

## South Dakota Comprehensive Plan/Program Narrative

### **Sec. 300.201 Consistency with State policies.**

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

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

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

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

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

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Signature of Authorized Official

Date

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Typed Name and Title

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Address/State/Zip

Telephone Number

## South Dakota LEA Comprehensive Plan: Program Narrative

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

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

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

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

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

All eligible students with disabilities, regardless of whether they are advancing from grade to grade, will have FAPE available to them on an individualized basis as determined by the student's IEP team on an annual basis. Exceptions to FAPE for students aged 3-21 includes those students who have graduated from high school with the regular high school diploma. For students with disabilities who turn 21 years of age during the fiscal year, the Oelrichs School District will provide FAPE until June 30. Additionally, the Oelrichs School District will make FAPE available to children from birth to three who qualify for prolonged assistance according to South Dakota state eligibility criteria.

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

All students determined eligible for special education or special education and related services through a multidisciplinary evaluation and has an individual education program (IEP) formulated and approved by Oelrichs School District local placement committee is inclusive from age 3 thru the completion of an approved public or nonpublic school secondary program or through age 21, as designated in that child's individual education program as set out in SDCL 13-37-J.

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

The district acknowledges that it will apply federal, state, local, and private funds are available to meet its obligations for the provision of FAPE and must ensure that FAPE is provided at no cost to parents and without delay, even if the sources of funding are still being determined. This does not relieve any insurer or similar third party from its responsibility to pay for otherwise valid obligations.

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

When an IEP team determines residential placement is necessary in an approved public or private residential program in order to meet the special education and related services needs of a child with a disability, the program, including nonmedical care and room and board, will be provided at no cost to the parent of the eligible individual.

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

When necessary for FAPE, the district will provide assistive technology services to a student with disabilities, and the evaluation for this technology at no cost to the parents. The assistive technology tools or device will be used to increase, maintain, or improve functional capabilities of children with disabilities, not including a medical device that is surgically implanted or the

replacement of the device. Assistive technology will be used for educational purposes at home if determined essential for FAPE, written within the student's IEP, and determined on a case-by-case basis.

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

Extended school year services are provided to individual students to ensure benefit of special education services. The need for extended school year services is based on the IEP team's decision regarding regression/recoupment of skills, maintenance of critical life skills, and/or emerging skills. These will be provided at no cost to the parents.

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

To the maximum extent possible, the Oelrichs School District will ensure that students with disabilities are permitted to participate with non-disabled peers during nonacademic services such as extracurricular activities, meals, and recess. Supplementary aids and services will be provided by the district if necessary and appropriate as determined by the student's IEP team.

Annually, the IEP team will consider the program options, nonacademic and extracurricular services to ensure that children in need of special education or special education and related services have such services and supports available to them. Documentation will be made in the IEP.

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

The district will ensure that students with disabilities participate in physical education, specially designed if necessary, consistent with their age peers. To the maximum extent possible, the Oelrichs School District will ensure that students with disabilities participate in physical education classes with non-disabled peers.

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

All students in need of special education and/or related services within the district have available to them a variety of educational programs and services also available to students without disabilities. The students' IEP team meets annually to determine the least restrictive environment for each individual student. Oelrichs School District works to ensure participation in the district's program options to the maximum extent possible for students with disabilities. Documentation will be made in the IEP.

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

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

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

1. The district utilizes a district adopted referral form that addresses all disability categories and informal review information to determine suspected areas of disability.
2. Based upon the skill areas effected, the eligibility guide will be used to determine category(s) of disability to be assessed.
3. Parents will be contacted to gain their input into the evaluation process and the areas to be assessed.
4. Parental Prior Notice/Consent Form will be completed and sent to parents.
5. Upon receipt of the signed **Parental Prior Notice/Consent Form**, the date that permission was received by the district will be documented on the form.

6. The district will secure an evaluation team to conduct a comprehensive evaluation in all areas of suspected disability that matches with the types of evaluations checked on the **Parental Prior Notice/Consent Form**. In addition to completing evaluations that will help the team determine eligibility, they will also gather functional assessment data and developmental information about the child relating to progress in the general curriculum.
7. Within **25 school days** of receipt of the signed **Parental Prior Notice/Consent Form**, the evaluation will be completed unless other timelines are agreed to.
8. Upon completion of all evaluations, the data will be analyzed compiled into a written report(s). The report(s) will be disseminated to team members prior to the meeting, which will be held within **30 calendar days** from the end of the allowable evaluation period.
9. The district and parents will decide upon a mutually agreeable meeting date. The district will mail to the parents a completed **Meeting Notice** informing them of the meeting date, time, place, persons invited to attend the meeting, and other required prior notice content information.
10. At the meeting, the team will review the evaluation report(s), determine eligibility for special education and special education and related services, and, if appropriate, develop an IEP and then determine placement in the appropriate least restrictive environment.
11. A school district that is responsible for making a free appropriate public education available to a student with a disability shall obtain informal consent from the parent of the student before initially providing special education and related services to the student. The district will have parents sign the form for **Initial Consent for Services** prior to providing any services.
12. A **Parental Prior Written Notice** which meets the requirements of 24:05:30:05 must be given to the parents five days before the district proposes or refuses to initiate or change the identification, evaluation, or education placement of the child or the provision of a free appropriate public education to the child. The five-day notice requirement may be waived by parents.

The notice must include the following:

- (1) A description of the action proposed or refused by the district, and example of why the district proposes or refuses to take the action, and a description of any other options the IEP team considered and the reasons why those options were rejected.
- (2) A description of each evaluation procedure, assessment, record, or report that the district uses as a basis for the proposal refusal.
- (3) A description of any other factors which are relevant to the district's proposal or refusal.
- (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this article, and if this notice is not initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- (5) Sources for parents to contact to obtain assistance in understanding the provisions of this article.

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

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

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

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

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

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

The Oelrichs School District utilizes the eligibility criteria of developmental delay for individuals up to age 9 to receive special education services. These students include those who score at least 1.5 standard deviations below their same age peers in at least two areas of development or 2 standard deviations in at least one area of development. The areas of development are cognitive, motor, communication, adaptive, and personal social.

