonable notice and opportunity for a hearing.
2. The following procedures will be followed as set forth under 34 CFR §76.401 of the Education Department General Administrative Regulations (EDGAR).
  - a. The applicant shall request the hearing within 30 days of the action of the NDDPI.

- b. Within 30 days after it receives a request, the NDDPI shall request the assignment of an administrative law judge from the North Dakota Office of Administrative Hearings, who shall hold a hearing on the record and shall review the NDDPI action.
- c. No later than 10 days after the hearing the administrative law judge shall issue a written ruling, including findings of fact and reasons for the ruling.
- d. If the administrative law judge determines that the NDDPI action was contrary to state or federal statutes or regulations that govern the applicable program, NDDPI shall rescind its action.
- e. If the NDDPI does not rescind its final action after a review, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary, U.S. Department of Education, within 20 days after the applicant has been notified by the NDDPI of the results of the NDDPI review. If supported by substantial evidence, findings of fact of the NDDPI are final.
- f. The NDDPI shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section including records of other applicants.

## **XXVI. PERSONNEL STANDARDS (20 U.S.C. 1412(a)(14); 34 CFR 300.156)**

It is the policy of the **JAMES RIVER SPECIAL EDUCATION UNIT** to adhere to North Dakota personnel standards as stated by the Educational Standards and Practices Board and the NDDPI. The **JAMES RIVER SPECIAL EDUCATION UNIT** and the school district assure that each person employed as a public school special education teacher in North Dakota who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher under the *Every Student Succeeds Act*, 2015, (ESSA).

Teacher licensure in North Dakota is based upon transcribed majors and minors from approved colleges of teacher education. The North Dakota Professional Educator's License is issued by the ND Education Standards and Practices Board (ESPB). ESPB has the responsibility of teacher licensure, teacher education program approval, professional development and professional practices in ND.

The NDDPI Office of Special Education offers the Special Education Director's Credential, N.D. Admin. Code § 67-11-08; Certificate of Completion Speech-Language Pathology Paraprofessionals, N.D. Admin. Code § 67-11-20; and a Certificate of Completion for Paraprofessionals, ND. Admin. Code § 67-11-14.

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that member school districts take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.

The **JAMES RIVER SPECIAL EDUCATION UNIT** adheres to § 300.156(e) *Rule of construction*. "Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part."

## **XXVI. PUBLIC PARTICIPATION (U.S.C. 1412(a)(19), 1413(a)(8); 34 CFR §§ 300.165, 300.212)**

The **JAMES RIVER SPECIAL EDUCATION UNIT** assures that, prior to the adoption of any policies and procedures needed to comply with IDEA Part B, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. The **JAMES RIVER SPECIAL EDUCATION UNIT** further assures that all documents relating to the eligibility of the **JAMES RIVER SPECIAL EDUCATION UNIT** under IDEA Part B are available to parents of children with disabilities and to the general public.

## **XXVII JAMES RIVER SPECIAL EDUCATION UNIT POLICIES AND PROCEDURES**

The **JAMES RIVER SPECIAL EDUCATION UNIT** will keep on file with the NDDPI its Policies and Procedures that establish eligibility under IDEA Part B. The Policies and Procedures remain in effect until the unit submits modifications that the NDDPI or the **JAMES RIVER SPECIAL EDUCATION UNIT** decide are necessary. The NDDPI may requirement modifications if the provisions of the IDEA or state statute are amended; if federal or state regulations implementing IDEA are amended; if there is a new interpretation of the IDEA by federal or state courts; or there is an official finding of noncompliance with federal or state law or regulations.