

**SPECIAL EDUCATION ASSURANCES AND AGREEMENTS  
FOR SCHOOL-AGE SERVICES  
FISCAL YEAR 2009-10**

**Adoption of Procedures:** The applicant agrees to implement *Special Education and Related Services: Procedural Requirements and Program Standards* and *Special Education Eligibility Criteria and Program Guidelines for Children with Disabilities, Ages 3-21* to ensure that it provides special education services to enable children with disabilities to participate in regular educational programs and that each child has a properly developed individualized education program.

**Adjustment to Local Fiscal Effort:** If eligible to do so, the applicant, in accordance with 20 U.S.C.A. §1413, assures that funds it uses to offset maintenance of effort requirements comply with the provisions of Part B of IDEA 2004.

**Assistive Technology:** The applicant assures that assistive technology devices or assistive technology services, or both, as defined in 20 U.S.C.A. §1401, are made available to a child with a disability if required.

**Complaint Procedures of the State:** The applicant, in accordance with 20 U.S.C.A. §1415, assures that it will provide a copy of the written procedures for Complaint Management to parents of students with disabilities when they are notified of their procedural safeguards.

**Coordination of Projects:** The applicant, in accordance with EDGAR 34 CFR 76.580, assures, to the extent possible, it coordinates each of its projects with other activities that are in the same geographic area served by the project and targeted groups.

**Excess Cost:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that funds provided under Part B of IDEA 2004 will be used only for excess costs.

**Extended School Year:** The applicant, in accordance with 20 U.S.C.A. §1415, shall ensure that extended school year services are available as necessary to provide a free appropriate public education.

**Highly Qualified Personnel:** The applicant assures that all personnel necessary to carry out Part B of IDEA 2004 within the jurisdiction of the agency are appropriately and adequately prepared and trained consistent with the requirements of 20 U.S.C.A. §1412.

**Information for State Education Agency:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that information necessary for the state education agency to carry out its duties under 20 U.S.C.A. §1412 shall be provided.

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**Least Restrictive Environment:** The applicant, in accordance with 20 U.S.C.A. §1412, assures it has adopted the policies and procedures of *Special Education and Related Services: Procedural Requirements and Program Standards*, Section 13, pages 1 and 2; and Section 17, pages 1-3.

**Responsibility of LEA:** The applicant assures that any child with a disability who is placed in or referred to a private school or facility by the public agency is provided special education and related services in conformance with an IEP that meets state and federal requirements, at no cost to the parents, is provided an education that meets the standards that apply to education provided by the SEA/LEA, and has all of the rights of a child with a disability who is served by a public agency.

**Maintenance of Effort:** The applicant assures, in accordance with 20 U.S.C.A. §1413, that funds provided under Part B of IDEA 2004 will not be used to reduce the level of financial effort for the education of children with disabilities from local funds below the level of those expenditures for the preceding fiscal year and that additional state funds made available to the special education program through Acts of the Arkansas General Assembly will not be used to reduce the preceding level of financial effort.

**Nondiscrimination and Employment of Individuals with Disabilities:** The applicant assures that the program assisted under Part B of IDEA 2004 will be operated in compliance with Title 45 of the Code of Federal Regulations, Part 84.

**Nonsupplanting:** The applicant, in accordance with 20 U.S.C.A. §1412, assures that funds provided under Part B of IDEA 2004 will be used to supplement the level of State and Local funds expended for the education of children with disabilities, and in no case to supplant those State and Local funds.

**Permissive Use of Funds (PUF):** The applicant assures that any Part B funds utilized under the PUF provisions of 20 U.S.C.A. §1413 are consistent with, and adhere to, state and federal law and regulation.

**Policies and Programs Consistent with Eligibility Provisions:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that it has in effect policies, procedures and programs that are consistent with State policies and procedures established under 20 U.S.C.A. §1412.

**Procedural Safeguards:** The applicant incorporates by reference the procedures of the state education agency in *Special Education and Related Services: Procedural Requirements and Program Standards*, Sections 4 through 16.

**Protection in Evaluation Procedures:** The applicant adopts by reference the procedures of the state education agency in *Special Education and Related Services: Procedural Requirements and Program Standards*, Sections 4, 6 and 7.

