

7. **Consent.** Consent means that:
- a. 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.
 - b. 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.
 - c. 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retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
 - d. If the parent revokes consent in writing for their student's receipt of special education and related services, the public agency is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

III.T. PARENTAL CONSENT FOR SERVICES. (§300.300)

1. An LEA that is responsible for making a FAPE available to a student with a disability must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.
2. An LEA must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the eligible student with disabilities.
3. If the parent of a student fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, the LEA:
 - a. May not use the procedures in Section IV. of these Rules, including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student.
 - b. Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student

with the special education and related services for which the LEA requests consent; and

- c. Is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which the LEA requests such consent.
4. If, at any time subsequent to the initial provision of special education and related services, the parent of a student revokes consent in writing for the continued provision of special education and related services, the public agency:
 - a. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Section IV. D. of these Rules before ceasing the provision of special education and related services.
 - b. May not use the procedures in Section IV of these Rules, including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student.
 - c. Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which the LEA requests consent; and
 - d. Is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which the LEA requests such consent.
5. An LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA, or to fail to provide a student with a FAPE.
6. Consent means that the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time (§300.9).
 - a. 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).

IV.I. FILING A DUE PROCESS COMPLAINT. (300.507)

1.
 - a. Persons with special expertise, including advocates, may assist or accompany either party to a due process hearing.
 - b. The parties may:
 - (1) be represented by an attorney authorized to practice law in the State of Utah; or
 - (2) represent themselves, also referred to as pro se representation, (CFR 300.512(b)(a)(1), (Utah Bar Rules 14-102, 14-111, 14-802(c)(8))

VIII.C. STATE MONITORING AND ENFORCEMENT. (§300.600)

1. The USOE must:
 - a. Monitor the implementation of Part B of the IDEA and these Rules;
 - b. Make determinations annually about the performance of each LEA using the categories in 300.603(b)(1);
 - c. Enforce implementation of Part B of the IDEA and these Rules using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan, (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds in whole or in part, by the SEA); and
 - d. Report annually on the performance of the State and of each LEA under the IDEA. 300.602(b)(1)(i)(A) and (b)(2).
2. In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance
2. The primary focus of the State's monitoring activities must be on:
 - a. Improving educational results and functional outcomes for all students with disabilities; and

- b. Ensuring that LEAs meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for students with disabilities.
- 3. As a part of its responsibilities, the USOE uses quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas, and the indicators established by the Secretary for the State performance plans.
- 4. As required by this section, the USOE monitors the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
 - a. Provision of a free appropriate public education in the least restrictive environment.
 - b. 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.
- 5. Monitoring activities for Least Restrictive Environment (LRE). (§300.120)
 - a. The USOE must carry out activities to ensure that the LRE requirements are implemented by each LEA.
 - b. If there is evidence that an LEA makes placements that are inconsistent with the LRE requirements, the USOE must:
 - (1) Review the LEA's justification for its actions; and
 - (2) Assist in planning and implementing any necessary corrective action.

VIII.E. STATE PERFORMANCE PLANS AND DATA COLLECTION (300.601)

3. State use of targets and reporting (300.602)

- a. The USOE uses the targets established in the State Performance Plan (SPP) and the priority areas to analyze the performance of each LEA.

b. Public reporting and privacy.

(1) The USOE must :

(a) Report annually to the public on the performance of each LEA located in the State on the targets in the SPP as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary; and

(b) Make each of the following items available through public means; the State's performance plan (SPP); annual performance reports (APR); and the State's annual reports on the performance of each LEA located in the State.

(2) In doing so, the State must, at a minimum, post the plan and reports on the SEA's web site, and distribute the plan and reports to the media and through public agencies.

VIII.G. SECRETARY'S REVIEW AND DETERMINATION REGARDING STATE PERFORMANCE. (300.603)

6. Public attention (300.606)

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action subject to §300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action, including, at a minimum, by posting the notice on the USOE's Web site and distributing the notice to the media and through public agencies.

VIII.P. SUBPART G-AUTHORIZATION, ALLOTMENT, USE OF FUNDS, AND AUTHORIZATION OF APPROPRIATIONS

6. Subgrants to LEAs for eligible students ages 3 through 21. (300.705)

a. Each state that receives a grant under section 611 of the IDEA for any fiscal year must distribute any funds the State does not reserve under 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the IDEA for use in accordance with part B of the IDEA. Effective with funds that become available on the July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

b. Same
(2) Add (d) as follows

(d) If an LEA received a base payment of zero in its first year of operation, the USOE must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any students with disabilities. The USOE must divide the base allocation for the LEAs that would have been responsible for serving students with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

c. Reallocation of LEA funds. (300.705)

(1) If the USOE determines that an LEA is adequately providing FAPE to all children with disabilities residing in the areas served by that agency with State and local funds, the USOE may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE, to other LEAs in the state that are not adequately providing special education and related services residing in the areas served by those other LEAs. The USOE may also retain those funds for use at the State level to the extent that the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 300.704.

(2) After the USOE distributes funds under this part to an eligible LEA that is not serving any children with disabilities, the USOE must determine, within a reasonable period of time prior to the end of the carryover period, whether the LEA has obligated the funds. The USOE may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The USOE may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 300.704.

VIII.Q. SUBPART H-PRESCHOOL FOR STUDENTS WITH DISABILITIES

5. Subgrants to LEAs under Section 619 for eligible students ages 3 through 5. (300.815)

Each state that receives a grant under 619 of the IDEA for any fiscal year must distribute all of the grant funds the State does not reserve under 300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the IDEA. Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children ages three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities.

a.

(1)

(2)

(a)

(b) If one or more LEAs are combined into a single new LEA, the USOE must combine the base allocations of the merged LEAs;

(c)

If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to students with disabilities ages 3 through 5 changes, the base allocations of affected must be redistributed among affected LEAs based on the relative numbers of students with disabilities ages 3 through 5 currently provided special education by each LEA; and

(d)

If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any students with disabilities aged three through five years. The State must divide the base allocation determined for the LEAs that would have been responsible for serving students with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of students with disabilities aged three through five years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

6. Reallocation of LEA funds (300.817)

a. If the USOE determines that an LEA is adequately providing FAPE to all students with disabilities ages 3 through 5 residing in the area

served by the LEA with State and local funds, the USOE may reallocate any portion of the funds under Section 619 of the IDEA that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related to all students with disabilities ages 3 through 5 residing in the areas the other LEAs serve. The USOE may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 300.812.

- b. After the USOE distributes section 619 funds to an eligible LEA that is not serving any children with disabilities ages three (3) through five (5) years, as provided in §300.815, the USOE must determine, within a reasonable period of time prior to the end of the carryover period, whether the LEA has obligated the funds. The USOE may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas served by those other LEAs. The USOE may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.812.