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

Children who have been identified as in need of special education are provided with services based on their need and eligibility. Advancement from grade to grade and/or mobility are not used in determining eligibility for services.

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

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

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

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

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

The Oelrichs School District utilizes the IEP through the Infinite Campus system to ensure all parts of the IEP are included. Training is provided as needed.

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

Oelrichs School District requires transition services be addressed no later than age 16. These services are designed to assist the students with moving from a school-based environment to post-secondary school activities, including education, employment,

and daily living. Several measures are utilized to assess a student's transition needs and then report those through transition goals on the IEP. The district provides Vocational Rehab services and Project Skills.

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

Prior to age 17, Oelrichs School District provides information to parents and students concerning the transfer of rights. Discussion of whether guardianship is appropriate also takes place. The state website is provided to the parents.

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

At a minimum, the IEP team will include the parent, general education teacher, special education teacher, and an administrator or designee.

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

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

If parents cannot attend, the district shall use other methods to ensure participation, including virtual and/or conference calls.

Parent participation will be documented in written format. This may be found within the IEP or the Parental Prior Written Notice.

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

The district ensures that if the child is determined to be in need of special education and/or related services, the IEP team shall develop an appropriate individualized education program for the child. At the beginning of each school year, thereafter, the district must have in effect an IEP for each child with disabilities within its jurisdiction. For children beginning at age 3, an IEP shall be in effect by that date. If a child's third birthday occurs during the summer, the IEP team shall determine the date when services under the IEP will begin.

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

1. The special education director will be responsible for ensuring that the proper procedures are followed in the development, review, and revision of each IEP. This would include completing and mailing parental prior notices and other correspondence relating to development, review, or revision of IEP's, adhering to timelines, composition of the IEP team, and properly completing each section of the IEP.
2. The IEP team will ensure that all appropriate special education issues are addressed and documented on the IEP. The district's Comprehensive Plan along with the IEP Technical Assistance Guide (available from Special Education Programs) will be used as references in the development, review, and revision of each IEP.
  - (a) In the case of a student whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior. Information to support positive behavior will be included within a Behavior Intervention Plan which will include the behavior, behavior supports and positive reinforcements. If restraint is addressed through the student's IEP/BIP, the team meeting will address procedures and training timelines for implementing the BIP.
  - (b) In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's IEP;

- (c) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the team determines, after an evaluation of the students' reading and writing skills, needs and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;
  - (d) Consider the communication needs of the student and, in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
  - (e) Consider whether the student requires assistive technology devices and services.
3. All decisions of the IEP team will be made jointly by the parents and school personnel through the IEP process and specified on the child's IEP.
  4. The general education teacher of a student with a disability, as a member of the individualized education program team, must, to the extent appropriate, participate in the development, review and revision of the student's IEP, including the determination of appropriate positive behavioral interventions and supports and other strategies for the student and the determination of supplementary aids and services, program modifications and supports for school personnel that will be provided for the student consistent with subdivision 24:05:27:01:03 (3).
  5. The IEP will be in effect before special education and related services are provided to a child and will be implemented as soon as possible following a placement committee meeting.
  6. The special educator will ensure that the parent receives a copy of the completed IEP. The district will ensure the general educators and other service providers are made aware of the sections of the IEP they are responsible for implementing in the child's program.
  7. At the conclusion of each meeting or following any decision made by the IEP team, the parents will be provided with written notice of proposals or refusals and given five days to consider acceptance of said proposals or refusals.
- **Routine checking of hearing aids and external components of surgically implanted medical devices, 300.113; ARSD 24:05:27:05**

For children with hearing impairments, including deafness, in need of special education who wear hearing aids in school, Oelrichs School District ensures the IEP team will include, as a related service, a monitoring schedule in the individual educational program to ensure the proper functioning of the corrective devices.

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

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

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

The Oelrichs School District ensures the availability of a continuum of alternative placements to provide each student with a disability the opportunity for education in the Least Restrictive Environment. Any removal of a student with a disability from the

regular education environment may occur only when the nature and severity of the child's needs dictate that education in regular classes, with the use of supplementary aids and services cannot be achieved satisfactorily.

- **A continuum of alternative placements; 300.115; ARSD 24:05:28:02**

A continuum of alternative placements will be provided and include the following:

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

For each of the programs listed in this section, the IEP team will determine the extent to which related services are required to ensure student benefit from the program. The length of the school day will be equal in duration to that of a regular public-school day unless an adjusted school day is required to meet the individual needs of the child. The IEP team will provide supplementary services, such as resource room or itinerant instruction, in conjunction with regular classroom placement as applicable.

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

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

The IEP team will ensure the following:

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

The IEP team will review the students' educational strengths, needs, and progress to assure the student is benefiting from their IEP and determine the appropriate placement considering least restrictive environment, annually or as student need changes. Related services must be directly related to the student's disability and determined on an annual basis.

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

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

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

Oelrichs School District, through its IEP team and individual education program procedures, shall ensure that children placed in public or private institutions or other care facilities are educated with non-disabled peers to the maximum extent appropriate.

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



Before the Oelrichs School District places or refers a child in need to special education or special education and related services to a private school, facility, or a contracting district, the district shall initiate and conduct an IEP team meeting to develop an individual educational program for the child in accordance with district procedures.

The district shall ensure that a representative of the private school or facility attends the IEP team meeting via in person, telephone, or by virtual means.

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

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

If a private school or facility implements a child's individual educational program, responsibility for compliance with this section remains with the school district and the department.

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

The Department of Education shall ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the provisions and are provided with technical assistance and training necessary to assist them.

Oelrichs School District encourages individuals to attend state provided technical assistance workshops and relevant trainings.

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

Oelrichs School District will submit data to the State for the purpose of monitoring educational placement for students with disabilities on an annual basis. Analysis of placement rates within the continuum is reviewed and considered through the State Performance Plan process with the priority always being assuring students' FAPE in the least restrictive environment.

