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10.16.3121 SUPERINTENDENT OF PUBLIC INSTRUCTION'S RESPONSIBILITY FOR FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

(1) The Superintendent of Public Instruction shall ensure that all students with disabilities, ages 3 through 18 inclusive, including students with disabilities who have been suspended or expelled from school, are provided a free appropriate public education (FAPE) in accordance with the Individuals with Disabilities Education Act (IDEA) (20 USC, sections 1401 through 1485) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA), and the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).

(2) The Superintendent of Public Instruction shall ensure that when local educational agencies provide education to students ages 19, 20, or 21, students of the same age with disabilities are provided FAPE in accordance with IDEA.

(3) The Superintendent of Public Instruction shall ensure that all students with disabilities referred to or placed in private schools by a public agency receive the rights and protections under IDEA.

(4) If a local educational agency fails to provide FAPE for a student with disabilities in accordance with IDEA, the Superintendent of Public Instruction shall take immediate steps to ensure FAPE is made available to the student with disabilities.

(a) The Superintendent of Public Instruction may initiate one or more of the following options to ensure that FAPE is made available for the student with disabilities:

- (i) provide FAPE directly;
- (ii) contract for services to provide FAPE;
- (iii) provide an out-of-district placement in accordance with least restrictive environment regulations of IDEA;
- (iv) recommend to the Board of Public Education withholding of state education funds;
- (v) deny in whole or part IDEA-B federal funds; or
- (vi) recommend to the Board of Public Education a change in accreditation status.

(b) Any costs incurred by the Superintendent of Public Instruction to provide FAPE to a student with disabilities due to failure of the local educational agency to provide FAPE, may be recovered from the local educational agency through a reduction in state education funds upon recommendation of the Superintendent of Public Instruction and hearing before the Board of Public Education.

History: 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07.

10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES

(1) The local educational agency in which a student with disabilities resides is responsible for ensuring the student with disabilities, age 3 through 18, beginning on the student's third birthday, including students with disabilities who have been suspended or expelled from school, has available a free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA) (20 USC, sections 1401 through 1419) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16) unless the parent has refused initial consent for services or has revoked such consent. If the student's third birthday occurs in the summer, the individualized education program (IEP) team shall decide whether the student is to receive extended school year services during the summer. The local educational agency shall participate in transition planning conferences arranged by the early intervention provider agency.

(2) For the purposes of this rule, "resides" means where the child lives during the school week.

(3) When the local educational agency provides education to students ages 19, 20, or 21, students of the same age with disabilities will be provided a free appropriate public education in accordance with IDEA.

(4) The local educational agency shall implement procedures for students with disabilities in private elementary and secondary schools and consistent with the requirements of 34 CFR 130 through 148 and state administrative rules.

(5) The local educational agency may not require parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202c of the Controlled Substances Act (21 USC 812c) for a child as a condition to attending school, receiving an evaluation under 34 CFR 300.300 through 300.311, or receiving special education and related services in accordance with the requirements of the Individuals with Disabilities Education Act.

(6) The local educational agency must conduct routine checking of hearing aides in accordance with the requirements of 34 CFR 300.113.

(7) The local educational agency must take all reasonable steps to provide instructional materials in accessible formats to students with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(8) Local educational agencies must take measurable steps to recruit, hire, train, and retain qualified personnel, including individuals with disabilities, to provide special education and related services to students with disabilities.

History: 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 5/25/07; AMD, 2010 MAR p. 1076, Eff. 4/30/10.