

Carol accepted



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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COMMENTS

Four horizontal lines for handwritten comments.

Sheet #1 of 24

- when to recontact consumers?
- Hang back/or more forward.
- comments on substance

*Q: Kennedy Fellow
George Percey*

To: Secretary Riley

From: Mike Smith
Judy Heumann

Date: 12/9/94

Attached is a briefing paper on the status of the IDEA reauthorization. We will be meeting to discuss it with you on Monday, December 12th from 1:30 to 3:00.

As you know, we are planning to submit a reauthorization proposal in February. However, we believe that it is important to begin sharing details of our proposals with Hill staff and constituency groups as soon as possible in order to begin to build support for the new directions we will be proposing.

The paper lays out our "vision" for the reauthorization. It then includes specific recommendations for statutory changes that the two of us both agree on in 8 key areas: assessments, IEPs, initial and triennial evaluation, eligibility, federal and state funding formulas, discretionary programs (professional development, technical assistance, research and parent training), due process requirements and state plans. You have already seen and agreed with our proposals for assessments and the discretionary programs. The other issues in the paper we are presenting to you for the first time.

In order to make our meeting with you as productive as possible, we plan to spend very little time summarizing our proposals. Instead, we hope to answer the questions that you have about the proposals and to describe how we believe they will be received by the Hill and constituency groups.

We have been already have confidential discussions about this document with a small number of key groups and as well as with Senator Harkin's staff. Overall, the response to our proposals has been positive. The most concerns have been raised about our proposals for the federal funding formula, eligibility and discretionary programs. On the formula and eligibility, there is agreement that these are the right policy directions -- but that they will be controversial. On the discretionary programs, there is general concern about the loss of specific programs that serve important special interests.

Once we have your agreement to go forward on the specific proposals, we plan quickly to share a revised version of this paper with Carol Rasco and then with both Democratic and Republican Hill staff and with key constituency groups.

You should note that we have not included several important issues in this paper, particularly discipline, attorneys fees, schoolwide projects, increased fiscal flexibility for states, school districts and schools, and the details of proposals on technical assistance. We plan to come to you over the next month for your decisions on these and other issues.

cc: Terry Peterson, Kay Casstevens, Tom Hehir, Carol Cicowski, Colleen McGinnis, Jessica Levin, Theda Zawaiza, Sue Craig, Patty Guard

Terry
Sue
Caroline

DRAFT**IDEA Reauthorization**

School districts and states around the nation are actively engaged in education reform. The Clinton administration has forged new partnerships with states and communities to support their efforts to develop flexible, coherent and comprehensive strategies for educational improvement based on high standards for all students. The Goals 2000: Educate America Act, the School to Work Opportunities Act and the reauthorization of the Elementary and Secondary Education Act promote these comprehensive strategies based on high academic and occupational standards, improving teaching, and strengthening parental involvement.

The reauthorization of the Individuals with Disabilities Education Act (IDEA) must reflect this momentum both in spirit and letter. The IDEA was enacted in November, 1975, and has undergone numerous reauthorizations. The latest amendments were added in 1991. As we undertake the reauthorization process again we must view this endeavor as an opportunity to review a good law and improve and strengthen it based on 20 years of experience and implementation.

The right of children with disabilities to a free, appropriate public education is grounded in the United States Constitution. Prior to the enactment of the law, almost one million children with disabilities were excluded entirely from public schools. Two landmark court decisions, Pennsylvania Association for Retarded Children v. Commonwealth (1971) and Mills v. Board of Education of the District of Columbia (1972), established the constitutional responsibility of States and local school districts to educate individuals with disabilities. The drafting of the IDEA was guided by the principles of these court decisions and was intended to assist the States in meeting their constitutional obligations.

To quote from Sec. 601(c) of IDEA: "It is the purpose of this Act to assure that all children with disabilities have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities."

As we review the purpose and intent of IDEA within the framework of twenty years of implementation, we recognize our vision must reflect the progress that has occurred and the opportunities available to children with disabilities that were unthinkable twenty or even ten years ago. Today, a basic goal of the law -- assuring that children with disabilities have access to education -- has been largely achieved. Today, families can have a vision for their child. They can participate in a planning process for their child which is inclusive, both in school and community, and moves toward a future with employment opportunities, residential community options and varying degrees of independence.