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

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

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

- **Referral to action by law enforcement and judicial authorities; 300.535; ARSD 24:05:26:15**
- **Change of placement due to disciplinary removals; 300.536; ARSD 24:05:26:02.01**

The Oelrichs School District ensures that all children with disabilities and their parents are afforded the required procedural safeguards of 34 CFR 300.500 through 300.356 as outlined in the *South Dakota Parental Rights and Procedural Safeguards* document. The district will provide a copy of the procedural safeguards document to the parents of an eligible child with a disability at least one time each year, in addition to the following:

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

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

Oelrichs School District ensures that parents of a child in need of special education and/or related services shall be afforded an opportunity to inspect and review all educational records concerning the identification, evaluation, and educational placement of the child and the provisions of a free, appropriate public education for the child.

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

Upon a parental request for an independent educational evaluation, the district will provide parents with information on where an independent educational evaluation may be obtained and the district criteria applicable for independent educational evaluations.

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

If the parent requests an independent educational evaluation at public expense, the district must, without unnecessary delay, either file a due process complaint to request a hearing to show that the evaluation is appropriate or ensure that an independent educational evaluation is provided at public expense unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet district criteria. If the district files a due process complaint to request a hearing and the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. A parent is entitled to only one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees.

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

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

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

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

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

The content of the notice must include a description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take action, and a description of any other options the IEP team considered and the reasons why those options were rejected, a description of each evaluation procedure, assessment, record or report that the district uses as a basis for the proposal or refusal, a description of any other factors which are relevant to the district's proposal or refusal, and procedural safeguards must be given. Oelrichs School District utilizes the Prior Written Notice provided through Infinite Campus to ensure all content is appropriate.

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

Oelrichs School District ensures all children with disabilities and their parents are given the required procedural safeguards as outlined in the South Dakota Parental Rights and Procedural Safeguards document.

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

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

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

The district ensures a parent of a child with a disability may elect to receive notices by this chapter by an electronic mail communication.

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

The district will provide information to parents concerning mediation for dispute resolution by providing procedural safeguards and explaining the process. Procedures for mediation are as follows:

- 1) Ensure that mediation is viewed as voluntary and freely agreed to by both parties and is in no way used to deny or delay an aggrieved party's right to a hearing on a parent's due process complaint, or to deny any other rights afforded, and
- 2) The mediation conference is an intervening, informal process conducted in a non-adversarial atmosphere that is scheduled in a timely manner and held in a location that is convenient to the parties in the dispute.

The state shall bear the cost of the mediations process, including the costs of meetings. The mediation process shall be completed by a qualified and impartial mediator who is trained in effective mediation techniques.

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

A parent or school district may file a due process complaint on any matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. A due process complaint shall allege a violation that occurred not more than two years before the date the parent or school district was notified or made aware of the alleged action that forms the basis of the due process complaint. The timeline described in this section does not apply to a parent if the parent was prevented from filing a due process complaint due to specific misrepresentation by the district that it had the problem resolved; or the district's withholding of information from the parent.

The school district shall inform the parent of any free or low-cost legal and other relevant services available in the area, if the parent or school district files a due process complaint under this section, or the parent requests the information. The school district must have procedures that require either party or the attorney representing a party, to provide to the other party a due process complaint, which must remain confidential. The party filing a due process complaint shall forward a copy to the department.

The notice required in district policies and procedures must include:

- the name of the child
- the address of the child
- the name of the school the child is attending
- in the case of a homeless youth or child, 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 relating to the proposed or refused initiation or change, including facts relating the problem, and
- A proposed resolution to the problem to the extent known and available to the party at the time

Oelrichs School District will utilize the Dispute Resolution Forms found on the state website to ensure all required content is included.

A party may not have a hearing on a due process complaint until the party or the attorney representing the party files a due process complaint that meets the requirements of this section.

The due process complaint is deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in district policies and procedures.

Within five days of receipt of the notification required under district policies and procedures, the hearing officer shall make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of district policies and shall immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if:

- The other party consents in writing to the amendments and is given the opportunity to resolve the due process complaint through a resolution meeting held under district policies and procedures; or
- The hearing officer grants permission, except the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
- If the party files an amended due process complaint, the timelines for the resolution meeting and the time period for resolving the complaint begin again with the filing of the amended due process complaint.

If the district has not sent a prior written notice under this chapter to the parent regarding the subject matter contained in the parent's due process complaint, the district shall, within ten days of receiving the due process complaint, send to the parent a notice that includes:

- An explanation of why the district proposes or refuses to take that action raised in the due process complaint.
- A description of other options that the IEP team considered, and the reasons why those options were rejected.
- A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action; and
- A description of other factors that are relevant to the district's proposed or refused action.

A response by the district does not preclude the district from asserting the parent's due process complaint was insufficient, if appropriate.

A response addressing the issues raised in the due process complaint shall be sent within 10 days of receiving the initial complaint.

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

The district shall convene a meeting with the parents and other relevant member(s) of the IEP team who have specific knowledge of the facts identified in the due process complaint within fifteen days of receiving the complaint and before the due process hearing.

The meeting:

- Shall include a representative of the district who has decision-making authority on behalf of the district; and
- May not include an attorney of the district unless the parent is accompanied by an attorney.
- The parent and district shall determine the relevant members of the IEP team to attend the meeting.
- The resolution meeting shall allow for the parent/guardian of the child to discuss the due process complaint, and the facts that form the basis of the complaint, so that the district is provided with an opportunity to resolve the dispute.

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

The resolution meeting need not be held if:

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

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

The timeline for issuing a final decision in a due process hearing begins at the expiration of the thirty-day period.

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

If the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documents using the procedure in the district's policies, the district may, at the conclusion of the thirty-day period, request that a hearing officer dismiss the parent's due process complaint.

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

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

The department is responsible for ensuring a due process hearing.

The party requesting a due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under this chapter unless the other party agrees.

A parent may file a separate due process complaint on issues not raised on the original complaint.

A parent or the district shall request an impartial hearing on a due process complaint within two years of the date the parent or district became aware of the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the exceptions in district policies and procedures exist.

