

160-4-7-.20 MANDATORY PRE-DETERMINATION OF LOCAL EDUCATIONAL AGENCY'S INABILITY TO PROVIDE SERVICES TO A STUDENT(S) WITH A DISABILITY.

(1) REQUIREMENTS.

(a) Prior to any LEA determining it is unable to serve an eligible child with disabilities, the local school superintendent shall contact the state school superintendent to explore possible alternatives for services. GaDOE shall provide assistance to the local school superintendent in locating needed services, where appropriate.

(b) The State Board of Education may determine that an LEA is unable to establish and maintain programs of free appropriate public education. Should the state board make such determination, the following procedures shall apply: Notice shall be given to the LEA of the proposed determination; the LEA shall be given the opportunity to respond to the proposed determination by presenting oral testimony and documentary evidence to the state board; evidence and notice of such testimony shall be sent to the state school superintendent 10 days before it is to be presented to the state board; and the members of the state board shall have the opportunity to ask questions of the state school superintendent or staff and the LEA.

(c) When an LEA determines that it is unable to provide a free appropriate public education to an eligible child with disabilities after an individualized education program (IEP) has been developed by its IEP Team, the LEA shall notify, in writing, the state school superintendent. However, prior to sending such notice, the LEA shall exhaust all avenues for providing services for the child. The unavailability of a teacher or other necessary employees shall not be sufficient cause for the LEA to be deemed unable to provide a free appropriate public education to the student in question.

1. The LEA's written notice shall include:

(i) A resolution of the local board of education stating that it is unable to serve the student;

(ii) A copy of the child's past and current complete special education record, including at a minimum the IEP, placement minutes and comprehensive evaluation information.

(iii) An explanation of the LEA's inability to provide a free appropriate education to the student, including efforts made by the LEA to provide special education services in accordance with the child's IEP, and efforts to develop and/or locate services.

2. The state school superintendent and any necessary GaDOE staff shall review the notice and may request additional information.

3. After a review of the notice, the state school superintendent may either:

(i) Concur with the LEA, or

(ii) Disagree with the conclusion of the LEA.

4. If the state school superintendent concurs with the LEA, special education and related services shall be provided to the student. The state school superintendent shall inform the state board of the decision.

5. If the state school superintendent disagrees with the LEA, he or she shall make a recommendation to the state board regarding the LEA's ability to serve the student and shall send a copy of the recommendation to the LEA.

(i) The state board shall determine whether the LEA is unable to serve the child. The state board shall have the authority to determine that the LEA is either unable to serve the student, regardless of the position taken by the LEA.

6. If the state board determines that the LEA is unable to serve the student, special education and related services shall be provided to the student.

(d) If the state board determines that the LEA is unable to serve the student, the state board shall assume responsibility for the implementation of the IEP by locating services or, if not located, by providing services directly or through contract.

1. Once services are implemented, the LEA shall be responsible for any amendment and/or annual review of the student's IEP.

2. GaDOE shall maintain oversight responsibility of the IEP, and shall be responsible for ensuring the delivery of services and compliance with the IEP.

(1) GaDOE shall develop an oversight plan specifically for the LEA. The plan shall specify a time frame for the reporting responsibility of the LEA and the level of involvement of GaDOE with the LEA in regard to the student's IEP and its implementation.

3. If the LEA is determined by the state board to be unable to serve a student and GaDOE locates services in accordance with paragraph (1)(d), then GaDOE and the LEA shall share the financial responsibilities. If GaDOE provides services directly or through contract, then GaDOE shall retain from the LEA the necessary state and/or federal funds to provide such services to the student.

4. The state board may implement Rule 160-5-2-.02 Withholding of Funds as necessary.

(2) The administrative hearing procedures shall not apply.

[See 34 C.F.R. § 300.175; § 300.221; § 300.227]

(2) This rule shall become effective July 1, 2007.

Authority O.C.G.A. § 20-2-152; 20-2-240.

Adopted: June 14, 2007

Effective: July 1, 2007