In the past twenty years, results for children with disabilities have improved dramatically.

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Children with disabilities are no longer excluded from education. Graduation rates are higher. Rates of competitive employment are higher. Today, 56.8% of youth with disabilities are competitively employed within five years of leaving school. This compares favorably to the situation of Americans with disabilities of working age, only one third of whom are employed. [add data on savings from employment] The number of children served in costly residential facilities declined 24% from 1978 to 1988 -- leading to a cost savings of over \$1 billion. [add data on savings from deinstitutionalization of developmentally delayed]

In addition, the research and understanding of how to improve educational results for children with disabilities has increased significantly. As a result of twenty years of research, demonstration, dissemination and technical assistance, there exists an important knowledge base about effective strategies for teaching and learning for children with disabilities and a significant number of States, school districts and individual schools that are translating that knowledge into improved practice.

IDEA has been a primary factor in this progress and must continue to open doors for persons with disabilities. As the Americans With Disabilities Act recognizes, disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. And, improving educational results for children with disabilities is an essential element of empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence and integration into society.

However, while there has been great progress, there remain tremendous challenges. Over the past two decades, implementation of the law has focused on access to a free and appropriate education and procedural safeguards to ensure that access. While attention to these issues is critical, we know that it is not enough. Now that children with disabilities have been included in the classroom, the critical issue is to improve educational results. Despite progress, educational outcomes for students with disabilities remain less than satisfactory. The students served under IDEA are very diverse and represent a broad range of abilities. Too many students, without appropriate interventions or supports, are failing courses and dropping out of school. Enrollment in post-secondary education is low and there is a correspondingly high rate of unemployment. Often these students get in trouble with the law and spend significant time in jail. Results for students with learning disabilities and emotional disabilities are particularly poor -- and these students are approximately 60% of all students served under IDEA.

We also know after twenty years that there is no "quick" or "easy" fix. Hoping that the right thing will happen is not sufficient, nor can we continue along the current pathway without some improvements in the law. As we construct our vision for the reauthorization of the IDEA we must take an honest look at what we have learned from the past twenty years and make improvements to reflect these findings. In this spirit, we have the opportunity to improve IDEA to ensure both that the fundamental objectives of the law are more likely to be achieved and that the existing rights and protections for children and their families are preserved and maintained.

An original goal of IDEA was to ensure access to educational opportunity. An equally

rep. important goal was to ensure that student's educational services and placement are determined on an individualized basis, based on the unique needs of the child, in the least restrictive environment. To reach these goals we must focus on teaching and learning, educational results, individualized approaches in the least restrictive environment, and ensuring that students with disabilities graduate from high school prepared for independent living and work or continued education. We must build on the experience and research developed in the past twenty years. As we know more about how children learn, we know that all students with disabilities, given the opportunity, can achieve more than we ever believed possible. It is our responsibility, within the framework and the spirit of the law, to provide this opportunity.

Our vision is constructed on a framework of five key principles that clearly define our mission to improve results for students with disabilities.

- (1) Align IDEA with State and local school reform efforts to enable students with disabilities to benefit from those efforts.
- (2) Promote high expectations for students with disabilities and access to the general curriculum in the regular classroom, wherever appropriate.
- X (3) More effectively address individual student needs in the least restrictive environment.
- (4) Ensure that those who are closest to students -- families, teachers and principals -- have the knowledge and training they need to work effectively with students and with each other.
- (5) Focus resources on teaching and learning.

The pages that follow suggest some new directions that will be critical to achieving each of these principles. Both the five principles and the new directions are drawn from extended and in-depth consultations with a range of organizations and individuals committed to improving results for students with disabilities. These principles and new directions reflect a serious and comprehensive review of suggestions and recommendations generated by the Federal Register notice requesting comment on the IDEA reauthorization. Some issues, such as discipline and Part H, will be addressed in separate documents.

