

Title of Regulation:

Regulation No.: R43-243

**SPECIAL EDUCATION,
EDUCATION OF STUDENTS
WITH DISABILITIES**

Effective Date: 5/27/16

Constitutional and Statutory Provisions:

Section(s):

59-5-60.

General powers of [State] Board

59-21-510, et seq.

Education of Physically and Mentally Handicapped Children.

59-21-580.

Rules, regulations and policies, of State Board of Education

59-33-10, et seq.

Special Education for the Handicapped.

Code of Laws of South Carolina, 1976.

20 U.S.C. 1400 et seq.

Individuals with Disabilities Education Improvement Act of 2004

U.S. Code of Laws

State Board Regulation:

43-243. Special Education, Education of Students with Disabilities.

I. Purpose

The purpose of this regulation is to promulgate the state's requirements of educational programs for students with disabilities, as outlined by the Individuals with Disabilities Education Act, 2004 (IDEA). The South Carolina Department of Education (SCDE), as the state educational agency (SEA); all local educational agencies (LEAs); all state-operated programs (SOPs); and all other public programs providing special education and related services as outlined in the IDEA follow and comply with all statutory and regulatory requirements of the IDEA as outlined in 20 U.S.C. Section 1400 et seq. and the Code of Federal Regulations (C.F.R.), Chapter 34, Part 300.

In addition to the statutory and regulatory requirements to which the state adheres, this regulation further delineates state-specific requirements of the IDEA.

II. Policies and Procedures

Pursuant to the statutory requirements in Part B of the IDEA and regulatory requirements found in 34 C.F.R. Part 300, the state has in effect policies and procedures governing public educational programs for children with disabilities. These state policies and procedures are reviewed and approved by the SCDE. These state policies and procedures are broadly disseminated and are found in electronic format on the SCDE's website.

III. Clarified Definitions

A. Child with a disability. For the purposes of the definitions of a child with a disability, SBE R.43-243.1 provides the definitions of a child with a disability as outlined at 34 CFR Part 300 Section 8.

B. Children with disabilities enrolled by their parents in private schools. Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools, homeschool programs, or facilities that meet the definition of elementary schools in 34 C.F.R. Section 300.13 or secondary schools in 34 C.F.R. Section 300.36; or in homeschool programs as defined by S.C. Code Ann. Sections 59-65-40, 45, and 47; other than children with disabilities covered under 34 C.F.R. Sections 300.145 through 300.147.

C. Free appropriate public education. A free appropriate public education must be available to all children residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 34 C.F.R. Section 300.530(d). In South Carolina, this means that if any student turns age 21 after September 1 of the school year, the LEA must permit the student to enroll and complete the school year, and all applicable statutes and regulations apply. If a student turns age 21 on or prior to September 1, the LEA is not required to permit the student to enroll.

D. Intellectual disabilities. For the purposes of this regulation, all references in 34 C.F.R. Part 300 to mental disabilities or mental retardation are forthwith referred to as intellectual disabilities, as required by Pub. L. No. 111-256.

E. Residential treatment facilities. For the purposes of this regulation, residential placements defined at 34 C.F.R. Section 300.104 include residential treatment facilities authorized by the South Carolina Department of Health and Environmental Control and are governed by state statutes, regulations, and annually through state provisos in the State Appropriations Act. Requirements set forth in state statutes, regulations, and provisos delineate the responsibilities of the state and LEAs with regards to those children who are placed, or referred to such placements, by public agencies.

F. Transfer of rights at age of majority.

1. General Requirements. Beginning not later than one year before the child reaches the age of majority under state law, the child's Individualized Education Program (IEP) must include a statement that the child has been informed of his or her rights under Part B of the IDEA, if any, that will transfer to the child on reaching the age of majority under 34 C.F.R. Section 300.520. For the purposes of this definition, the age of majority in South Carolina is 18 years.

2. Exceptions to transfer of rights at age of majority.

a) Parental rights transfer to a child with a disability who reaches the age of majority under state law that applies to all children, except for a child with a disability who has been determined to be incompetent under the laws of South Carolina (S.C. Code Ann. Sections 62-5-501 et seq).

b) The state has established procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the child's eligibility under the IDEA when the child has not been determined to be incompetent under state law (S.C. Code Ann. Sections 62-5-501 et seq).

G. Transition services. Beginning not later than the first IEP to be in effect when the child turns 13 years, or younger if deemed appropriate by the IEP team, and updated annually thereafter, the IEP must include—

1. appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
2. transition services (including courses of study) needed to assist the child in reaching those goals that align with the child's career goals and course of study in the child's Individualized Graduation Plan (IGP) as outlined in S.C. Code Ann. Section 59-59-140.

IV. Monitoring, Enforcement, and Program Information

A. General Requirements. As outlined throughout the IDEA, the state is responsible for ensuring—

1. that the requirements of the IDEA and SBE R.43-243 are carried out; and
2. that each educational program for children with disabilities administered within the state, including each program administered by any other state or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—
 - a) is under the general supervision of the persons responsible for educational programs for children with disabilities in the state; and
 - b) meets the educational standards of the state.

B. State Monitoring. As outlined in 34 C.F.R. Sections 300.600 et seq., the state monitors the implementation of educational programs for students with disabilities, as provided by the IDEA.

C. Local Determinations. As outlined in 34 C.F.R. Sections 300.600, 300.603, 300.604, and 300.608, the state makes determinations annually about the performance of each LEA and SOP using the categories in 34 C.F.R. Section 300.603(b)(1). The state makes these determinations based on the totality of information the state has regarding the compliance and performance of each LEA and SOP with regards to its educational programs for students with disabilities covered under the IDEA.