A hearing may not be conducted by a person who is an employee of the department or a school district which is involved in the education or care of the child or by any person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

A hearing officer will:

- Possess knowledge of the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts.
- Possess knowledge and the ability to conduct hearings in accordance with appropriate standard legal practice; and
- Possess the knowledge and ability to render and write decisions in accordance with appropriate standard legal practice.

An individual who otherwise qualifies to conduct a hearing is not an employee of the department solely because the individual is paid by the department to serve as a hearing officer.

Subject to the provisions of this section, a hearing officer's determination of whether a child received a FAPE shall be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

- Impeded the child's right to FAPE
- Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or
- Caused a deprivation of educational benefit

Nothing in this section precludes a hearing officer from ordering a district to comply with procedural requirements under this chapter, suspension, and expulsion.

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

Any party to a hearing under this chapter has the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that neither party has the right to be represented by a non-attorney at a hearing;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- Obtain a written, or at the option of the parents, electronic verbatim record of the hearing; and
- Obtain written, or at the option of the parents, electronic findings of fact and decisions.

The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the state advisory council and shall make those findings and decisions available to the public.

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

At least five business days prior to a hearing conducted under this section for procedural safeguards, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

The department shall ensure that no later than forty-five calendar days after the expiration of the thirty-day period under this section for procedural safeguards or adjusted time period described in this section, a final decision is reached on the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the periods set out in this section at the request of either party. Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.

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

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

The party bringing the action has ninety (90) days from the date of a hearing officer's decision to file a civil action.

In any action brought under this section, the court:

- shall review the records of the administrative proceedings; or shall hear additional evidence at the request of a party; and
- basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

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

In any action or proceeding brought under 20 U.S.C. § 1415(e), the court, in its discretion, may award reasonable attorneys' fees under 20 U.S.C. § 1415(i)(3) as in effect on December 3, 2004, as part of the cost to the prevailing party who is the parent of a child with a disability; to the prevailing party who is the state or district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to the prevailing party who is the state or district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA and this chapter. This does not preclude a district from using IDEA, Part B funds for conducting an action or proceeding under section 615 of IDEA.

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

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

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

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

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

The district shall establish procedures for the assignment of a surrogate parent to ensure that the rights of a child are protected if no parent, as defined in §24:05:13:04, can be identified or located or if the child is a ward of the state or an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2009.

A district's method for determining whether a child needs a surrogate parent must include the following:

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

- the provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and
- the establishment of a referral system within the district for the appointment of a surrogate parent.

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

The district superintendent or designee shall appoint surrogate parents.

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

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

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

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

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

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

The term, parent, means:

- a biological or adoptive parent of a child;
- a foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
- a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;
- an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- a surrogate parent who has been appointed in accordance with district policies and procedures.

Except as provided below, the biological or adoptive parent is presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons under the above subdivisions of this section to act as the parent of a child or to make educational decisions on behalf of a child, then the person or persons are deemed to be the parent for purposes of this section.

Ward of the state means a child who, as determined by the state, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the above definition of a parent.

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



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

- the school district shall provide any notice required by article 24:05 to both the individual and the parents;
- all other rights afforded to parents under article 24:05 transfer to the child; and
- all rights afforded to parents under article 24:05 transfer to children who are incarcerated in an adult or juvenile correctional facility.

If a state transfers rights under this section, the school district shall notify the individual and the parents of the transfer of rights. If, consistent with state law, an eligible child is determined not to have the ability to provide informed consent with respect to the educational program, the school district shall appoint the parent, or another appropriate individual, when necessary, to represent the educational interests of the child.

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

Within ten (10) school days of a change of placement for a student with a disability due to student conduct, the school district, the parent, and relevant members of the student's IEP team, as determined by the parent and the district, shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- whether the conduct is directly related to or caused by the student's disability and
- whether the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the student's IEP team determine that a condition in either subdivision of this section was met. If the district, the parent, and relevant members of the student's IEP team determine that the condition described above in this section was met, the district shall take immediate steps to remedy those deficiencies.

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

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

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

The parent of a child with a disability who disagrees with any decision regarding:

- placement under these procedures, or
- the manifestation determination may request a hearing by filing a due process complaint consistent with this document.

The district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may request a hearing by filing a due process complaint consistent with this document.

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

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

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

A student who has not been determined to be eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the school district, including any

behavior described in this chapter, may assert any of the protections provided for in this article if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. A school district is deemed to have knowledge that a student is a student with a disability if:

- The parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;
- The parent of the student has requested an evaluation of the student pursuant to this article; or
- The teacher of the student, or other personnel of the district or other public agency has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel of the district.

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

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

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

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

Nothing in Part B of the Individuals with Disabilities Education Act prohibits a school district from reporting a crime committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability. The district reporting a crime committed by a student with a disability will ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. A school district reporting a crime under this chapter may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, as amended to January 8, 2009.

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

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

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

3. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.

The 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.

**Oelrichs School District provides a copy of procedural safeguards and offers explanation of above situations when requested by parent. Information is also provided for parents to contact SD Advocacy and Parent Connection for assistance in these areas.**

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

**The district will ensure that all children with disabilities are evaluated in accordance with 34 C.F.R. §§300.300 through 300.311. Specific references must include:**

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

The Oelrichs School District ensures that all children with disabilities are evaluated in accordance with the following regulatory provisions:

- The district shall ensure that documented, reasonable efforts are made to obtain consent to conduct initial evaluations and re-evaluations. Evaluations and reports will comply with deadlines set forth by the Department of Education. Multiple assessments will be used to determine eligibility for special education services. These assessments will be given in the student's native language, will be valid and reliable, will be administered by trained personnel and will be sufficiently comprehensive to identify any necessary special education and/or related services. Screenings will not be used to determine eligibility.
- After completing the assessments, the IEP team will determine the child's eligibility for special education services and related services. A copy of the evaluation report will be provided to parents at no cost.
- The IEP team will ensure that children suspected of having a specific learning disability (SLD) have been observed in their normal learning environment and that IEP team members are qualified to determine if a child has an SLD. Documentation must be used that supports a child having an SLD.
- Evaluation, for the purposes of this section, means the procedures used in accordance with district policies to determine whether a child is a child with a disability and to determine the nature and extent of the special education and related services that the child needs.
- **Parental consent (for initial evaluation, services, and re-evaluations; 300.300; ARSD 24:05:25:02.01, ARSD 24:05:25:06.01.)**

Parental consent for initial evaluation may not be construed as consent for initial provision of special education and related services.