The new directions are designed to achieve these principles will require carefully selected refinements in Part B of IDEA as well as substantial redesign of Parts C through G. These new directions strengthen the law by making it more meaningful for children with disabilities and their families and in no way diminish the opportunities and safeguards guaranteed in IDEA as it stands today.

Families of children with disabilities stand on the brink of an exciting era -- an opportunity to take giant steps toward a life of independence and fulfillment for their son or daughter. The results of families, schools and advocates working together for the past twenty years are

beginning to come to fruition as students are leaving the school system better equipped to live and work in their communities. However, there is still much work to be done.

I. ALIGN IDEA WITH STATE AND LOCAL SCHOOL REFORM EFFORTS TO ENSURE A SYSTEM THAT ENABLES STUDENTS WITH DISABILITIES TO BENEFIT FROM REFORM

School districts and states around the nation are actively engaged in education reform. Goals 2000, School to Work, and ESEA promote comprehensive strategies for education reform based on high academic and occupational standards, improving teaching, and strengthening family involvement. To ensure that children with disabilities benefit from these reform efforts, we should strive for a system of education that helps all children, including children with disabilities, learn to high standards. This reauthorization can help to foster the development of such a system.

To understand what it really means to align IDEA with federal, state and local school reform efforts, it helps to look at the major reform components. These include 1) challenging standards and aligned assessments for all children; 2) comprehensive state and local reform plans; 3) high-quality professional development aligned to the standards; 4) comprehensive technical assistance; and 5) whole school, rather than categorical, reform efforts. On a basic level, alignment could mean the linking of special education programs and processes with each of these components. On a more fundamental level, however, this goal strives to promote the transformation of our current programmatically-driven education system into an education system for all children.

✓ We envision an education system that would set higher expectations for all students, give all students the opportunity to learn to challenging standards, and take responsibility and be accountable for the success of all children. To the extent appropriate, students with disabilities would have access to the same curricula aligned with the State's content standards that other students are receiving and be included in State and local assessments. The needs of students with disabilities would be considered as part of State and local planning for regular education and not regarded solely as special education's responsibility. All teachers (both regular and special) would be trained to teach to high standards. And the needs of all children would be considered as States revise licensing and certification standards for teachers, as local educational agencies reform governance and management to focus on improving teaching and learning, and as schools mobilize the involvement of families and the community in reforming schools. In this context, special education would not be regarded as a separate program or place for children with disabilities but a source of supports for children with disabilities who need them for a meaningful and effective education.

The new directions we describe below are critical to the development of a system that meets this vision.

II. PROMOTE HIGH EXPECTATIONS AND ACCESS TO THE GENERAL CURRICULUM IN THE REGULAR CLASSROOM

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A critical element of aligning IDEA with state and local education reform efforts is promoting high expectations for children with disabilities commensurate with their unique needs and access to the general curriculum in the regular classroom, when appropriate. We know from experience and from research that when we have high expectations for students with disabilities, ensure their access to the general curriculum whenever appropriate, and provide them the necessary accommodations and supports, many can achieve to high standards -- and all can achieve more than society has historically expected. Despite our knowledge, the education system too often fails to have challenging standards for these students or even to take responsibility for their academic progress. Instead, too often, the system provides a "watered down" curriculum, fails to set meaningful educational goals, and excludes them from state assessments. While the original intent of IDEA was to ensure access to an appropriate education based on individual needs, including access to the general curriculum to the maximum extent possible, special education is now too often seen as a "place" to send students rather than a set of services and supports designed to ensure students have meaningful and effective access to the general curriculum and achieve to high standards.

There are two complementary and inter-related strategies for promoting high expectations: (1) including students with disabilities in state assessments; and (2) strengthening the IEP process to focus on access to the general curriculum and educationally meaningful goals.

Challenging standards and aligned assessments are a central component of state and local school reform efforts. One strategy to help ensure that the education system has high expectations for students with disabilities and includes them in school reform efforts is to require that these students be included in state assessments and the results be publicly reported. When schools are required to assess students with disabilities and report on the results, schools are more likely to focus on improving outcomes for students with disabilities and students are more likely to have access to the general curriculum.

