



Rules of
Department of Elementary and
Secondary Education
Division 20—Division of Learning Services
Chapter 300—Office of Special Education

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**Title 5—DEPARTMENT OF
ELEMENTARY AND
SECONDARY EDUCATION**

**Division 20—Division of Learning Services
Chapter 300—Office of Special Education**

5 CSR 20-300.110 Individuals With Disabilities Education Act, Part B

PURPOSE: The Department of Elementary and Secondary Education is eligible to apply for and receive federal funds under the Individuals with Disabilities Education Act (IDEA), Part B for the provision of special education and related services to eligible children and youth. This rule incorporates by reference changes to the annual program plan required by new federal statutes for the provision of the services to eligible children.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The Missouri state plan for the Individuals with Disabilities Education Act (IDEA), Part B contains the administrative provision for the delivery of special education and related services to eligible children and youth.

(2) The content of this state plan for the Individuals with Disabilities Education Act (IDEA), Part B, which is hereby incorporated by reference and made a part of this rule, meets the federal statute and Missouri's compliance in the following areas. A copy of the IDEA, Part B (revised February 2017) is published by and can be obtained from the Department of Elementary and Secondary Education, Office of Special Education, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480. This rule does not incorporate any subsequent amendments or additions.

(A) General Provisions:

1. Applicability;
2. Amendments; and
3. Definitions.

(B) Confidentiality:

1. Confidentiality of Personally Identifiable Information.

(C) Identification and Evaluation:

1. Child Find;
2. Definitions and Criteria for Determination of Eligibility;
3. Procedures for Evaluation and Determination of Eligibility; and
4. Additional Procedures.

(D) Free Appropriate Public Education (FAPE)/Individualized Education Program (IEP)/Least Restrictive Environment (LRE):

1. Free Appropriate Public Education;
2. Individualized Education Programs;
3. Least Restrictive Environment (LRE); and
4. Transition of Children from Part C Services to Part B Services.

(E) Procedural Safeguards/Discipline:

1. Opportunity to Examine Education Records/Parent Participation in Meetings;
2. Independent Educational Evaluation;
3. Written Notice;
4. Procedural Safeguards Notice;
5. Parental Consent;
6. Administrative Hearing Rights;
7. Educational Surrogates;
8. Transfer of Parental Rights at Age of Majority; and
9. Disciplinary Actions/Removals/Expedited Hearings.

(F) Department Responsibilities:

1. General Supervision Responsibilities;
2. Application, Evaluation, and Approval of Private Educational Agencies;
3. Child Complaint Process;
4. Full Educational Opportunities Goal;
5. Methods of Ensuring Services;
6. Performance Goals and Indicators;
7. Public Participation;
8. Public Attention;
9. State Advisory Panel;
10. Suspension and Expulsion Rates;
11. Access to Instructional Materials;
12. Overidentification and Disproportionality;
13. Prohibition on Mandatory Medication;
14. State Administration;
15. Personnel Qualifications; and
16. Personnel Standards Chart.

(G) Public Agency Eligibility:

1. General Requirements;
2. Fiscal Requirements; and
3. Compliance Requirements.

(H) Private Schools and Agencies:

1. Children Placed in Approved Private Agencies by Public Agencies;
2. Children Enrolled by Their Parents in Private Schools When Free Appropriate Public Agency is at Issue;
3. Children with Disabilities Enrolled by Their Parents in Private Schools—Child Find; and

4. Public Agency Requirements to Provide Services for Parentally-Placed Private School Children with Disabilities.

(I) Special School Districts:

1. Basis for Compliance;
2. Structure of Compliance; and
3. Compliance Requirements.

(J) State Operated Programs:

1. State Education Agency (SEA) Provision of Direct Services;
2. Missouri Schools for the Severely Disabled; and
3. Missouri School for the Blind and Missouri School for the Deaf.

AUTHORITY: sections 161.092 and 162.685, RSMo 2016. This rule previously filed as 5 CSR 70-742.140. Original rule filed April 11, 1975, effective April 21, 1975. Amended: Filed March 1, 1977, effective April 15, 1977. Amended: Filed Feb. 7, 1978, effective March 13, 1978. Amended: Filed Dec. 11, 1978, effective Jan. 15, 1979. Amended: Filed Aug. 29, 1979, effective Oct. 15, 1979. Amended: Filed Sept. 24, 1980, effective Nov. 15, 1980. Amended: Filed Oct. 12, 1983, effective Nov. 15, 1983. Amended: Filed Feb. 25, 1987, effective March 26, 1987. Amended: Filed Jan. 30, 1989, effective Feb. 24, 1989. Amended: Filed July 3, 1989, effective Oct. 27, 1989. Amended: Filed Oct. 23, 1991, effective Jan. 13, 1992. Amended: Filed Nov. 25, 1992, effective Feb. 26, 1993. Amended: Filed Sept. 23, 1994, effective Dec. 30, 1994. Amended: Filed March 29, 1996, effective Oct. 30, 1996. Amended: Filed Oct. 23, 1996, effective Jan. 30, 1997. Amended: Filed July 3, 2001, effective Sept. 30, 2001. Amended: Filed Jan. 5, 2004, effective March 30, 2004. Amended: Filed Nov. 15, 2004, effective Jan. 30, 2005. Amended: Filed Aug. 5, 2005, effective Oct. 30, 2005. Amended: Filed May 25, 2007, effective Aug. 30, 2007. Amended: Filed May 12, 2010, effective July 30, 2010. Moved to 5 CSR 20-300.110, effective Aug. 16, 2011. Amended: Filed March 1, 2013, effective May 30, 2013. Amended: Filed Jan. 14, 2014, effective March 30, 2014. Amended: Filed April 27, 2015, effective July 30, 2015. Amended: Filed March 25, 2016, effective June 30, 2016. Amended: Filed May 10, 2017, effective July 30, 2017.*