The school district shall make reasonable efforts to obtain informed consent from the parent or guardian for an initial evaluation to determine whether the child is a child with a disability or for a re-evaluation to determine continued eligibility.

To meet the reasonable efforts requirement in this section, the district shall document its attempts to obtain parental consent using procedures such as detailed records and dates of telephone calls, correspondence, and home or place of employment visits.

Consent, as used in this article, means:

- the parent has been fully informed of all information relevant to the activity for which consent is sought, in the native language, or other mode of communication;
- the parent understands and agrees in writing to the evaluations and the consent describes the evaluation and lists the records, if any, that will be released and to whom
- the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- if a parent revokes consent, that revocation is not retroactive, it does not negate an action that has occurred after the consent was given and before the consent was revoked; and
- 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 local education 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 the revocation of consent.

For initial evaluations only, if the child is a ward of the state, 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:

- despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent of the child;
- the rights of the parents of the child have been terminated in accordance with state law; or
- the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

To meet the reasonable efforts requirement in this section, the district shall document its attempts to obtain parental consent using procedures such as detailed records and dates of telephone calls, correspondence, and home or place of employment visits.

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under this section, or the parent fails to respond to a request to provide consent, the district may, but is not required to, pursue the initial evaluation of the child by using the procedural safeguards in article 24:05, including the mediation procedures or the due process procedures, if appropriate, except to the extent inconsistent with state law relating to such parental consent.

The school district does not violate its obligation under child find in article 24:05 and the requirements in this chapter regarding parental consent, evaluation, and reevaluation if the district declines to pursue the evaluation.

Parental consent is not required before reviewing existing data as part of an evaluation or a reevaluation or before administering a test or other evaluation that is administered to all children without parental consent.

A school district may not use a parent's refusal to consent to one service or activity under this section to deny the parent or child any other service, benefit, or activity of the school district, except as required by article 24:05.

If a parent of a child who is receiving alternative instruction under SDCL 13-27-3 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 if the parent fails to respond to a request to provide consent, the school district may not use the consent to override procedures described in district policies for procedural safeguards, including mediation and due process hearing procedures. The school district is not required to consider the child as eligible for services under district policy for children voluntarily enrolled in nonpublic schools.

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

- the school district can demonstrate that it has taken reasonable measures to obtain consent, and the child's parent has failed to respond; and
- the school district documents its efforts to obtain consent by using the procedures consistent with § 24:05:25:17.

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

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

Before initial placement of a child with disabilities in a special education program, a full and individualized initial evaluation of the child's educational needs must be conducted in accordance with the requirements of this chapter.

Initial evaluations must be completed within 25 school days after receiving signed parental consent to evaluate unless other timelines are agreed to by the school administration and the parents.

Within 30 days from the end of the 25-school day evaluation timeline, evaluation reports must be written and a meeting to determine eligibility and develop an IEP (if applicable) must be completed. If an alternate timeline was agreed upon by the parent and the district, these shall occur within 30 days of the end of that timeline.

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

The timeline for conducting initial evaluations does not apply to a school district if:

- the parent of the child repeatedly fails or refuses to produce the child for the evaluation or
- a child enrolls in a school of another school district after the relevant timeline for conducting an initial evaluation has begun, and before a determination by the child's previous school district as to whether the child is a child with a disability.

The exception in this section applies only if the school district is making sufficient progress to ensure a prompt completion of the evaluation and the parent and school district agree to a specific time when the evaluation will be completed.

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

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

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

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

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

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

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

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

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

The district shall follow the procedures in this chapter before determining that the child is no longer a child with a disability.

The evaluation procedures described in this chapter are not required before the termination of a child's eligibility under this article due to graduation from secondary school with a regular high school diploma, or exceeding the age eligibility for FAPE.

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

The district shall provide notice to the parents of a child with a disability, in accordance with article 24:05 that describes any evaluation procedures the district proposes to conduct.

The district shall ensure, at a minimum, that evaluation procedures include the following:

1. Assessments and other evaluation materials are provided and administered in the child's native language or by another mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer. In addition, assessments, and other evaluation materials:
  - a. Are used for the purposes for which the assessments or measures are valid and reliable; and
  - b. are administered by trained and knowledgeable personnel in conformance with the instructions provided by their producer;
2. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;
3. Assessments are selected and administered to ensure that the assessment accurately measures what the student can and cannot do, rather than limitations due to the child's impaired sensory, manual, or speaking skills except where those skills are the factors which the assessment purports to measure;
4. No single measure or assessment is used as the sole criterion for determining eligibility or an appropriate educational program for a child
5. A variety of assessment tools and strategies shall be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parents, that may assist in determining:
  - a. whether the child is a child with a disability; and
  - b. the content of the child's IEP, including information related to enabling the child:
    - i. To be involved in and progress in the general education curriculum; or
    - ii. For a preschool child, to participate in appropriate activities;
6. Technically sound instruments, assessment tools, and strategies are used that:
  - a. May assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and
  - b. Provide relevant information that directly assists persons in determining the educational needs of the child;
7. The child is assessed in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general status, general intelligence, academic performance, communicative status, and motor abilities
8. The evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.

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

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

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

In interpreting evaluation data for the purpose of determining eligibility and determining the educational needs of the child in making placement decisions, including decisions regarding preschool children, the district will do the following:

- a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
- b. Ensure that information obtained from all of these sources is documented and carefully considered;
- c. Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- d. Ensure that the placement decision is made in conformity with the least restrictive environment rules in district policy; and
- e. Ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

If a determination is made that a child is disabled and needs special education and related services, an individual education program will be developed for the child in accordance with least restrictive environment requirements.