D. Enforcement. The state retains all rights for enforcement of this regulation and of the state and federal statutory and regulatory requirements as outlined in the IDEA, in the Education Department General Administrative Regulations (EDGAR), and in 2 C.F.R. Section 200.300.

E. Fiscal Sanctions. If the state, represented by the SEA, finds that an LEA, special school, or other agency, herein referred to as an applicant, with the responsibility under state law for the provision of a free appropriate public education (FAPE) to students with disabilities is failing to comply with any requirement described under Part B of the IDEA, the applicable federal or state regulations, or state policies and procedures related to the requirements of the IDEA, the state may impose sanctions, including the reduction, withholding, or recovery of payments made relative to the IDEA grant administered by the state. In accordance with Part B of the IDEA and EDGAR 34 C.F.R. Parts 75 and 76, and 2 C.F.R. Section 200.300, the state shall provide reasonable notice and an opportunity for a hearing prior to taking any final action regarding the reduction, withholding, or recovery of payments to the applicant.

1. Hearing Issues. The state shall provide the applicant with notification of the right to a hearing and the procedures for a hearing if the state determines
 - a) an applicant is not eligible for assistance under Part B of the IDEA;

b) an applicant, for three or more consecutive years, needs intervention or substantial intervention in implementing the requirements of Part B of the IDEA;

c) an applicant is unable or unwilling to consolidate with other applicants or agencies in accordance with the IDEA;

d) an applicant failed to submit an accurate and unduplicated count of the number of students with disabilities receiving special education and related services, or in the case of children enrolled by their parents in private or homeschool programs, failed to accurately report the count of students eligible to receive special education and related services;

e) an applicant is not meeting the requirements of Part B of the IDEA and the provision of an applicable FAPE to students with disabilities and the applicant has not, or the state has reason to believe the applicant cannot, correct the problem within one year; or

f) an applicant is not meeting any of the other federal or state requirements relative to Part B of the IDEA that allow the reduction, withholding, or recovery of funds.

2. Hearing Appeals Panel. When an applicant requests a hearing relative to these matters, in writing, the State Superintendent of Education (Superintendent) shall select a three-member hearing panel to conduct the proceeding. The hearing panel shall consist of at least two of the SEA's deputy superintendents, or their designees, and one additional individual designated by the superintendent.

3. Hearing Procedures.

a) An applicant shall request a hearing by notifying the Superintendent by certified mail of its decision to appeal a decision as set forth in these procedures.

b) The applicant shall include the nature of the request for the hearing, including the reasons for any disagreement with the determinations by the state, and the facts on which the request for the hearing is based.

c) The applicant shall request a hearing within thirty calendar days of the date of the state's notification of the intent to impose the specified sanction. For purposes of these procedures, the date of the notification by the state is the date the notice is received by the applicant.

d) The hearing shall be scheduled before a hearing panel within thirty calendar days from the receipt of the request.

e) The applicant shall receive written notice at least ten days prior to the hearing date. The notice shall include the date, location, and time of the hearing.

f) The applicant and the state may present evidence in writing and through witnesses and may be represented by counsel at the hearing. The parties shall exchange the names of proposed witnesses no later than five days prior to the hearing. The parties shall have six copies available of written materials that will be used as evidence during the hearing.

g) The hearing panel may determine the length and order of the presentations by the parties and determine the course of the proceedings. The hearing panel shall take all steps necessary to conduct a fair

and impartial proceeding, avoid delays, maintain order, and comply with the additional procedures set forth in the SEA *Policies and Procedures for Programs for Students with Disabilities*.

h) The hearing panel shall make a formal recommendation to the Superintendent within five calendar days following the hearing.

i) If the applicant or its authorized representative fails to appear at the hearing, the appeal shall be considered closed and the hearing process terminated.

j) If the state determines that its proposed action is contrary to federal or state statutes, regulations, or applicable policies and procedures related to the requirements of the IDEA, the state shall review its proposal and determine what, if any, alternative action is warranted.

k) The Superintendent shall issue a written decision within ten days of the date of the conclusion of the hearing. The written decision shall include the findings of fact and reasons for the decision.

l) The Superintendent's decision is final unless the applicant disagrees with the decision and files an appeal of the decision with a court of competent jurisdiction. If the state does not receive notice of an intent to appeal the decision within thirty calendar days of the issuance of the written decision, the state shall implement the proposed action in whole or in part until the state is satisfied that the applicant is complying with the applicable federal and state requirements.

m) The SEA shall keep a record of the proceedings. Any party, at its expense, may obtain a copy of the record of the proceedings.

4. Decision. The Superintendent shall issue a written decision within ten days of the date of the conclusion of the hearing by transmitting the written decision to the applicant or other representative authorized by the applicant.

5. Public attention. Any applicant that receives notice that the state is proposing to take or is taking an enforcement action pursuant to this section must, by means of public notice, take such actions as may be necessary to notify the public of the pendency of the action, including, at a minimum, posting the notice on the applicant's web site and distributing notice of the proposed act to the media and through public agencies.

F. State Advisory Panel. The state has established and maintains an advisory panel for the purposes of providing policy guidance with respect to special education and related services for children with disabilities in the state. In addition to the state advisory panel requirements at 34 C.F.R. Section 300.167, the state has expanded the State Advisory Panel to meet the requirements of S.C. Code Ann. Section 59-36-30.

V. The South Carolina State Board of Education authorizes the South Carolina Department of Education to develop and amend special education policies and procedures as necessary to meet U.S. Department of Education approval.