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**Public Control of Funding:** The applicant assures that control of funds provided under Part B of IDEA 2004 and State/Local funds committed to Special Education in accordance with Ark. Code Ann. 6-20-310 and title to property acquired with those funds is in a public agency for the uses and purposes authorized and as provided in the Arkansas Department of Education, School and Educational Service Cooperative Financial Accounting Manual.

**Records, Reports, and Public Information:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that it will provide information as may be necessary to enable the state education agency to perform its duties under 20 U.S.C.A. §1412. The applicant assures that such records as the state educational agency may require to ensure the correctness and verification of the information are maintained and available. The applicant assures that all documents relating to the eligibility of the applicant under Part B of IDEA 2004 are available to parents of children with disabilities and to the general public.

**Retention of Records:** Education Department General Administrative Regulations (EDGAR) 34 CFR 76.734 requires that recipients of IDEA-B funds retain for five (5) years after completion of the activity for which they use grant or subgrant funds any record needed to fully show compliance with program and administrative requirements.

**School-Wide Programs Under Title I of ESEA:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that funds it uses to carry out a school-wide program under Section 1114 of the Elementary and Secondary Act of 1965 will conform to the conditions for the use of the funds under Part B of the IDEA 2004.

**Transition Services:** The applicant assures that transition services, as defined at 20 U.S.C.A. §1414, are designed within a results-oriented process that is focused on improving academic and functional achievement of children with disabilities to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation and is based on the individual child's needs.

**Treatment of Charter Schools and Their Students:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that when a public school in its jurisdiction is a charter school, the LEA will serve children with disabilities attending those schools in the same manner as its other schools and will provide funds under Part B of IDEA 2004 to those schools in the same manner as it provides those funds to its other schools.

**Access To and Purchase of Instructional Materials:** The applicant, in accordance with 34 Code of Federal Regulations §300.210 (a) and (b), assures that it will coordinate with the State education agency (Arkansas Department of Education, Special Education) and the National Instructional Materials Access Center (NIMAC) and will take all reasonable steps to provide instructional materials to blind persons or other persons with print

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disabilities in a timely manner.

**Records Regarding Migratory Children with Disabilities:** The agency must cooperate in the Secretary's effort 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.

**General Education Provisions Act:** The applicant assures that it will comply with the assurances set forth below as stated in the General Education Provisions Act in compliance with 20 U.S.C.A. §1232 e(b)(3),(5),(7),(A)&(B),(8) and (9). The general application submitted by the public agency under subsection (a) incorporates by explicit agreement these assurances:

- 1) That the local education agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans and applications;
- 2) That the control of funds provided to the local education agency under each program and title to property acquired with those funds will be in a public agency and that a public agency will administer those funds and property;
- 3) That the local education agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;
- 4) That the local education agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under Section 437, and provide access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;
- 5) That the local education agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for an operation of each program;
- 6) That any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;
- 7) That the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such

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projects; and

- 8) That none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

**Notice of Required Actions by the SEA**

*The SEA is required under Part B of IDEA 2004 to provide notice to LEAs of the following actions:*

**Direct Services by the State Education Agency:** The Arkansas Department of Education (ADE), Special Education Unit has the responsibility to ensure that the provisions of a free appropriate public education (FAPE) are met for eligible students with disabilities, ages 3 – 21. Consistent with the provisions of 20 U.S.C.A. §1412, a State Education Agency (SEA) shall use the payments that otherwise would have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency –

- a. Has not provided the information needed to establish the eligibility of the agency under Part B of the Act;
- b. Is unable to establish and maintain programs of FAPE that meet the requirements of this part;
- c. Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or
- d. Has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of these children.

When it is brought to the attention of the ADE through:

- a. The enforcement of a decision from an Impartial Due Process Hearing;
- b. A complaint investigation under the Complaint Procedures of the State;
- c. Compliance monitoring of a public agency; or
- d. A request from a parent or public agency that the SEA assume the responsibility for Direct Services;

the ADE, Special Education Unit will implement the following procedures before final action is taken by the ADE to assume the provision of Direct Services to an eligible student(s) with disabilities, ages 3 – 21.