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

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

1. Whether the child has a specific learning disability;
2. The basis for making the determination, including an assurance that the determination has been made in accordance with this section;
3. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
4. The educationally relevant medical findings, if any;
5. Whether:
  - a. the child does not achieve adequately for the child's age or does not meet state approved grade-level standards; and
  - b. the child does not make sufficient progress to meet age or state-approved grade-level standards; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards or intellectual development;

6. The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level;
7. If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
  - a. the instructional strategies used and the student-centered data collected;
  - b. the documentation that the child's parents were notified about:
    - i. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - ii. Strategies for increasing the child's rate of learning;
    - iii. The parents' right to request an evaluation;
8. If using the discrepancy model, the group finds that the child has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the eligibility areas, the group shall consider regression to the mean in determining the discrepancy
9. If using the response to intervention model for eligibility determination, the group shall demonstrate that the child's performance is below the mean relative to age or state approved grade level standards.

Group members to certify report in writing. Each group member shall certify in writing whether the report reflects his conclusion. If it does not reflect a group member's conclusion, the group member must submit a separate statement presenting his conclusion.

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

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

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

The Oelrichs School District ensures the compliance with all regulations regarding the confidentiality of personally identifiable information and all records according to 34 CFR 300.610 through 300.626.

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

The district will annually notify parents of students currently in attendance at the agency or institution of their rights under the Family Educational Rights and Privacy Act and this section. The notice must inform the parent or eligible student that the parent or eligible student has a right to do the following:



- a.) Seek amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights
- b.) Consent to disclosure of personally identifiable information contained in the student's educational records, except to the extent that the Act and the regulations in this section authorize disclosure without consent
- c.) File with the U.S. Department of Education a complaint concerning alleged failures by the agency or institution to comply with the requirements of the Act and this section

The notice will also include the procedures for exercising the right to inspect and review education records, the procedures for requesting the amendment of records and, if the educational agency or institution has a policy of disclosing education records, a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

The district may provide this notice by any means that are likely to inform the parents and eligible students of their rights and that will effectively notify parents of students who have a primary or home language other than English, and parents or eligible students who are disabled.

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

Oelrichs School District will permit parents to inspect and review any education records relating to their student, which are collected, maintained, or used by the agency under this chapter. The district will comply to a request without unnecessary delay and before any meeting regarding an individual education program or hearing relating to the identification, evaluation, or placement of the student, or discipline hearing, or resolution session, and in no case more than forty-five (45) calendar days after the request has been made. The right to inspect and review education records under this section includes the following:

- a.) The right to response from the district to reasonable requests for explanations and interpretations of the records;
- b.) The right to request that the district provide copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- c.) The right to have a representative of the parent inspect and review the records.

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

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

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

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

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

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

Oelrichs School District will provide parents, on request, a list of the types and location of education records collected, maintained, or used by the district.

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

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

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

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

The district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request. If the district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

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

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

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

At a minimum, the district's hearing procedures must include the following elements:

1. The hearing must be held within 30 days after the district received the request, and the parent of the student or eligible student will be given notice of the date, place, and time 5 days in advance of the hearing
2. The hearing may be conducted by any party, including an official of the district, who does not have a direct interest in the outcome of the hearing
3. The parent of the student or eligible student will be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of his choice at his own expense, including an attorney
4. The district will make its decision in writing within 30 days after the conclusion of the hearing. The decision of the district will be based solely upon evidence presented at the hearing and will include a summary of the evidence and the reasons for the decision.

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

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

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

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

Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this article or used for any purpose other than meeting a requirement under this chapter, unless the information is contained in education records and the disclosure is authorized

without parental consent under FERPA. The district may not release information from education records to participating agencies without parental consent except as follows:

- a.) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is to other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests or to officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in subdivision of this section;
- b.) An educational agency or institution that discloses the education records of a student pursuant to subdivision (1) of this section shall make a reasonable attempt to notify the parent of the student or the eligible student at the last known address of the parent or eligible student, unless the disclosure is initiated by the parent or eligible student.

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

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

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

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

The district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. Officials in the district shall assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the provisions of this chapter concerning personally identifiable information.

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

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

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

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

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

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

The department of education, special education programs, is the entity responsible for ensuring the district complies with the requirements on confidentiality of information through on-site monitoring, approval of comprehensive plans, and complaint resolution. Sanctions for noncompliance include the disapproval of local special education programs and the withholding of state and federal funds.

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

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

#### **SECTION IX: Transition from Part C to Part B 34 C.F.R. § 300.124; ARSD 24:05:27:21**

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

The Oelrichs School District ensures that children participating in early intervention programs under Part C, and who will participate in preschool programs under Part B experience a smooth and effective transition to district preschool programs. Further, each eligible child with a disability will have in place at the time of their third birthday, an appropriate IEP or IFSP for the provision of special education and related services has been developed and implemented. The district participates in transition planning conferences as coordinated by the local Part C agency.

At least ninety (90) day prior to the child's third birthday, the school district will meet with the local service coordinator and the child's family to discuss and begin necessary steps in the transition plan. The school district will provide the family with information on the eligibility and evaluation requirements under Part B of the IDEA, including the parent's and school district's rights regarding procedural safeguards.

In addition, the school district will review with the family a child's program options for the period commencing on the day a child turns three and through the remainder of the school year regarding transition planning, including development of an individual education program.

All requirements under IDEA 2004 will be implemented in the process for determining eligibility for a child moving from the Part C program to the Part B program.