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013, 2014 and 162.685, RSMo 1973.*

5 CSR 20-300.120 Individuals with Disabilities Education Act, Part C

PURPOSE: The Department of Elementary and Secondary Education is eligible to apply for and receive federal funds under the



Individuals with Disabilities Education Act of 1986 for the provision of early intervention services to infants and toddlers with disabilities. This rule incorporates by reference changes to the annual program plan required by new federal statutes for the provision of the services to eligible children.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The Missouri Department of Elementary and Secondary Education, in consultation with the parents, interested community members, early intervention service providers, representatives of special populations, representatives of other state agencies, and the governor, prepares the state plan. The plan identifies specific groups of individuals to be served and indicates the types of services and activities which may be provided.

(2) The Missouri state plan for the regulations implementing Part C of the Individuals with Disabilities Education Act (IDEA) First Steps Program contains the administrative provisions for the delivery of the state's federally assisted early intervention system. The Missouri state plan for the IDEA, Part C is hereby incorporated by reference and made a part of this rule. A copy of the IDEA, Part C (revised December 2013) is published by and can be obtained from the Department of Elementary and Secondary Education, Special Education Compliance Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480. This rule does not incorporate any subsequent amendments or additions.

(3) Rules pertaining to the state board of education which is responsible for the administration of the state plan, statements of assurance, methods of coordination, and procedures for the operation of the system are contained in the plan.

(4) Operational procedures are contained in the plan. Additional procedures pertaining to personnel development activities are also included.

(5) The content of this state plan, as submitted to the United States Department of Education, meets the federal statute and Missouri's compliance in the following areas:

- (A) Definitions;
- (B) Lead Agency;
- (C) Public Participation;
- (D) Central Directory;
- (E) Public Awareness;
- (F) State Interagency Coordinating Council;
- (G) Child Find;
- (H) Traditionally Underserved Groups;
- (I) Referral Procedures;
- (J) Eligibility Criteria;
- (K) Evaluation and Assessment Procedures;
- (L) Individualized Family Service Plan;
- (M) Transition to Preschool and Other Programs;
- (N) Comprehensive System of Personnel Development;
- (O) Personnel Standards;
- (P) Parental Rights;
- (Q) Fiscal Administration;
- (R) System of Payments;
- (S) Supervision and Monitoring of Programs;
- (T) Policies for Contracting or Otherwise Arranging for Services; and
- (U) Data Collection and Annual Reports.

AUTHORITY: sections 160.900-160.925, 161.092, and 376.1218, RSMo Supp. 2013. This rule previously filed as 5 CSR 70-742.141. Executive Order 94-22 of the Governor, Individuals with Disabilities Education Act, 20 U.S.C. Section 1431, et seq. Original rule filed Dec. 29, 1997, effective March 30, 1998. Amended: Filed July 31, 1998, effective Oct. 30, 1998. Amended: Filed Dec. 7, 2000, effective Feb. 28, 2001. Amended: Filed Dec. 7, 2000, effective March 30, 2001. Amended: Filed Feb. 18, 2003, effective April 30, 2003. Amended: Filed Jan. 5, 2004, effective March 30, 2004. Amended: Filed Nov. 14, 2005, effective Jan. 30, 2006. Amended: Filed Jan. 5, 2007, effective March 30, 2007. Amended: Filed May 12, 2010, effective July 30, 2010. Amended: Filed March 1, 2011, effective May 30, 2011. Moved to 5 CSR 20-300.120, effective Aug. 16, 2011. Amended: Filed Feb. 29, 2012, effective May 30, 2012. Amended: Filed March 1, 2013, effective May 30, 2013. Amended: Filed Jan. 14, 2014, effective March 30, 2014.*

**Original authority: 160.900-160.925, RSMo 2005, amended 2007; 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013; and 376.1218, RSMo 2005, amended 2007.*

5 CSR 20-300.130 State Agency Payments to School Districts for Educational Services

PURPOSE: This rule establishes criteria for making payments to school districts which provide educational services to nondominant children who are in residential placement arranged by the Department of Mental Health, Department of Social Services or a court of competent jurisdiction.

(1) The Department of Elementary and Secondary Education shall expend general revenue appropriated to fund the excess cost of educational services provided to a child— a) whose domicile is in one district but is placed in programs or facilities operated by the Department of Mental Health or resides in another district pursuant to assignment by that department; or b) whose domicile is in one district but is placed by the Division of Family Services into any type of publicly contracted residential site in Missouri; or c) whose domicile is in one district but is placed by a court of competent jurisdiction into any type of publicly contracted residential site in Missouri. The Department of Elementary and Secondary Education shall pay the serving school districts the excess cost of services provided, e.g., an amount by which the per pupil costs of the educational services exceeds the funds received from the domiciliary school district and from other sources.

