



## **Governance Standards**

**Governance** is the administrative structure and long range planning through which the special education system operates.

# **Required Policies**

The LEA must have in effect policies that are consistent with State policies established under the Code of Federal Regulations, title 34, sections 300.101 through 300.163, and sections 300.165 through 300.174. Many of those policies are addressed in the previous chapters. The LEA also must have policies that (1) Address transition from preschool; (2) Ensure compliance with the private school requirements in sections 300.130 through 300.148; and (3) Prevent inappropriate over identification or disproportionate representation by race and ethnicity of children with disabilities.

#### **Governance Standards**

The LEA, in providing for the education of children with disabilities within the jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under the Code of Federal Regulations, title 34, sections 300.101 through 300.163, and sections 300.165 through 300.174. (34 C.F.R. § 300.201.)

# **Requirements Placed on the State**

#### Additional Information if the SEA Provides Direct Services

If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency

- (a) Must comply with any additional requirements of the Code of Federal Regulations, title 34, sections 300.201 and 300.202 and sections 300.206 through 300.226 as if the agency were an LEA; and
- (b) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to section 300.202(b) (relating to excess costs). (34 C.F.R. § 300.175.)

## **Commingling of Funds, Prohibition Against**

- (1) Funds paid to a State under this part must not be commingled with State funds.
- (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the funds paid to a State under this part. Separate bank accounts are not required. (See 34 C.F.R. 76.702 (Fiscal control and fund accounting procedures).) (34 C.F.R. § 300.162(b).)

#### **Condition of Assistance**

A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in the Code of Federal Regulations, title 34, sections 300.101 through 300.176. (34 C.F.R. § 300.100.)

# **Exception for Prior State Plans**

If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of the Code of Federal Regulations, title 34, section 300.100, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act. (34 C.F.R. § 300.176(a).)

- (1) Subject to paragraph (b)(2) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary.
- (2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan. (34 C.F.R. § 300.176(b).)

The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if —

- (1) After December 3, 2004, the provisions of the Act or the regulations in this part are amended:
- (2) There is a new interpretation of this Act by a Federal court or a State's highest court; or
- (3) There is an official finding of noncompliance with Federal law or regulations. (34 C.F.R. § 300.176(c).)

#### **Enforcement**

The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with the Code of Federal Regulations, title 34, sections 300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met. (34 C.F.R. § 300.626.)

## Procedural Safeguards, Implementation of

The SEA (and any agency assigned responsibility pursuant to the Code of Federal Regulations, title 34, section 300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency. (34 C.F.R. § 300.150).

# Requirements Placed on the LEA

#### Information for SEA

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to the Code of Federal Regulations, title 34, sections 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act. (34 C.F.R. § 300.211.)

## **Use of Part B Funds**

Amounts provided to the LEA under Part B of the Act

- (1) Must be expended in accordance with the applicable provisions of this part;
- (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
- (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds. (34 C.F.R. § 300.202(a).)

# **Personnel Preparation**

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of section 300.156 (related to personnel qualifications) and section 2122 of the ESEA. (34 C.F.R. § 300.207.)

#### **Public Information**

The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act. (34 C.F.R. § 300.212.)

#### **Treatment of Charter Schools**

- (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must
- (i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practices of providing such services on the site to its other public schools; and
- (ii) Provide funds under Part B of the Act to those charter schools
- (A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
- (B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.
- (2) If the public charter school is a school of an LEA that receives funding under the Code of Federal Regulations, title 34, section 300.705 and includes other public schools.

- (i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and
- (ii) The LEA must meet the requirements of paragraph (b)(1) of this section. (34 C.F.R. § 300.209(b).)

If the public charter school is an LEA, consistent with section 300.28, that receives funding under section 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity. (34 C.F.R. § 300.209(c).)

# Requirements Placed on both the LEA and the State

## **Ensuring Personnel Qualifications**

The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (34 C.F.R. § 300.156(a).)

## **Full Educational Opportunity Goal and Timetable**

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. (34 C.F.R. § 300.109.)

#### **IEP**

The State must ensure that an IEP or an IFSP that meets the requirements of section 636(d) of the Act is developed, reviewed, and revised for each child with a disability in accordance with the Code of Federal Regulations, title 34, sections 300.320 through 300.324, except as provided in section 300.300(b)(3)(ii). (34 C.F.R. § 300.112.)