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But, including students in assessments is not alone sufficient to meet these goals. The IEP -- which plays a central role in the implementation of IDEA -- must also effectively support them. However, there is much concern in the field that IEPs too often fail to include meaningful educational goals designed to provide students with access to the general curriculum and the special education and supports to enable them to attain high standards. While current law does not prevent teachers from developing such an IEP, current law does not sufficiently promote the development of effective IEPs.

Experience offers insight into why this is the case: IEP meetings are often a discussion of only the few hours each day or each week the child is "in" special education and of short term objectives that bear little relation to how children learn or their parents' aspirations for them. The IEP team is not required explicitly to explain why services are not being provided

in the regular classroom, if that is the case. And, since the law does not require regular education teachers to attend IEP meetings, for those students who spend much of their day in the regular classroom, the discussion of what instructional approaches and services are necessary to enable the student to achieve to high standards often takes place without the teacher with whom the student spends most of her time. As a result, the IEP process too often results in a paper exercise characterized by fragmented goals, lower expectations, and instructional irrelevance.

There is a fair amount of consensus that this is in stark contrast to what IEP meetings should be -- an opportunity for parents and the child's teachers to discuss a student's progress, how he will have access to the general curriculum to the extent appropriate and achieve to high standards, what special education services and accommodations she needs to achieve to high standards, whether he will be included in standard or in alternative assessments, and the extent to which the student can receive these services in the regular classroom. After 20 years of experience, we have learned much about how the effectiveness of IEPs, but the law has not changed to reflect our knowledge. In this reauthorization we should increase the utility of the IEP to preserve the individualized educational planning that is central to effective teaching and learning while reducing paperwork requirements that do not benefit families, students or teachers.

New Directions for Assessments:

- o Amend IDEA to require states to include all students with disabilities in the general assessments aligned with a state's content standards, with few exceptions.
- o Recognizing that a small number of students with significant cognitive disabilities cannot appropriately be included in the state assessments that are aligned with their state's content standards, states-- in their IDEA plans-- would justify the extent to which they propose not to include students with disabilities from the state's assessments, and would phase in alternative assessments for students whose participation in the general state assessment is not appropriate and to report on their performance.
- o States would report on results of assessments for students with disabilities.
- o The IEP would justify when the inclusion of a student in the general state assessment is not appropriate and to document the alternative assessment used.
- o As appropriate, provide guidance that generally an exclusion rate exceeding 1-2% of the general population may be an initial indicator of a potential problem.

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New Directions for IEPs:

- o Amend the IEP provisions of IDEA to create a more useful IEP that contains the following elements:
- (1) a description of the student's present levels of performance, including how the student's disability affects his ability to access the general curriculum and his present level of performance in relationship to that curriculum;
 - (2) description of the supports and accommodations provided to enable participation in the regular curriculum and assessments and enable achievement to high standards, including supports to the student's teacher;
 - (3) statement of where these supports and accommodations (including special education instruction) will be provided and, if they are not provided in the regular classroom, document why they are not;
 - (4) if a student, because of the nature of his disability or the special education services he is receiving, needs different goals than those reflected in the general curriculum, a statement of measurable annual goals, how those goals will be assessed, and a description of the supports and accommodations provided to enable the child to meet those goals, including supports to the student's teacher [no short term objectives would be required];
 - (5) the projected date for initiation and anticipated duration of special education services, supports and accommodations;
 - (6) consideration of the student's progress, based on on-going classroom assessment, and whether the student continues to need special education or related services;
 - (7) if a student has failed to achieve expected progress in the general curriculum or the annual goals of the IEP, a revision of the student's program to address this failure;
 - (8) for students 14 and over, a plan for transition, including attention to the student's course of study (e.g., participation in a school to work or vocational education program) as well as the transition services to be provided consistent with current requirements; and
 - (9) consideration of the parents' aspirations for their child and

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2 | statement of how the parents will be kept regularly apprised of their child's progress (by means such as periodic report cards, parent-teacher meetings, etc....).

The board o Amend IEP provisions to require that at least one of the student's regular education teacher(s), in addition to the special education teacher, attend the IEP meeting.