(2) Serving school district may submit requests of payment for educational services to the Department of Elementary and Secondary Education, Division of Special Education. Requests for payment will be accepted no later than October 1 following the school year during which billable services were delivered.

(3) Serving school district shall use forms prescribed by the Department of Elementary and Secondary Education when submitting requests for payment.

(4) The Department of Elementary and Secondary Education will determine excess cost payments based on expenditure data for the first year preceding the delivery of services.

(5) Payments to the serving district may be prorated based on funds appropriated for this purpose.

AUTHORITY: section 167.126(4) and (5), RSMo Supp. 1997. This rule previously filed as 5 CSR 70-742.165. Original rule filed June 21, 1996, effective Jan. 30, 1997. Amended: Filed Sept. 16, 1997, effective March 30, 1998. Moved to 5 CSR 20-300.130, effective Aug. 16, 2011.*

**Original authority: 167.126, RSMo 1995, amended 1997.*



5 CSR 20-300.140 Extraordinary Cost Fund

PURPOSE: This rule provides administrative procedures to public school districts to seek reimbursement for extraordinary cost, if any, associated with serving students with disabilities, as defined by the 1997 Amendments to Individuals with Disabilities Education Act (IDEA). This rule sets forth a plan for distributing funds to public school districts which educate students whose service costs exceed five times the district's current expenditure per eligible pupil.

(1) The cost of special education and related services, as defined by the 1997 Amendments to the Individuals With Disabilities Education Act (IDEA), which are needed by some students in public education can be considerable. The purpose of the Extraordinary Cost Fund is to provide a source of support to districts to mitigate the financial stress which may result from the cost of serving a student(s) with disabilities whose needs are extraordinary. There are a limited number of students whose service needs are so extensive as to result in exceptional costs. Regardless of their exceptionality, these students are generally served alongside or near their age-appropriate peers. The stated preference for the use of the funds available from this source is to support services which are provided in the public school environment, unless other placements are necessary to provide the student a free appropriate public education in the least restrictive environment. Funds from this source are available only to public school districts and exclude the state board operated schools. The "Extraordinary Cost Fund" (hereinafter referred to as "the fund") is made possible by an annual appropriation from state revenue. It is to be used to pay approvable special education and related service costs for students with disabilities when such costs exceed five (5) times the serving district's current expenditure per eligible pupil for the year in which services were provided. Districts may apply no later than October 31 following the close of a school year in which approvable costs were incurred. All applications shall be made on forms provided by the Department of Elementary and Secondary Education, Division of Special Education. Questions should be addressed to Director, Grants and Applications Section, Missouri Department of Elementary and Secondary Education, Division of Special Education, PO Box 480, Jefferson City, MO 65102.

(2) General Provisions.

(A) Eligible Applicant Districts and Students—A Missouri public school district which directly serves a student(s) with an educational disability (as defined by the State Plan for Part B of IDEA) and for whom there are extraordinary costs may apply to recover expenses from the fund. In order to be considered for reimbursement of extraordinary costs, the applying school district must show actual approvable expenditures for an individual student which exceed five (5) times the district's current expenditure per eligible pupil for the year in which services were provided. A separate application is required for each student for whom reimbursement is sought. (Retroactive adjustments may be made to payments to correspond with changes made to the district's post-audit data.)

(B) Approvable Extraordinary Expenditures—Part C includes approvable expenditures which may be reimbursed by the fund. They are the only expenditures which may be included in the calculation of total educational cost required to serve a student for whom an application for recovery of extraordinary costs is submitted. Any and all expenditures claimed on an application are subject to audit and further requests for clarification by the division. The division reserves the right to disapprove any and all expenditures submitted for reimbursement which are not documented as requested or do not qualify as approvable extraordinary costs.

(C) Deadline for Annual Application—An original properly completed form for claiming reimbursement from the fund must be postmarked no later than October 31 in order to be reimbursed for expenditures made during the preceding school year. (Reimbursement may be provided only after actual costs have been incurred for the delivery of a service, program or purchase/lease of a product.) Forms submitted for claiming reimbursement which are incomplete will be returned with corrective advice, but will not be considered submitted for the purpose of complying with the submission deadline. Costs for extended school year (ESY) services should be allocated to the fiscal year(s) in which they are accrued in the district's financial accounting system.

(D) Forms for Application—Claims for reimbursement of extraordinary costs must be submitted on the "Extraordinary Cost Fund Application" form approved by the Division of Special Education. At the discretion of the division, applications may be submitted by paper form, fax or World Wide Web.

(E) Reconsideration of Denied Expenditures—An applicant may seek reconsideration of expenditures denied for reimbursement by

the director of grants and applications. Requests for reconsideration must be made in writing to the assistant commissioner of special education, Division of Special Education, within thirty (30) calendar days following the date of the notice of approval or denial. Decisions of the assistant commissioner of special education shall be made within thirty (30) calendar days of the date of the reconsideration request.