#### **LRE**

- (1) Except as provided in the Code of Federal Regulations, title 34, section 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and sections 300.115 through 300.120.
- (2) Each public agency must ensure that
- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. § 300.114(a).)

# **Maintenance of State Financial Support**

A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. (34 C.F.R. § 300.163(a).)

#### **Use of Part B Funds**

- (1) Except as provided in the Code of Federal Regulations, title 34, section 300.203, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.
- (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under section 300.164. (34 C.F.R. § 300.162(c).)

Funds paid to a State under this part must be expended in accordance with all the provisions of this part. (34 C.F.R. § 300.162(a).)

## **Performance Goals and Indicators**

The State must

- (a) Have in effect established goals for the performance of children with disabilities in the State that
- (1) Promote the purposes of this part, as stated in the Code of Federal Regulations, title 34, section 300.1;
- (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act, United States Code, title 20, section 6311;
- (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
- (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
- (b) Have in effect established performance indicators that the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act, United States Code, title 20, section 6311; and
- (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this

section; which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act. (34 C.F.R. § 300.157.)

## **Personally Identifiable Information**

The State must have policies and procedures in effect to ensure that public agencies in the State comply with the Code of Federal Regulations, title 34, sections 300.610 through 300.626 related to the protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act. (34 C.F.R. § 300.123.)

#### **Private Schools**

The State must have in effect policies and procedures that ensure that LEAs and, if applicable, the SEA, meet the private school requirements in the Code of Federal Regulations, title 34, section 300.130 through 300.148. (34 C.F.R. § 300.129.)

## **Procedural Safeguards**

- (a) The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of the Code of Federal Regulations, title 34, sections 300.500 through 300.536.
- (b) Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section. (34 C.F.R. § 300.121.)

## **Suspension and Expulsion Rates**

- (a) The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities
- (1) Among LEAs in the State; or
- (2) Compared to the rates for nondisabled children within the agencies.
- (b) If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (34 C.F.R. § 300.170.)

## **Transition of Children from Part C to Preschool Programs**

The State must have in effect policies and procedures to ensure that —

- (a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;
- (b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with the Code of Federal Regulations, title 34, section 300.323(b) and section 636(d)

of the Act, an IFSP, has been developed and is being implemented for the child consistent with section 300.101 (b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act. (34 C.F.R. § 300.124.)

# **Statutes Governing District Structure and Organization**

## **Intermediate School Districts**

See Minn. Stat. § 136D

## **Independent School Districts By-Laws and Operating Procedures**

See Minn. Stat. §§ 123B.09-123B.50

# **Total Special Education System (TSES) Plan**

## **Responsibility for All Educational Programs**

Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State. (34 C.F.R. § 300.149(c).)

Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law), may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. (34 C.F.R. § 300.149(d).)

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. (34 C.F.R. § 300.109.)

The Department of Education is responsible for ensuring that all pertinent requirements in the Code of Federal Regulations, and this part are carried out by the local education agencies. Each special education program within the state, including programs administered by any other public agency is under the general supervision of the persons responsible for special education in the Department of Education.

This shall be done, in part, by reviewing each district's and program's total special education system (TSES) for compliance. Districts and programs shall also be monitored periodically by the Department of Education for their implementation of the TSES and all requirements in United States Code, title 20, chapter 33, section 1400 et seq., Code of Federal Regulations, title 34, part 300, Minnesota Statutes, and this part. (Minn. R. 3525.1100, subp. 1.)

## **District Responsibility**

#### A. District Plan

A district shall submit to the commissioner the district's plan for providing instruction and related services upon request for all pupils as required by Minnesota Statutes, sections 125A.03 to 125A.24. The plan may be for a single district or for the member districts of a formal special

education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. If a cooperative changes administrative organization, it shall submit a revised plan. The new plan must be submitted before the beginning of the next school year. The plan shall include descriptions of the district's:

- A. Child study procedures for the identification and evaluation of students or other persons suspected of having a disability beginning at birth that include a plan for receiving referrals from parents, physicians, private and public programs, and health and human services agencies.
- B. Method of providing the special education services for the identified pupils. The district shall have, as part of the district's TSES plan, a description of the full range of available educational service alternatives. The district's TSES plan shall include:
- (1) a description of the sites available at which services may occur. Sites describe the building or other location where special education occurs; and
- (2) a description of the available instruction and related services.
- C. Administration and management plan to assure effective and efficient results of items A and items B, including due process procedure assurances available to parents.
- D. Operating procedures of interagency committees required in statute.