III. MORE EFFECTIVELY ADDRESS INDIVIDUAL NEEDS IN THE LEAST RESTRICTIVE ENVIRONMENT

A central purpose of the IDEA is to ensure an effective and individualized education designed to address each child's unique needs in the least restrictive environment. However, for many children, this promise has not been met. In the years since the law was first enacted, we have discovered that certain provisions of the law create disincentives for individualized approaches in the least restrictive environment. Analysis of our experience over the past 20 years shows that the initial and triennial reevaluation requirements, the current categorical eligibility criteria, and the funding formula all create significant barriers to individualized services for students in the least restrictive environment. We discuss each in turn.

Evaluation, Annual Review and Triennial Reevaluations

In order to help students achieve to higher standards, parents and teachers need to have usable information about the student's functional abilities and what supports and services she needs --how does the student learn, what instructional strategies are most effective for this particular student, what progress should be expected, what supports or accommodations are necessary to ensure meaningful access to education. The initial and triennial evaluation and annual review are the tools for obtaining this vital information. In order to be effective, they should be instructionally-relevant, functional analyses that help parents and teachers understand both whether the student requires special education and related services and how best to enable the student to achieve to high standards.

However, far too often, initial and triennial reevaluations consist of a battery of standardized tests that are not or only partially related to the student's instruction or academic progress. They look primarily at which of the thirteen disability categories the student fits within in order to place a label on the child -- rather than focusing attention on how the child functions in the classroom. And, annual reviews often fail to take a hard look at the results of on-going classroom based assessment; what changes in the child's program are necessary to improve results, or whether the child continues to need special education and related services. Most professionals agree that the current statute and regulations result in excessive

add attention to identifying and labeling the disability rather than identifying the child's educational needs.

Sum Evaluations and triennial reevaluations as currently implemented also detract resources from the primary goals of teaching and learning. School psychologists spend most of their time administering evaluations and reevaluations with little instructional relevance rather than working directly with students, parents and teachers to improve results for students. In fact, even students with clearly permanent disabilities must be subjected every three years to a battery of tests to determine whether they remain disabled. Streamlining evaluation and reevaluation procedures to focus them on what is necessary will free up the time of school psychologists and other staff to help more students.

New Directions for Evaluation, Annual Review and Triennial Reevaluations:

Initial Evaluation

- o Modify regulations governing initial evaluation to promote more functional, instructionally relevant evaluations.

Annual Review

- o Amend IEP provisions to require that the annual review include consideration of both student progress based on on-going classroom assessment and whether the child continues to need special education or related services.

Triennial Reevaluation

- o Under current law, agencies are required to determine whether the child has a disability at each reevaluation -- even if the parent and school agree that the child continues to have a disability. Moreover, the reevaluation must address all areas of suspected disability, regardless of the utility of the information for the parent or the school or whether they already have that comprehensive information from other sources. In addition, current practice in many districts is to simply re-administer the same procedures that we used in the initial evaluation, regardless of their current appropriateness.

These new directions would make reevaluation provisions more functional by giving the reevaluation team flexibility to determine, based on professional and parental judgment, what procedures are necessary to effectively determine what -- if any -- special education services the student needs to achieve to high standards. In a change from current law, public agencies would not be required as part of each reevaluation to make a new determination as to whether the child has a disability, unless the public agency or the parent believes that such a determination is warranted.

In particular, the reevaluation provisions would be amended as follows:

(1) Define "reevaluation" as procedures conducted by a multidisciplinary team or group of persons to determine the child's current level of performance and educational needs, including whether the student continues to need special education services. The procedures used to conduct a reevaluation must include those tailored to assess specific areas of educational need and not merely those designed to provide single general intelligence quotient.

(2) While continuing the requirement that a reevaluation be conducted for each child with a disability every three years, or more frequently if conditions warrant or if the child's parent or teacher requests a reevaluation, make the reevaluation more functionally useful. To this end, require that, when a reevaluation is to be conducted, the public agency shall, using a multidisciplinary team or group of persons, review existing assessment and evaluation data regarding the child, and determine what additional data are needed to determine the child's current level of performance and educational needs, including whether the student continues to need special education services.