(F) Payment and Possible Proration of Extraordinary Cost Fund Payments—The division will sum all approved reimbursable expenditures prior to distribution of funds following the annual receipt of applications on October 31. If there are insufficient funds to pay all approvable expenditures, payments may be prorated based on the funds available. Beginning with applications for services provided during the 2000–2001 school term and from funds appropriated for this purpose, the division shall review applications submitted for payment and determine the approved cost after considering an amount per application equal to five (5) times each applicant district's average per pupil expenditure and any disallowed expenditures. Approved costs in excess of one hundred thousand dollars (\$100,000) per application shall be paid subject to the availability of funds. If funds are insufficient, such approved costs may be prorated. If funds remain, approved costs of one hundred thousand dollars (\$100,000) or less per application shall be paid in full or, if funds are not sufficient, such approved costs may be prorated.

(G) Service(s)—As used herein, this is a generic term which refers to any approvable expenditure and may include programs, evaluations, therapies, equipment/devices, instructional materials, etc.

(H) Effect of Fund on School District Financial Responsibility— Nothing contained in these regulations or the administration of the Extraordinary Cost Fund alleviates a public school district's obligation under state and federal law or regulation to provide special education and related services necessary for the provision of free and appropriate public education (FAPE). This obligation is in no way contingent upon the receipt of funds from the Extraordinary Cost Fund.

(3) Approvable Extraordinary Expenditure Categories—Approvable expenditures are organized by categories of service. General and category-specific rules which qualify the reimbursable services are stated. Services which are not represented in the following categories may be considered by the division for reimbursement on a case-by-case basis.

(A) Rules Applicable to All Service Categories.



1. Services must be provided in the least restrictive setting/manner appropriate for the student, as reflected in the Individualized Education Program (IEP).

2. Services must be necessary to provide a FAPE, as reflected in the IEP.

3. Services must be specifically included on a current IEP.

4. In the judgment of the Division of Special Education, the services and the method of delivery must be considered an efficient and effective means (e.g., method of delivery, frequency, duration, acceptable practice, etc.) of addressing the needs of the student, as indicated in his/her most recent diagnostic summary and/or IEP.

5. Expenditures are approved based on the following service categories, whether provided through district employees or via purchase of services, e.g., sections (2) through (8).

6. The cost for a direct education service (including professional consultative services) must be allocated in the proportion to which the student whose services are being charged is to the total number of students served.

7. Services and funding available from other public and private sources must be applied before those from the fund and are not to be included in the calculation of total educational cost. Copays or deductibles for accessing such benefits may be included in the calculation of total educational cost. The use of private health insurance benefits to pay portions of the cost of related services must be done with the informed consent of the parent or primary beneficiary of the insurance, and not negatively affect future benefits or costs to the insuree. Public health insurance benefits must be accessed whenever possible.

8. Schools must comply with all applicable laws and regulations in the procurement of services.

9. Written requests for prior approval of expenditures (prior to a district incurring an expense) may be made to the division. Doing so is encouraged for significant expenditures.

(B) Basic Special Education.

1. Allocated cost of special education teacher and aide, if any.

2. Allocated cost of materials and equipment required to provide the basic special education program.

A. The principal method to be used for making allocations of direct education service, material, and equipment expenditures is the proportion which the student(s) qualifying for the fund is of the total number served by a teacher, aide, etc. However, depending on unique situations, the division

may, at its discretion, apply an alternate method, including the following:

(I) The proportion of total time served; or

(II) The proportion of time or quantity relative to the total; or

(III) Others which may be deemed appropriate by the division.

(C) Related and Other Specialized Ancillary Services.

1. This category includes related or other specialized services which are provided by staff or as contracted.

2. Related service unit costs must be regionally competitive.

3. Includes specialized or individualized transportation. (Equipment should be placed under the category of specialized equipment.)

4. Medical service is reimbursable only if evaluation-related.

(D) Professional Development.

1. Monies from the fund may be used for professional development activities essential for staff directly assigned to a student to provide IEP-related services to the student for whom extraordinary cost reimbursement is being requested. General professional development expenditures, e.g., those which are not specialized and based on the qualifying student's IEP needs, are not approvable.

(E) Specialized Equipment.

1. The division at its discretion may determine the most cost-effective basis for reimbursement. It may consider the leasehold cost, purchase price, and useful life, among other relevant criteria in its decision. It too may prorate reimbursement based on these criteria.

2. Depending on cost and useful life, the division may recover equipment purchased through the fund for transfer to another student in the state.

3. No reimbursement will be provided for the initial development of or major modifications to custom software. Reimbursement may be sought for minor modifications to existing software if such are required by the student's IEP.

4. Costs for equipment or for adaptations and modifications to such are reimbursable if documented in the IEP to be required for the student to benefit from special education and related services. Costs must be allocated if equipment is used by multiple students.

(F) Out-of-District Day or Residential Schooling.

1. Must show evidence of financial participation by other public agencies, if appropriate.

2. Must show evidence that the district could not provide an appropriate service locally or by regional partnering.

3. Use of out-of-school district educational placement must be documented to be required by the IEP, and if relevant, a due process decision issued by the State Board of Education or a court of competent jurisdiction. Out-of-district payments may be made only for placements in other Missouri public school districts or in private agencies approved by the Missouri Department of Elementary and Secondary Education, Division of Special Education. Funding for out-of-state educational placement will be considered only when there is no appropriate service available in Missouri. (Exceptions may be considered where districts are close to or border other states.)