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

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

- **Definition of parentally-placed private school children; 300.130; ARSD 24:05:32:01**
- **Child find for parentally-placed private school children with disabilities; 300.131; ARSD 24:05:32:01.01**
- **Provision of services for parentally-placed private school children with disabilities; 300.132; ARSD 24:05:32:03.01, ARSD.**
- **Expenditures for parentally-placed private school children with disabilities; 300.133; ARSD 24:05:32:01:02**
- **Consultation process with private schools attended by children with disabilities; 300.134; ARSD 24:05:32:01:05**
- **Written affirmation by private school officials of meaningful consultation; 300.135; ARSD 24:05:32:01.06**
- **Compliance; rights of private school officials to submit a state complaint; 300.136; ARSD 24:05:32:01.07**
- **Determination of equitable services for parentally-placed private school students with disabilities; 300.137; ARSD 24:05:32:03.02,**
- **Provision of equitable services for parentally-placed private school students with disabilities; 300.138; ARSD 24:05:32:03.02**

- **Location of services and transportation; 300.139; ARSD 24:05:32:03.03**
- **Due process complaints and state level complaints; 300.140; ARSD 24:05:32:03.04**
- **Requirements that funds not benefit a private school; 300.141; ARSD 24:05:32:12**
- **Use of personnel for the provision of services to parentally-placed private school students with disabilities; 300.142; ARSD 24:05:32:13**
- **Prohibition on separate classes; 300.143; ARSD 24:05:32:11**
- **Property, equipment, and supplies used to provide special education and related services to parentally-placed private school students with disabilities; 300.144; ARSD 24:05:32:15, ARSD 24:05:32:16**
- **Children with disabilities in private schools placed or referred by public agencies; 300.145 – 300.147; ARSD 24:05:34:02**
- **Placement of children with disabilities by their parents in private schools when FAPE is an issue; 300.148; ARSD 24:05:31:01-07**

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

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

The district understands that parentally placed private school children with disabilities are defined as children with disabilities whose parents have enrolled them in private schools (including religious schools) that meet the state definition of elementary or secondary schools.

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

The district understands that it is responsible for conducting child find activities in private schools that happen to be within the boundaries of the district and must maintain records regarding the number of children evaluated, the number of children found to have a disability, and the number of children served.

The child find process will be completed in a time period comparable to that for students attending public schools in the district consistent with this section. The district in which private, including religious, elementary schools and secondary schools are located will, in carrying out the child find requirement 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.

The school district will maintain in its records and provide to the State information regarding the number of parentally placed school children evaluated, determined to be children with a disabilities, and the number of children served.

Oelrichs School District will locate, identify and evaluate all private school children with disabilities, including religious-school children, and children receiving alternative instruction under SDCL 13-37-1.1 residing in the jurisdiction of the district. The activities undertaken to carry out the responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.

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

Oelrichs School District will write an Individual Service Plan to guarantee the services for parentally placed private school children with disabilities, with a representative of the private school in attendance (or participating by phone or virtual platform).

- **Expenditures for parentally placed private school children with disabilities; 300.133; ARSD 24:05:32:01.02**

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

1. For children aged 3 to 21, inclusive, an amount that is the same proportion of the school district's total sub-grant under Part B of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 21, inclusive, who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 21, inclusive; and
2. For children aged 3 to 5, inclusive, an amount that is the same proportion of the school district's total sub-grant under Section 619, Preschool, of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 5, inclusive, who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 5, inclusive.

If a district has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the district shall obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.

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

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

- **Consultation process with private schools attended by children with disabilities; 300.134; ARSD 24:05:32:01:05**

When deciding how to spend federal funds designated for children with disabilities parentally placed in private schools, the district will consult with private school representatives and representatives of parents of parentally placed private school children with disabilities.

- **Written affirmation by private school officials of meaningful consultation; 300.135; ARSD 24:05:32:01:06**

Following the consultation, Oelrichs School District will seek to acquire written affirmation by private school officials of the meaningful consultation that took place. If the private school does not provide written affirmation, the school district will forward documentation of the consultation process to the department.

- **Compliance; Rights of private school officials to submit a state complaint; 300.136; ARSD 24:05:32:01:07**

The district understands that private school officials have the right to submit a state complaint about consultation or other related matters. If this occurs, the school district will forward its relevant documentation to the department.

- **Determination of Due process complaints and state level complaints; 300.140; ARSD 24:05:32:03:04**

The district understands private schools have the right to submit state complaints and follow the due process procedure if the school feels the local district is not meeting the regulations for providing special education services within the private school.

- **Equitable services for parentally placed private school students with disabilities; 300.137; ARSD 24:05:32:03:02**

The district determines the services for parentally placed private school students with disabilities through the general process agreed through consultation with the private school officials and representative parents. Then specific services are written through the services plan created for each child.

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

The district agrees to provide the same quality of personnel and services for private school students as would have been provided for public school students. Additionally, the services, material, and equipment must be secular, neutral, and nonideological. However, the amount of services may be less than what would have been received had the student been enrolled in the public school district.

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

During consultation, the local school district will determine equitable service, location and transportation for special education services.

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

The due process hearing and mediation procedures in chapter 24:05:30 do not apply to complaints that a school district has failed to meet the requirements of this chapter, including the provision of services indicated on the child's service plan.

The due process hearing and mediation procedures in chapter 24:05:30 apply to complaints that the district has failed to meet the child find requirements in § 24:05:32:01.01, including the parent consent and evaluation requirements in this article.

Any due process complaint regarding the child find requirements shall be filed with the school district in which the private school is located and a copy shall be forwarded to the department. Complaints that the department or a school district has failed to meet the requirements of this chapter may be filed under the procedures in chapter 24:05:15 consistent with the procedures in § 24:05:32:01.07

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

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

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

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

The district understands that it may use funds to make personnel available for the provision of special education and related services in private schools.

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

The district understands IDEA funds may only be utilized to provide services to students within the private school who have been identified as in need of special education and may not be used to create separate classes to segregate children with disabilities.

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

The district understands that it is still responsible to account for property, equipment, and supplies placed in private schools for parentally placed private school students with disabilities. Such inventory will be removed from the private school when it is no longer needed there.

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

The district understands that it is responsible for identification, evaluation and special education placement. Cost for placement in private school is the public agency's responsibility.

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

The district understands that if a student with a disability is placed in a private school because the school district could not provide FAPE, then the school district may be responsible for the costs of the education.