(3) Require that, when a reevaluation is to be conducted, the public agency shall provide prior written notice to the child's parents that:

- (a) Summarizes existing assessment and evaluation data regarding the child;
- (b) Informs the parent as to whether the evaluation will include a determination of whether the child continues to have a disability;
- (c) Describes the evaluation procedures that the public agency proposes to conduct, and the purpose for each such procedure; and
- (d) In cases when the agency is not proposing to include a determination of continued disability, informs the parents that they may request that the reevaluation also include a determination of whether the student continues to have a disability.

Eligibility

Research shows that the instruction and services a student needs depends upon an individualized functional analysis of the child, not the child's particular disability category. Nonetheless, current law fosters a categorical approach to instruction and service delivery that focuses solely on the disability category without recognizing that many students within each

category have very different functional abilities and instructional needs.

The thirteen disability categories in the law define who is eligible to be served under IDEA. In many cases, once a student is identified as being in a particular disability category, he is assigned to a program for students in that disability category to be taught by a teacher trained in that disability category. However, the thirteen categories in the law are based on medical models and stereotypical patterns of performance for groups of persons and do not convey accurate information about an individual student's educational needs or how the disability affects an individual student's ability to succeed educationally.

Federal law does not require the labeling of individual students, although it does require reporting on the number of students in each disability category. However, the current statutory requirement that children be found to be in one of thirteen medically determined categories in order to be eligible under IDEA in combination with statutory reporting requirements have fostered a categorical approach to evaluating, labeling, placing and serving children. This categorical approach is inconsistent with the basic principle of IDEA that children should be served based on individual needs rather than stereotypical assumptions.

Not only is this categorical approach contrary to our fundamental goals and our research on best instructional practices, but also giving students labels such as "mentally retarded" or "emotionally disturbed" stigmatizes these students and breeds low expectations. And, children understanding from their label that they are not expected to succeed, fulfill our expectations by performing poorly.

The practice of labeling children in one of 13 categories also detracts from the central goal of schools: teaching and learning. States are spending considerable resources on evaluations to determine the appropriate diagnostic label (such as mentally retarded, learning disabled, autistic) for each child -- with little educational benefit.

Some states are already moving to less categorical approaches to eligibility and service delivery -- and are achieving better educational results for students with disabilities. However, they find their progress toward more efficient and effective approaches hampered by the current federal eligibility requirements. A revised eligibility definition could give those states the flexibility to move forward toward less categorical approaches, while permitting other states to retain their current eligibility criteria.

Under a revised eligibility definition, the same children would be identified as disabled and in need of special education services -- but the processes of identification would be instructionally relevant.

New Directions for Eligibility:

- o Amend IDEA to replace the current eligibility definition with a functional

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definition based on the first part of Section 504. A child with a disability eligible for services under IDEA would be defined as a child who has a physical, mental, or emotional impairment which substantially limits one or more major life activities, and who by reason thereof requires special education.

This change in eligibility criteria would not affect who is eligible for services under IDEA. All students who are currently eligible would remain eligible under the new definition. And, as under current law, only students who are in need of special education services as a result of their disability, would be eligible. Nor would this change require states to radically change their eligibility criteria-- they could retain what they now use, including a discrepancy definition for learning disability if they so wished. However, states that were ready to move towards less categorical eligibility criteria and assessments, consistent with section 504, would be able to.

Formula

To achieve our goal of ensuring that every child receives an appropriate education in the least restrictive environment and receives services based on individual needs not label, it is critical that federal and state financing systems do not create disincentives for appropriate placements and services. Unfortunately, current law and many state financing systems do just that.

Twenty years ago, when the federal law was first developed, Congress found that one million children with disabilities were excluded entirely from the public school system and many children with disabilities were participating in regular school programs but their disabilities prevented them from having a successful school experience because they were undetected. A critical purpose of the law was to ensure that children with disabilities were identified and served. A funding formula that funded states based on the number of students identified and served created appropriate incentives to identify children and serve them under IDEA. And, those incentives have been successful -- over 5 million students are served under IDEA and the number increases every year.

Today, the major policy concern is not that millions of disabled children are not identified or not enrolled in school. Critical issues instead are that too many children are served in inappropriately restrictive environments, and, in some communities, that children -- particularly minority children -- are often inappropriately identified as disabled in order to generate funding to either remove them from the regular classroom or purchase extra services for them.