(G) Capital Facility Renovation.

1. At its discretion, the division may give consideration to requests to make minor modification to existing facilities which a) exceed the requirements of the Americans with Disabilities Act Accessibility Guide (ADAAG) and b) are documented to be essential for the student to benefit from special education and related services. Reimbursement for such expenditures may be prorated on a case-by-case basis. All such requests must receive prior written approval from the division.

(H) Specific Expenditure Exclusions.

1. No capital construction or renovation beyond that specified herein, including leases for facilities.

2. No indirect or allocable costs for administration or support services. Only direct special education service costs shall be included in the calculation of total educational cost.

AUTHORITY: section 162.975(1), RSMo Supp. 1999. This rule previously filed as 5 CSR 70-742.170. Original rule filed Aug. 8, 1997, effective March 30, 1998. Amended: Filed July 28, 2000, effective Feb. 28, 2001. Moved to 5 CSR 20-300.140, effective Aug. 16, 2011.*

**Original authority: 162.975, RSMo 1973, amended 1974, 1977, 1986, 1989, 1990, 1993, 1997.*

5 CSR 20-300.150 Administrative Policies of the State Schools for Severely Disabled Regarding Approved Private Agencies

PURPOSE: The State Schools for the Severely Handicapped, State Department of Elementary and Secondary Education, is authorized to contract for educational services for children who cannot be adequately



served in the State Schools for Severely Handicapped. This rule sets forth certain policies which will aid the development of administrative cooperation and program continuity.

(1) The private agency shall submit to the superintendent of the state schools for severely handicapped, not later than October 31 of each year, an annual audit verification of the accuracy of attendance of the children for whom educational services were provided the previous year through contractual agreement with the Department of Elementary and Secondary Education (DESE). The following format is recommended for use by the auditor: "The pupil attendance records are so maintained as to disclose with substantial accuracy the daily attendance of pupils, which for the year ending June 30, 19_____, was _____ days."

(2) The private agency shall submit to the superintendent of the state schools for severely handicapped, not later than August 31 of each year, a school calendar showing the opening and closing date of school, the days in session and the days school will be dismissed for holidays, vacations and teachers' meetings.

(3) The private agency shall submit to the superintendent of the state schools for severely handicapped immediately following the end of each school month an attendance report on those children for whom educational services are provided through contractual agreements with the DESE. The format of this report shall be determined by the superintendent of the State Schools for Severely Handicapped.

(4) Immediately following the end of the school month, the private agency shall submit to the superintendent of the State Schools for Severely Handicapped an invoice for the cost for the educational services provided through contractual agreement with the DESE.

(5) The superintendent of the State Schools for Severely Handicapped shall determine the days the transportation system will operate for those children for whom educational services are provided through contractual agreements with the DESE. The transportation system will operate the same number of days for these children as for the children attending state-operated schools.

(6) The superintendent shall approve the routes and time schedules for the transportation system providing service for children attending private agencies through contractu-

al agreements with the DESE as s/he approves the routes and time schedules for the transportation system providing services for children attending state-operated schools.

AUTHORITY: section 162.735, RSMo 1986. This rule previously filed as 5 CSR 70-760.070. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed June 4, 1979, effective Sept. 14, 1979. Amended: Filed July 23, 1993, effective Jan. 31, 1994. Moved to 5 CSR 20-300.150, effective Aug. 16, 2011.*

**Original authority: 162.735, RSMo 1973.*

5 CSR 20-300.160 Establishment of Sheltered Workshops

PURPOSE: The Department of Elementary and Secondary Education, Division of Special Education shall issue a certificate of authority to a not-for-profit corporation that meets the requirements listed in this regulation to operate a workshop which offers but does not entitle employment to persons with disabilities who have been approved by the department for such employment. Corporations seeking a certificate of authority shall file documents prescribed by statute and regulation.

(1) For the purpose of this rule, the following terms shall mean:

(A) "Employee"—a person with a disability ("disabled persons" as defined in section 178.900, RSMo) employed in a workshop. All persons employed by a sheltered workshop shall demonstrate productive capacity and their behavior shall contribute to the work environment of that shop. These regulations shall neither mandate nor prohibit employment of individuals who require personal supports which go beyond reasonable accommodations;

(B) "Staff"—persons employed by a workshop as defined in section 178.900, RSMo;

(C) "Workshop"—an extended employment sheltered workshop as defined in section 178.900, RSMo;

(D) "Department"—the Missouri Department of Elementary and Secondary Education;

(E) "Disability"—those conditions as defined in section 178.900, RSMo;

(F) "Gross revenue"—income from all sources;

(G) "Accrual accounting system"—a system of accounting based on recognition of income and expenses when incurred;

(H) "Productive capacity"—the amount of work accomplished by an employee with a disability, with reasonable accommodations, in proportion to that accomplished on the

same or similar task by an experienced non-disabled employee. A minimum productive capacity level may be specified by the board of directors;

(I) "Full-time equivalent (FTE)"—equals six (6) person hours per day worked by an approved employee or combination of employees; and

(J) "Reimbursable time"—time or activity that is related to production, training, and/or reasonable wait time, which must be paid in accordance to United States Department of Labor regulations, that occurs normally as a part of the production process. After wait time exceeds twelve (12) consecutive hours, state aid can only be claimed if training is provided.