E. Interagency agreements the district has entered. The commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner shall grant the district a reasonable time to make necessary modifications when the commissioner receives a satisfactory corrective action plan that complies with standards for the education of pupils. (Minn. R. 3525.1100, subp. 2.)

#### B. Parent Advisory Councils

In order to increase the involvement of parents of children with disabilities in district policy making and decision making, school districts must have a special education advisory council that is incorporated into the district's special education system plan.

- (1) This advisory council may be established either for individual districts or in cooperation with other districts who are members of the same special education cooperative.
- (2) A district may set up this council as a subgroup of an existing board, council, or committee.
- (3) At least half of the designated council members must be parents of students with a disability. When a nonpublic school is located in the district, the council must include at least one member who is a parent of a nonpublic school student with a disability, or an employee of a nonpublic school if no parent of a nonpublic school student with a disability is available to serve. Each local council must meet no less than once each year. The number of members, frequency of meetings, and operational procedures are to be locally determined. (Minn. Stat. § 125A.24.)

# **Exception for Prior Local Plans**

If an LEA or a State agency described in the Code of Federal Regulations, title 34, section 300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of section 300.200, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act. (34 C.F.R. § 300.220(a).)

- (b) Subject to paragraph (c) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until the LEA or State agency submits to the SEA the modifications that the LEA or State agency determines are necessary.
- (c) The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with Part B of the Act or State law, if
- (1) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended;
- (2) There is a new interpretation of an applicable provision of the Act by Federal or State courts; or
- (3) There is an official finding of noncompliance with Federal or State law or regulations. (34 C.F.R. § 300.220(b)-(c).)

# Joint Establishment of Eligibility

#### A. Joint Establishment

An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities. (34 C.F.R. § 300.223(a).)

#### B. Charter School Exception

An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute. (34 C.F.R. § 300.223(b).)

#### C. Amount of Payments

If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEA must be equal to the sum of the payments that each LEA would have received under the Code of Federal Regulations, title 34, section 300.705 if the agencies were eligible for those payments. (34 C.F.R. § 300.223(c).)

#### D. Requirements

LEAs that establish joint eligibility under this section must

- (1) Adopt policies and procedures that are consistent with the State's policies and procedures under the Code of Federal Regulations, title 34, sections 300.101 through 300.163, and sections 300.165 through 300.174; and
- (2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act. (34 C.F.R. § 300.224(a).)

Notwithstanding any other provision of sections 300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by § 300.112. (34 C.F.R. § 300.224(c).)

# E. Requirements for Educational Service Agencies

If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act

- (1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and
- (2) Must be carried out by that educational service agency. (34 C.F.R. § 300.224(b).)

#### **Intervention and Technical Assistance**

If the Secretary determines, for two consecutive years, that a State needs assistance under the Code of Federal Regulations, title 34, section 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

- (1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include
- (i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
- (ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;
- (iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and
- (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, and national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.
- (2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.

(3) Identifies the State as a high-risk grantee and impose special conditions on the State's grant under Part B of the Act. (34 C.F.R. § 300.604(a).)

If the Secretary determines, for three or more consecutive years, that a State needs intervention under section 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

- (1) The Secretary may take any of the actions described in paragraph (a) of this section.
- (2) The Secretary takes one or more of the following actions:
- (i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.
- (ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, the United States Code, title 20, section 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.
- (iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.
- (iv) Seeks to recover funds under section 452 of GEPA.
- (v) Withholds, in whole or in part, any further payments to the State under Part B of the Act.
- (vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice. (34 C.F.R. § 300.604(b).)

Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary shall take one or more of the following actions:

- (1) Recovers funds under section 452 of GEPA.
- (2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.
- (3) Refers the case to the Office of the Inspector General at the Department of Education.
- (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice. (34 C.F.R. § 300.604(c).)

## A. Withholding Funds

- (a) Prior to withholding any funds under Part B of the Act, the secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in sections 300.180 through 300.183.
- (b) Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the

recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

- (c)(1) If the Secretary determines that it is appropriate to withhold further payments under section 300.604(b)(2) or (c)(2), the Secretary may determine —
- (i) That the withholding will be limited to programs or projects, or portions of programs or projects that affected the Secretary's determination under section 300.603(b)(1); or
- (ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under section 300.603(b)(1).
- (2) Until the secretary is satisfied that the condition that cause the initial withholding has been substantially rectified —
- (i) Payments to the State under Part B of the Act must be withheld in whole or in part; and
- (ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under section 300.603(b)(1), as the case may be. (34 C.F.R. § 300.605.)