The current federal funding formula often creates incentives that add to these problems -- and creates disincentives for those states that seek progressive solutions to them. For example, states such as Vermont and Pennsylvania have embarked on aggressive programs of early

intervention and pre-referral in order to serve students with disabilities in a less restrictive and more appropriate manner. Yet, as they engage in these practices to serve children early and inclusively -- practices that educators and families agree are exemplary -- they find the number of students identified as needing special education services -- and thus their federal funding -- is declining. The federal funding formula thus is a direct disincentive to best practice. Allocating funding to states based on census -- that is, the total number of children in the state -- would create incentives for states to undertake reforms such as pre-referral and early intervention and disincentives for over-representation of minorities. Such a change would not affect procedural safeguards or the requirement to identify and serve all children with disabilities who need special education. Allocating funding to states based on census would also simplify administration of the program -- reducing data collection burdens and avoiding the problems of inaccurate child counts.

State funding formulas frequently also contain disincentives to appropriately serving students in the least restrictive environment. For example, in some states, if a district seeks to keep a child in his neighborhood school because it believes that the student is appropriately served in the regular classroom, the state will not pay for the supports and accommodations that child needs to be able to succeed in that less restrictive environment. The lack of state funding in this instance is due solely to the state's funding formula, not the needs of the student. Indeed, that same state would pay most or all of the cost of an expensive separate placement. Not surprisingly, research shows that states that pay districts more for teaching special education students in restrictive environments have fewer students in the regular classroom.

New Directions for the Formula:

- o Amend IDEA so that allocations to states over and above their FY1995 funding levels would be based on the total number of children in the state, regardless of the number of children identified as disabled.
- o Amend IDEA to require states to demonstrate that their state funding formula does not create incentives for providing education in a more restrictive environment than is permitted by the LRE provisions.

IV. ENSURE THAT FAMILIES, TEACHERS AND PRINCIPALS HAVE THE KNOWLEDGE AND TRAINING THEY NEED TO WORK EFFECTIVELY WITH STUDENTS AND WITH EACH OTHER

Developing an educational system in which each child with disabilities has the benefit of high expectations, access to the general curriculum with the individualized supports and accommodations he needs, in the regular education classroom where appropriate, requires improved practice by teachers and administrators and new relationships between teachers and families. Achieving this goal will not be possible unless families, teachers and principals

have the knowledge and training they need to work effectively with students and with each other.

Developing knowledge, training, and better working relationships will require new approaches that build on our increased knowledge of what works for improving educational results for children with disabilities. First, the discretionary programs authorized under Parts C through G of IDEA should be restructured in ways that support: (1) intensive and powerful professional development that enables general education and special education teachers and principals to help students with disabilities achieve to high standards; (2) research that continually expands our knowledge of how to improve educational results for students with disabilities; (3) technical assistance that assists educators in using the lessons from research in the classroom; and (4) increased attention to assisting families in helping their children achieve to high standards. Second, specific steps should be taken to strengthen working relationships between families and schools in three critical areas -- increasing involvement of families in decision-making, improving information available to families, and reducing adversarial dispute resolution.

A. Restructuring the Discretionary Authorities

For 19 years, the discretionary authorities have played a critical role in supporting the development of knowledge about the needs of children with disabilities. However, few dispute that these 14 programs are not achieving their potential and could do far more in supporting the efforts of families, teachers, schools, administrators, researchers and institutions of higher education to work together to improve educational results for children with disabilities. Under current law, the 14 separate discretionary programs are free-standing and self-contained rather than tools for meeting the broader purposes of IDEA and improving the implementation of Parts B and H. Not only does the multiplicity and narrow focus of the programs impede the development of powerful, coherent approaches to improving results for students with disabilities, but also there are significant gaps in current authorities (e.g., model projects for students with learning disabilities are limited to children under 8 years old; model projects for drop-out prevention are limited to students who are in high school or who are severely emotionally disturbed). In addition, administering the numerous discretionary programs requires significant federal staff. As we work to make government smaller and more efficient, there will be fewer OSEP staff to administer these programs -- making effective administration problematic.