(2) A not-for-profit corporation, registered with the Missouri secretary of state, founded for the purpose of administering a workshop, and engaged in the employment and rehabilitation of people with disabilities, as defined in section 178.900, RSMo, shall be a corporation engaged in the business of operating a workshop. The department only has authority to monitor activity associated with the business of operating a sheltered workshop or related to funding provided for operating a sheltered workshop. The workshop may enter into a written agreement for the purposes of sharing the purchasing of materials or services, sharing personnel, or sharing buildings and equipment. The agreement shall provide the responsibilities of each party. The agreement or any renewal or extension of the agreement shall be approved by the governing board of directors of the sheltered workshop who will ensure that the agreement does not violate any state or federal laws. The corporation shall apply for and be granted a certificate of authority from the department in order to qualify for the receipt of state funds. To make application for a certificate of authority, a corporation shall file form FP-100-1 (Application for Extended Employment Sheltered Workshop Certificate), together with each of the following documents with the department for its review and approval:

(A) An authorization from the Wage and Hour Division of the United States Department of Labor to pay subminimum wages;

(B) Evidence of exempt status under section 501(c)(3) of the *United States Internal Revenue Tax Code*;

(C) A copy of the first year's proposed budget which contains the following:

1. Budget message;
2. Estimated revenue;
3. Proposed expenditures;
4. Amount required for interest payments on debt;



5. Amount required for principal payments on debt; and

6. Budget summary.

In addition to the proposed budget, incorporation papers and bylaws for the workshop shall be provided to the department;

(D) Evidence of Workers' Compensation insurance, as well as sufficient other insurance coverage to adequately protect its employees, the general public having access to workshop property, and all real and personal property for which the workshop is responsible from loss and liability. Workshops shall consider the recommendations of all local, state and federal monitoring agencies when designing insurance coverage and safety programs;

(E) A list of any approved grants, the funds from which would be used in the operation of the workshop;

(F) A copy of one (1) or more income-producing contract for the workshop, which is or together are sufficient, in the judgment of the department, to provide work for at least fifteen (15) full-time employees for at least a three (3)-month period;

(G) Organizations that have been in existence for more than one (1) year prior to application shall supply a certified audit of the previous fiscal year's operation;

(H) Evidence of an active work force of not fewer than fifteen (15) eligible employees;

(I) Evidence of exemption from sales/use taxes from the Missouri Department of Revenue;

(J) Evidence the corporation has use of an appropriate facility or facilities in which to operate a workshop which substantially complies with all applicable federal, state, and local laws and regulations relating to safety, health, and accessibility; and

(K) A description of the proposed administrative and supervisory staffing to be employed to conduct daily operations of the workshop.

(3) Within fifteen (15) days of receipt of an application, the department shall notify the applicant whether the application is considered complete, and if not, what deficiencies exist. The omission of any of the documents specified in section (1) from the application or the failure of the applicant to complete the form FP-100-1 (Application for Extended Employment Sheltered Workshop Certificate) may result in the review and approval of the application being delayed or rejected. Applicants submitting incomplete materials shall have forty-five (45) days from the date of receipt of a notice from the department of the application being incomplete to complete all materials and to respond to any questions or file with the department additional docu-

ments which it may require. Applications which are not complete, as determined by the department, within sixty (60) days of their original receipt shall be rejected and notification of such rejection sent to the applicant. Any subsequent submittal by the same applicant shall be treated as a new application for the purpose of review and approval.

(4) Within thirty (30) days of the department's notification of the applicant that its application is complete, the department shall schedule a public hearing in the local community in which the workshop is proposed to be located. The time and place of the public hearing shall be determined by the department, in consultation with the applicant. The department shall file all notices required by law to conduct a public hearing.

(5) The department shall notify the applicant in writing within ten (10) days following the hearing of its decision whether or not to grant a certificate of authority. If the application is approved, the department shall issue a certificate of authority within thirty (30) days of the hearing. If the department decides not to grant a certificate of authority, it shall notify the applicant in writing stating the specific reasons for its decision to deny a request to grant a certificate of authority. Applicants for whom a certificate of authority is not granted may appeal the decision pursuant to Chapter 536, RSMo.

*AUTHORITY: section 178.920, RSMo 2000. * This rule previously filed as 5 CSR 70-770.010. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.160, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013, effective March 30, 2014.*

**Original authority: 178.920, RSMo 1965.*

5 CSR 20-300.170 Operation of Extended Employment Sheltered Workshops

PURPOSE: This rule specifies minimum operating standards for a workshop which has been granted a certificate of authority.

(1) Continued operation of a workshop must be evidenced by the availability and eligibility of not fewer than fifteen (15) employees.

(2) The not-for-profit corporation which operates a workshop shall maintain substantial compliance with all federal or state statutes or regulations, or local ordinances at all times.

(3) A copy of any notification of noncompliance with federal or state laws or regulations shall be provided to the Department of Elementary and Secondary Education (department) by the workshop receiving such notice. This includes, but is not limited to, the United States Department of Labor, Wage and Hour Division; Occupational Safety and Health Administration; Department of the Treasury; Internal Revenue Service; and the Social Security Administration. Such notice shall be provided within twenty (20) calendar days of its initial receipt by the workshop. Failure to do so may result in the suspension of state aid payments.

