

**State of Rhode Island and Providence Plantations**

**Rhode Island Board of Education**

**Public Notice of Proposed Rule-Making**

**Rhode Island Regulations Governing the Education of Children with Disabilities:  
Technical Corrections**

Pursuant to the provisions of Title 16-48 of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter Section 42-35-3(a) of the General Laws, the RI Board of Education, hereby gives notice of its intent to amend the Rhode Island Regulations Governing the Education of Children with Disabilities.

In February 2013, the U.S. Office of Special Education and Rehabilitative Services published the final regulations under the Individuals with Disabilities Act (IDEA) to amend the use of public benefits or insurance in providing educational services. Federal regulations now permit public agencies to access a child's or parent's public benefits or insurance (e.g., Medicaid) by providing prior written notification to the child's parents the first time benefits or insurance are accessed and annually thereafter. Federal regulations previously required notification each time public agencies sought to access the benefits or insurance. Under the new federal regulations, the written notification must meet certain requirements to ensure that parents can make an informed decision regarding whether to allow a public agency to use their' child's public benefits or insurance to pay for services for their child under IDEA. To implement the federally-authorized streamlined approach to accessing Medicaid reimbursement, it is necessary to revise section 300.154(d) of the RI Regulations Governing the Education of Children with Disabilities. That section sets forth the previous, transaction-based federal notification provision. The proposed revision incorporates the federal language, including the requirements to ensure informed authorizations.

Two other revisions to the RI Regulations Governing the Education of Children with Disabilities are included in this Proposed Rule-Making. First, the time limitation to appeal a due process hearing decision in section 300.516(b) is revised to reflect a Rhode Island federal district court decision. And second, the timeline for an expedited due process hearing in section 300.532(c) is adjusted to accommodate certain procedural requirements in the regulations and to ensure that a decision is rendered in expedited fashion.

The pertinent regulations, with the proposed additions and deletions clearly marked, are below.

In the development of the proposed amendments, the Board of Education has limited the changes only to those that are technical corrections and comply with federal regulations or a court decision.

The proposed regulation is available for public inspection in person at the RI Department of Elementary and Secondary Education, 255 Westminster Street, Providence, RI and can be requested by email at [Angela.Teixeira@ride.ri.gov](mailto:Angela.Teixeira@ride.ri.gov) or by calling Angela Teixeira at 401-222-8435.

All interested parties are invited to submit written comments concerning the proposed regulation by August 17, 2013, to Angela Teixeira at RI Department of Elementary and Secondary Education, 255 Westminster Street, Providence, RI 02903, or at [Angela.Teixeira@ride.ri.gov](mailto:Angela.Teixeira@ride.ri.gov) or by calling Angela Teixeira at 401-222-8435 or by faxing 401-222-6178.



Deborah A. Gist  
Commissioner

State of Rhode Island and Providence Plantations  
**DEPARTMENT OF EDUCATION**  
Shepard Building  
255 Westminister Street  
Providence, Rhode Island 02903-3400

Office of Student, Community and Academic Supports

***Rhode Island Regulations Governing the Education of Children with Disabilities:  
Proposed Technical Corrections***

**Executive Highlights**

June 25, 2013

<b>Change</b>	<b>Impact</b>	<b>Attachment</b>
USDOE amended the Individuals with Disabilities Education Act (IDEA) to change the requirements of LEAs in obtaining parental consent and providing information notices before accessing a child's or parent's public benefits (e.g. Medicaid) to pay for special education services.	Reducing a paperwork burden on LEAs while ensuring the protection of parent's rights to notice and privacy.	#1
RI Special Education Regulations for an expedited hearing timeline is inconsistent with IDEA regulatory timeline and unworkable for a resolution prior to hearing.	Comply with federal timeline requirement.	#2
RI Special Education Regulations are inconsistent with a First Circuit Federal District Court Decision regarding the time limitation for parents or LEAs aggrieved by hearing officer decisions to bring civil action. The federal court decision established that this timeline must be <u>30</u> days from the date of <u>receipt</u> of the hearing officer decision.	Comply with Federal Court decision.	#3

## Proposed Revision #1:

### **Update to Section 300.154(d) to align with new federal regulation concerning Medicaid/consent**

#### Methods of Ensuring Services

#### 300.154 Methods of ensuring services.

(a) *Establishing responsibility for services.* The Chief Executive Officer of the State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

(1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) *Obligation of noneducational public agencies.* (I) *General.* (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, § 300.42 relating to supplementary aids and services, and 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section, and the agreement described in paragraph (a) of this section.

(c) *Special rule.* The requirements of paragraph (a) of this section may be met through (I) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.

(d) *Children with disabilities who are covered by public benefits or insurance.*

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency-

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) 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 part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay; and

(iii) May not use a child's benefits under a public benefits or insurance program if that use would-

(A) Decrease available lifetime coverage or any other insured benefit;

(B) 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 child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

~~(iv)(A) Must obtain parental consent, consistent with § 300.9, each time that access to public benefits or insurance is sought; and~~

~~(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.~~

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that—

(A) Meets the requirements of 34 CFR 99.30 and §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with §300.503(c), to the child's parents, that includes--

(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;

(B) A statement of the “no cost” provisions in paragraphs (d)(2)(i) through (iii) of this section;  
(C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

*(e) Children with disabilities who are covered by private insurance.*

(1) With regard to services required to provide F APE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with regulation §300.9.

(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must -

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) 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.

*(f) Use of Part B funds.* (1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure F APE the public agency may use its Part B or state funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

*(g) Proceeds from public benefits or insurance or private insurance.*

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 34 CFR 300.163 and 300.203.

*(h) Construction.* Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. §§ 1396 through 1396v and 42 U.S.C. §§ 1397aa through 1397jj, or any other public benefits or insurance program.

## Proposed Revision #2:

**Correction of Section 300.532(c)(2) to comply with federal timeline for expedited hearings. Provides a workable timeline to allow time for resolution while meeting an expedited decision for the student and family.**

### 300.532 Appeal.

(a) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).

(b) *Authority of hearing officer.* (1) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs

(a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) *Expedited due process hearing.* (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507 and 300.508(a) through (c) and §§ 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

~~(2) The SEA or LEA is responsible for arranging the expedited due process hearing. The timeline for a due process hearing officer to schedule an expedited hearing and render a decision shall not exceed ten (10) business days from the request, except the hearing officer may grant an extension not to exceed forty five (45) calendar days from the receipt of the original hearing request.~~

(2) RIDE shall arrange the expedited due process hearing, which must conclude within 20 school days of the date that the complaint requesting the hearing is filed. The due process hearing officer must render a decision within 10 school days of the conclusion of the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in § 300.506—

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

~~(4) The State may establish different State imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§ 300.510 through 300.514 are met.~~

(4) The decisions on expedited due process hearings are appealable consistent with § 300.514.

### **Proposed Revision #3:**

#### **Update to Section 300.516 Civil Action to accurately reflect state timeline based on the result of a First Circuit Federal Court Decision.**

##### **300.516 Civil Action**

a) General. Any party aggrieved by the findings and decision made under §§ 300.507 through 300.513 or §§ 300.530 through 300.534 who does not have the right to an appeal under §300.514 (b), and any party aggrieved by the findings and decision under § 300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under § 300.507 or §§ 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have ~~90~~ 30 days from the date of the receipt of the decision of the hearing officer to file a civil action. ~~\_, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law, including the Rhode Island Administrative Procedures Act.~~

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under § 615 of the Act without regard to the amount in controversy.

(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under § 615 of the Act, the procedures under §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under § 615 of the Act.