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1. The Associate Director for Special Education will:
  - a. Provide written notice to the public agency that the SEA has reason to suspect that it is not providing a free appropriate public education to an eligible student(s) with disabilities, ages 3 – 21, on the basis of one or more of the conditions set forth in 20 U.S.C.A. §1412
  - b. State the source(s) of the information that has led the SEA to suspect that the district is not providing a free appropriate public education for the student(s) in question.
  - c. Appoint a Team to conduct an investigation of the situation/complaint.
2. The Investigative Team will review the public agency's provision of FAPE in light of the conditions set forth in 20 U.S.C.A. §1412.
3. The Team will follow the procedures the ADE has adopted for its Complaint Procedures of the State, as provided for in 20 U.S.C.A. §1412.
4. The Team will provide a written report and submit it to the Associate Director.
5. Following receipt of the report, the Associate Director will notify the parties concerned as to the findings of the Investigative Team.
6. Should sufficient evidence exist to demonstrate that the public agency is not providing FAPE as a result of a condition in 20 U.S.C.A. §1412, the Associate Director will notify the public agency that the ADE intends to take the necessary steps to provide Direct Services to an eligible student(s) with disabilities, ages 3 – 21, within the jurisdiction of the public agency.
7. The public agency will be provided notice that it has the opportunity for a hearing on this matter before the State's chief education official, (the Director of the ADE), or his/her designee.
8. To avail itself of the opportunity for a hearing on the proposed provision of Direct Services by the ADE, the Chief Administrative Official of the Public Agency must submit a written request for a hearing to the Associate Director for Special Education within 30 days of notice of the proposed action by the ADE.
9. Within ten (10) business days of receipt by the Associate Director of a written request by the public agency for a hearing, the ADE Director will set a mutually agreeable date, time and location for the hearing and advise the Chief Administrative Official of the Public Agency of this in writing.
10. The ADE Director, or designee, will consider the evidence presented by the Chief Administrative Official of the public agency and the Associate Director for Special Education, or designee.

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11. Within ten (10) business days of completion of the hearing, the ADE Director will submit written findings of fact, the decision and reasons for the ruling with regard to the provision of Direct Services by the ADE, in compliance with 20 U.S.C.A. §1412.
12. If the ADE determines that its action was contrary to state or federal statutes or regulations that govern the applicable program, the ADE shall rescind its action.
13. Public agencies will be notified of their right to appeal a decision of the ADE Director to withhold IDEA – Part B funds to the Secretary of Education, U.S. Department of Education.
14. The public agency must file a notice of the appeal with the Secretary within 20 days after the public agency has been notified by the ADE Director of the final decision of the hearing.
15. The Associate Director for Special Education will advise the Administrator, Grants and Data Management, in writing as to when to withhold and when to restore IDEA – Part B payments to the public agency.

When the ADE has determined that it will assume the provision of Direct Services to ensure FAPE, the ADE may provide special education and related services in such a manner and at such locations (including regional or State centers) as the ADE considers appropriate.

**Local Educational and State Agency Compliance:** If the SEA, in accordance with 20 U.S.C.A. §1412, after reasonable notice and an opportunity for a hearing, finds that a LEA or state agency that has been determined to be eligible under this section is failing to comply with any requirement described in 20 U.S.C.A. §1412, the SEA shall reduce or may not provide any further payments to the LEA or state agency until the SEA is satisfied that the LEA or state agency is complying with that requirement. Any state agency or LEA in receipt of a notice described in the first paragraph of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency. In carrying out its function under this section, the SEA shall consider any decision resulting from a hearing under 20 U.S.C.A. §1412 that is adverse to the LEA or state agency involved in the decisions.

**The public agency will acknowledge receipt of this information by signing the certification on the following page.**

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**CERTIFICATION**

**I, THE UNDERSIGNED AUTHORIZED REPRESENTATIVE, HEREBY CERTIFY THAT THE APPLICANT AGENCY'S GOVERNING BODY HAS ADOPTED THE ABOVE ASSURANCES AND IS AWARE OF REQUIRED ACTIONS BY THE SEA RELATIVE TO DIRECT SERVICES AND LEA COMPLIANCE.**

_____	_____
<b>Public Agency Name</b>	<b>LEA #</b>
_____	_____
<b>Director/Superintendent's Signature</b>	<b>Date</b>

After signature, submit this page to:  
[GRANTS AND DATA MANAGEMENT](#)  
Along with your signed Statement of Intent and Certification Regarding Lobbying form.