## B. Divided State Agency Responsibility

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to the Code of Federal Regulations, title 34, section 300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act except that-

- (a) Any reduction or withholding of payments to the State under section 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and
- (b) Any withholding of funds under section 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act. (34 C.F.R. § 300.607.)

# **Alternative Delivery of Specialized Instructional Services**

# **Commissioner Approval**

The commissioner may approve applications from districts initiating or significantly changing a program to provide prevention services as an alternative to special education and other compensatory programs. A district with an approved program may provide instruction and services in a regular education classroom, or an area learning center, to eligible pupils. Pupils eligible to participate in the program are pupils who need additional academic or behavioral

support to succeed in the general education environment and who may eventually qualify for special education instruction or related services under Minnesota Statutes, section 125A.03 to 125A.24 and 125A.65 if the intervention services authorized by this section were unavailable. Pupils may be provided services during extended school days and throughout the entire year and through the assurance of mastery program under Minnesota Statutes, sections 125A.03 to 125A.24 and 125A.65. (Minn. Stat. § 125A.50, Subd. 1.)

## **Application Contents**

The application must set forth:

- (1) instructional services available to eligible pupils under Minnesota Statutes, section 124D.66, Subd. 2, and pupils with a disability under section 125A.02;
- (2) criteria to select pupils for the program and the assessment procedures to determine eligibility;
- (3) involvement in the program of parents of pupils in the program, parent advocates, and community special education advocates;
- (4) accounting procedures to document that federal special education money is used to supplement or increase the level of special education instruction and related services provided with state and local revenue, but in no case to supplant the state and local revenue, and that districts are expending at least the amount for special education instruction and related services required by federal law;
- (5) the role of regular and special education teachers in planning, implementing, and evaluating the program;
- (6) an annual budget detailing program expenditures; and
- (7) other information requested by the commissioner. (Minn. Stat. § 125A.50, Subd. 2.)

#### **Evaluation**

The application must also set forth the review and evaluation procedures to be used by the district addressing at least the following:

- (1) the number of pupils with and without a disability served:
- (2) the impact of the program on the academic and behavioral progress of the pupils;
- (3) the level of satisfaction teachers, parents, and pupils have with the program;
- (4) the effect of the program on the number of referrals for special education, federal Title 1, and other programs; and
- (5) cost implications. (Minn. Stat. § 125A.50, Subd. 3.)

# **Review for Excess Expenditures**

Each year before a district receives aid under Minnesota Statutes, section 125A.78, the district must submit to the commissioner for review and approval a budget detailing program expenditures for the fiscal year. The commissioner must determine whether the personnel, equipment, supplies, and extended school year are necessary to meet the district's obligation to provide special instruction and services to children with a disability according to sections 125A.03 to 125A.24 and 125A.65. The commissioner may not approve revenue for any expenditures determined to be unnecessary. The commissioner must not approve budget increases under this section that would cause the state to fail to meet maintenance of effort requirements under federal special education law. The commissioner must establish criteria for prioritizing and approving budget increases, which may include criteria such as maintaining current programs, locating programs throughout the state, and developing innovative programs. (Minn. Stat. § 125A.50, Subd. 4.)

## **Annual Report**

Each year the district must submit to the commissioner a report containing the information described in subdivision 3. (Minn. Stat. § 125A.50, Subd. 5.)

# **Pupil Rights**

A pupil participating in the program must be individually evaluated according to the pupil's actual abilities and needs. A pupil who is eligible for services under Minnesota Statutes, section 125A.03 to 125A.24 and 125A.65 is entitled to procedural protections provided under United States Code, title 20, section 33, in any matter that affects the identification, evaluation, placement, or change in placement of a pupil. The district must ensure the protection of a pupil's civil rights, provide equal educational opportunities, and prohibit discrimination. Failure to comply with this subdivision will at least cause a district to become ineligible to participate in the program. Notwithstanding rules of the Department of Education, the commissioner cannot waive a pupil's rights under this section. (Minn. Stat. § 125A.50, Subd. 6.)

# Requirements Related to Local Educational Agency Eligibility

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must

- (a) Notify the LEA or State agency of that determination; and
- (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing. (34 C.F.R. § 300.221.)