District procedure:

1. The district will locate, identify, and evaluate all private school children with disabilities, including religious-school children, and children receiving alternative instruction under SDCL 13-37-1.1 residing in the jurisdiction of the district. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.
2. The district will consult with appropriate representatives of private school children with disabilities.
3. The district will ensure that a service plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services.
4. The district will consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities.
5. The child count must be used to determine the amount that the district must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.
6. The district will consult with representatives of private school children with disabilities in light of the funding, the number of private school children with disabilities, the needs of private school children with disabilities and their location decide –
  - a. Which children will receive services
  - b. What services will be provided
  - c. How and where the services will be provided, transportation; and
  - d. How the services provided will be evaluated.
7. If federal funds are received, the services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in public schools.
8. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.



9. No private school child with a disability is entitled to any service or to any amount of service the child would receive if enrolled in a public school.

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

**The district will ensure compliance with all SEA procedures under general supervision and that programs meet the standards of the SEA. Specific references must include:**

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

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

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

The district shall establish, maintain, and implement procedural safeguards which meet the requirements of the chapter ARSD 24:05:30.

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

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

The written signed statement shall also include:

1. The signature and contact information for the complainant; and
2. If alleging violations with respect to a specific child:
  - 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, including facts related to the problem
  - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

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

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

1. The state director of special education shall appoint a complaint investigation coordinator from the department's special education programs. The coordinator and any consultants may conduct an independent on-site investigation if it determines that one is necessary;
2. The complainant may submit additional information, either orally or in writing, about the allegations in the complaint;
3. The school district may respond to the complaint, including, at a minimum:
  - i. A proposal to resolve the complaint;
  - ii. An opportunity for a parent who has filed a complaint and the school district to voluntarily engage in mediation consistent with this article;

4. The complaint coordinator and any consultants shall make a recommendation to the state director of special education;
5. After reviewing all relevant information, the state director of special education shall make an independent determination as to whether the complaint is valid, what corrective action is necessary to resolve the complaint, and the time limit during which corrective action is to be completed. The state director of special education shall submit a written report of the final decision to all parties involved;
6. The written report shall address each allegation in the complaint, contain findings of fact and conclusions, and include reasons for the final decision;
7. If the complaint is valid, the state director of special education shall find the school district out of compliance with federal and state statutes and rules;
8. If corrective action is not completed within the time limit set, including technical assistance and negotiations, the department shall withhold all federal funds applicable to the program until compliance with applicable federal and state statutes and rules is demonstrated by the school district;
9. When the school district demonstrates completion of required correction action, the department's Office of Finance and Management shall be notified by the state director of special education, and all moneys withheld shall be paid to the school district;
10. Documentation supporting the corrective actions taken by a school district shall be maintained by the department's special education programs and incorporated into the state's monitoring process.

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

The South Dakota Department of Education, Special Education Programs, shall inform parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities about the state's complaint procedures by taking the following actions:

1. Conducting parent surveys through the state's monitoring process;
2. Providing copies of the state's procedures to parent and advocacy groups across the state;
3. Notifying local school districts through statewide memoranda;
4. Presenting state procedures at statewide conferences; and
5. Disseminating copies to parent training and information centers, independent living centers, protection and advocacy agencies, and other appropriate entities.

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

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

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

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

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

The Oelrichs School District ensures that public and private benefits available to a student with a disability will be used appropriately to support the provision of FAPE at no cost or harm to the parents.

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

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

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

Before accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the district will provide written consent with § 24:05:30:06 to the student's parent that includes a statement:

1. Of the parental consent and no cost requirements in § 24:05:14:01.03
2. The parents have the right under FERPA, as defined in § 24:05:29:02(1), and Part B of the IDEA to withdraw their consent to disclosure of their student's personally identifiable information to the state Medicaid agency at any time
3. That the withdrawal of consent or refusal to provide consent under FERPA and Part B of the IDEA to disclose personally identifiable information to the state Medicaid agency does not relieve the district of its responsibility to ensure that all required services are provided at no cost to the parents.

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

Regarding services required to provide FAPE to an eligible student under this article, the district may access a parent's private insurance proceeds only if the parent provides informed consent with this article. Each time the district proposes to access the parent's private insurance proceeds, it will:

1. Obtain parent consent in accordance with this article; and
2. Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

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

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

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

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

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

The district understands the right to a hearing regarding any final determination of the SEA on eligibility for funding under Part B.

The Oelrichs School District understands it has a right to a hearing before the SEA makes any final determination regarding eligibility for funding under Part B.

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

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

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

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

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

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

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

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

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

**The district will ensure the implementation of state established performance goals and indicators for students with disabilities within their jurisdiction. Specific reference must include:**

- **Student information management system (SIMS)**

The Oelrichs School District will comply with all requests by the SEA for data submission that is instrumental in monitoring the performance of the student population with respect to state established performance goals and indicators and will submit such data on a timely basis. District personnel responsible for data submission may include district administrators and clerical staff.

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

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

The Oelrichs School District ensures that all students with disabilities will be included in state and district assessments, with appropriate accommodations and alternate assessments when necessary. Parents will be informed of their child's participation during the course of the IEP meeting, including any necessary accommodations or any assessment that will be based on alternate or modified achievement standards.

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

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

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

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

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

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

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

The district makes all public records available upon request during normal business hours.

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

**The district supports the work of the State Advisory Panel to provide policy guidance to the SEA with respect to special education and related services for children with disabilities.**

The Oelrichs School District supports the work of the State Special Education Advisory Panel and will refer interested parents to the appropriate state contact if they are interested in serving on the panel.

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

**The district will ensure the following specific provisions have consistent policies for implementation at the local level. Specific references must include:**

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

The Oelrichs School District ensures that the specific provisions of 300.170 through 300.173 and 24:05:21:04, ARSD have been implemented at the district level, consistent with state policy.

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

The Oelrichs School District submits data on the suspension and/or expulsion of students with disabilities on an annual basis. If significant discrepancies are occurring, the local educational agency may be required to revise 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 such policies, procedures, and practices comply with Federal and state statute, rules, and regulations.

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

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

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

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

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

1. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to:
  - a. Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
  - b. Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats;
2. Shall provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

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

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

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

1. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in chapter 24:05:24.01.
2. The placement in particular educational settings of these children
3. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

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

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