(4) Gross revenues from the operations of a workshop shall be used first to support current operating expenses, including paying employees commensurate wages for comparable work in industry, in accordance with the regulations of the Wage and Hour Division, United States Department of Labor. Remaining revenue may be used for capital expenditures for equipment, buildings, or expansion of activities as determined by the workshop board.

(5) A workshop shall maintain sufficient insurance coverage to adequately protect its employees, the general public having access to workshop property and all real and personal property for which the workshop is responsible from loss and liability. Workshops shall consider the recommendations of all local, state, and federal monitoring agencies when designing insurance coverage and safety programs.

(6) The corporate board of directors and workshop manager shall observe sound business and financial practice in all areas including but not limited to subcontracting, purchasing of materials, sale of products and services, budget and accounting control and safeguarding of property and material. The workshop shall maintain a comprehensive accrual or modified accrual accounting system which accurately represents the financial condition of the corporation. Separate and accurate financial accounting shall be provided for each major program provided by the workshop.

(7) No fees shall be charged to employees approved by the department to work in a workshop.

(8) Hourly wages paid approved employees shall not be less than ten percent (10%) of the minimum wage standard as determined by the United States Department of Labor. The average income per hour for each approved



employee working at piece rates shall be not less than ten percent (10%) of the minimum wage standard as determined by the United States Department of Labor during any work week.

(9) Approved employees of a workshop shall be engaged in production work, or vocational-related training at all times during which state aid is claimed. Vocational-related training shall be paid at ten percent (10%) of the current federal minimum. During any fiscal quarter, a workshop should have no less than eighty percent (80%) of its reimbursable time in income producing work. State aid shall be paid for vocational-related training time up to a maximum of twenty percent (20%) of a workshop's quarterly reimbursable time. The department may waive this requirement for workshops located in an area declared by the governor to be a state of emergency for up to one (1) year after the declaration. Documentation of the time per employee and content of vocational-related training provided shall be maintained for inspection by department staff.

(10) The board of directors of workshop shall notify the department of any change in the employment status of the workshop manager, (e.g., hire, release, placed on leave, etc.); the notification shall be made in writing within five (5) days of the change.

(11) The maximum work day for state aid purposes shall be as set forth in section 178.930, RSMo.

(12) Monitoring may be done periodically by the department to ensure compliance with these regulations. If the department determines there is evidence of a violation of regulation, the department shall notify the manager and board of the determination. The workshop shall prepare a corrective action plan to achieve compliance as required. The corrective action plan, with a time frame for completion, shall be submitted within ninety (90) days of receipt of the monitoring findings by the workshop. Failure to do so may result in the suspension of state aid payments.

(13) Every workshop shall have in effect written policies and procedures for investigating and resolving complaints of abuse and neglect.

(14) Every workshop shall have in effect policies and procedures for resolving employee grievances.

AUTHORITY: sections 178.900 and 178.930, RSMo Supp. 2013, and sections 178.910 and 178.920, RSMo 2000. This rule previously*

filed as 5 CSR 70-770.020. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Oct. 2, 1981, effective Jan. 18, 1982. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.170, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013, effective March 30, 2014.

**Original authority: 178.900, RSMo 1965, 2011; 178.910, RSMo 1965; 178.920, RSMo 1965; 178.930, RSMo 1965, amended 1972, 1973, 1975, 1979, 1987, 1993, 1994, 1997, 1998, 2001, 2007, 2010.*

Op. Atty. Gen. No. 21, Millan, 11-22-71. Neither special funds from levies authorized by section 205.971, RSMo (1969) pertaining to county sheltered workshops nor funds from general revenue may be used by the directors of a county sheltered workshop or by a court to pay for the support, care or upkeep of county residents in a county sheltered workshop facility of another county. Persons living at a county residence workshop facility must come within the definition of "handicapped persons" in section 178.900, RSMo (1969) and be employed at the facility or in the community.

5 CSR 20-300.180 Renewal or Revocation of a Certificate of Authority

PURPOSE: Renewal of a certificate of authority is required annually and revocation may occur under certain conditions.

(1) Workshops which are current grantees of a certificate of authority shall apply to the Department of Elementary and Secondary Education (department) each year to seek renewal of the certificate. Renewal of the certificate of authority is based on the submission of an annual report by the board of directors of the workshop corporation four (4) months after the end of the workshop's fiscal year. Failure to provide the necessary information by the due date may result in the suspension of state aid payments. The annual report should include, but not be limited to, the following items:

(A) The proposed budget for the current fiscal year;

(B) An audit prepared by an independent certified public accountant for the fiscal year just ended;

(C) A listing of the board's membership, including the name, address, office held and expiration date of each member's term;

(D) An original copy of a signature sheet showing the official signatures of the officers of the corporation;

(E) A list of all management and supervisory staff, indicating the position, normal

work location and length of service with the workshop corporation; and

(F) An original copy of the assurance of compliance form signed by the president and secretary of the workshop corporation board.

(2) If the department determines the workshop board of directors is not in substantial compliance with these regulations, and depending on the nature and severity of the situation, the department may—

(A) Notify the workshop board of directors and manager that the workshop is not in substantial compliance with these regulations; and

(B) Require a corrective action plan within ten (10) business days; or

(C) Issue a temporary certificate of authority; or

(D) Suspend state aid payments until it is determined that the workshop is again in substantial compliance with these regulations; or

(E) If the workshop does not return to substantial compliance within ninety (90) days the state may proceed to revoke the workshop's certificate of authority pursuant to section 178.920(4), RSMo.

(3) Applicants which have been found by the department not to be in substantial compliance with federal or state laws or regulations may appeal the decision pursuant to Chapter 536, RSMo.

AUTHORITY: section 178.920, RSMo 2000. This rule previously filed as 5 CSR 70-770.030. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.180, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013, effective March 30, 2014.*

Original authority: 178.920, RSMo 1965.

5 CSR 20-300.190 Approval of Eligible Employees

PURPOSE: The department shall determine the eligibility of applicants as persons with disabilities. This rule provides the process for determining eligibility of non-staff persons applying for employment in workshops. Workshops may receive state aid only on persons with disabilities who have been approved by the department. Department approval is not required for the employment of workshop staff.

(1) A workshop provides employment for individuals with disabilities. If the workshop is certified by the United States Department of Labor, Wage and Hour Division, employees



with disabilities working in the workshop may be paid subminimum wages. The application for certification of a person with a disability is initially submitted by the workshop manager to the agency designated by the Department of Elementary and Secondary Education (department) or the department's representative for certification. The agency to which an application is submitted shall conduct an evaluation. If the agency determines the existence of a disability, it shall certify such. The evaluating agency shall advise the workshop of this certification and the workshop may submit the certification to the department. The department may approve the applicant for workshop employment.

(2) A workshop shall notify the department prior to or concurrent with the employment of any disabled person previously approved by the department. The department shall not pay state aid for workers with disabilities who have not been approved by the department for employment. Department approval is not required for the employment of workshop staff.

(3) The certification of eligibility for employment in an extended employment sheltered workshop shall be terminated one (1) year after a worker has obtained supported and/or competitive employment in an integrated and community-based business or industry. A person may reapply to the department for a certification of eligibility should the supported and/or competitive employment status change. The person must meet the eligibility requirements to receive a new certificate of eligibility.

AUTHORITY: sections 178.900 and 178.930, RSMo Supp. 2013. This rule previously filed as 5 CSR 70-770.040. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.190, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013, effective March 30, 2014.*

**Original authority: 178.900, RSMo 1965, 2011 and 178.930, RSMo 1965, amended 1972, 1973, 1975, 1979, 1987, 1993, 1994, 1997, 1998, 2001, 2007, 2010.*

Op. Atty. Gen. No. 21, Millan, 11-22-71. *Neither special funds from levies authorized by section 205.971, RSMo (1969), pertaining to county sheltered workshops nor funds from general revenue may be used by the directors of a county sheltered workshop or by a county court to pay for the support, care or upkeep of county residents in a county sheltered workshop facility of another county. Persons living at a county residence workshop facility*

must come within the definition of "handicapped persons" in section 178.900 RSMo (1969) and be employed at the facility or in the community.

5 CSR 20-300.200 Disbursement of Funds

PURPOSE: The department shall disburse state aid to each certified workshop based on the full-time equivalents (FTE) of approved employees who worked during the month. This rule specifies the disbursement process.

(1) After approval of a certificate of authority for a workshop, the Department of Elementary and Secondary Education (department) shall pay monthly, out of funds allotted to it for that purpose, to each workshop corporation pursuant to section 178.930.1(2), RSMo. Monthly state aid requests shall be submitted by the due date and time designated by the department. The department shall accept as proof of payment due a workshop, a statement signed by the president or vice president, acting in the absence of the president, and secretary, or treasurer acting in the absence of the secretary, of the workshop board and the workshop manager setting forth the dates worked and the number of hours worked each day for each approved employee with productive capacity employed by the workshop during the preceding month. These detailed records of work history by employee shall be maintained by the workshop for at least five (5) years following the year to which they apply and be made available for department inspection.

(2) Each workshop shall provide the department annually with a properly authenticated statement to permit the department to accept electronic submissions of invoices seeking the payment of state aid and electronically transfer state aid payments to workshop account(s).

(3) If it is determined by the department or by certified audit that a workshop has received state aid in excess of that which was permitted by statute and regulation, the workshop shall submit in writing to the department a repayment plan within thirty (30) days of determination of the overpayment. The department shall approve or deny the repayment plan and provide written notice of such to the workshop within thirty (30) days of its submission of the repayment plan. Repayment plans shall propose the return of all excess state aid over a period of time as determined by the department. The department may withhold state aid for the failure of a workshop to submit a repayment plan.

AUTHORITY: section 178.930, RSMo Supp. 2013. This rule previously filed as 5 CSR 70-770.050. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Oct. 2, 1981, effective Jan. 18, 1982. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.200, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013, effective March 30, 2014.*

**Original authority: 178.930, RSMo 1965, amended 1972, 1973, 1975, 1979, 1987, 1993, 1994, 1997, 1998, 2001, 2007, 2010.*