What is needed is a comprehensive and coordinated approach for using discretionary funds to improve results for students with disabilities by ensuring that families and teachers have the knowledge and training they need to be effective. This will require a new emphasis on systemic approaches to improving implementation of Parts B and H; a powerful research strategy; a well-coordinated system of technical assistance that addresses the most pressing needs of States efficiently and effectively; enhanced ability for State agencies to carry out their own plans for program improvement through professional development, technical assistance and systems change activities; and better coordination with other program

improvement activities funded other such authorities as Goals 2000 and ESEA.

Perhaps no other activity will be more critical in our effort to improve results for students with disabilities than ensuring that teachers and other staff serving students with disabilities have the necessary skills and knowledge to address their special needs. The need for professional development is particularly acute as States provide for participation of students with disabilities in curriculum aligned with State standards and the placement of more students in regular classrooms.

Historically, special education and regular education have operated as separate systems, with separate bureaucracies and separate training programs, even though today the majority of students with disabilities spend all or part of their time in regular education classes. Most "regular" education teachers have never received training on working with students with disabilities. Most special education personnel are ill-equipped to work in regular classrooms because their training focuses on serving students with disabilities primarily in segregated environments. This situation is slowly changing as more States are requiring special education training for new regular education teachers, and as more institutions of higher education are combining their schools of special and regular education. However, these reforms only affect new teachers. The bulk of the educational work force remains without education or training to serve students with disabilities.

Current professional development activities too often perpetuate this status quo. States are required to plan for comprehensive systems of personnel development (CSPDs) but are given few resources to implement them. Because training of regular and special education teachers proceeds on different tracks, little training is given regular education personnel to provide special education services even though most students with disabilities are educated in regular education classrooms for all or part of the day. And, insufficient training is given special education teachers in the content knowledge necessary to help students with disabilities learn to high standards or the skills necessary to work in integrated classrooms.

Moreover, institutions of higher education are the primary recipients of Part D funding but too often function independently of the needs of States for personnel. And, programs to develop new pre-service and in-service training programs are not linked with ongoing State personnel development activities or to broader State and national goals such as the development of model national standards or cross-categorical certification. Finally, the many separate independent awards made under Part D hinder overall reform of teacher training and systemic changes (e.g., portable certification requirements and reducing overspecialization) that would help address the need for qualified personnel.

What is needed is high quality professional development for all teachers and school administrators who work with students with disabilities designed to ensure high expectations, access to the general curriculum and appropriate services and supports provided, whenever possible, in the regular classroom.

New Directions for Discretionary Authorities:

- o Amend IDEA to create four powerful new discretionary authorities that would replace the current Parts C through G. The four new authorities would be: (1) Professional Development; (2) Research and Knowledge Development; (3) Technical Assistance and Systems Change; and (4) Family Training. Each is described below. In order to ensure that issues concerning the special needs of children with low-incidence disabilities are adequately addressed in the four discretionary authorities, there would be a floor for discretionary spending on low-incidence disability.

- o **Professional Development**

A restructured IDEA professional development authority would contain the following four elements: (i) National activities to support state of the art practices and promote portability and cross-categorical approaches; (ii) Activities to build capacity of colleges and universities to ensure strong leadership in regular and special education administration and teacher training; (iii) Regional grants to colleges and universities for increasing supply and quality of personnel to work with students with low-incidence disabilities; and (iv) Grants to SFAs for training of all teachers and principals working with students with disabilities tied to ESEA, Goals 2000 and an IDEA professional development plan. Each is described in detail below.

(i) **National activities to leverage the professional development system and build capacity of institutions of higher education and state professional development programs and promote state of the art practices.** This would be a general authority for national activities such as development of exemplary measures of assessing teachers and staff for licensure and certification; activities to promote cross-categorical approaches to training, certification, and licensure; and, activities that promote portability of certification.

(ii) **Activities to develop capacity of institutions of higher education to ensure strong leadership in regular and special education administration and teacher training.** Currently, approximately \$10.7 of Part D funds are used to support the development of special education leadership personnel, including teacher trainers, administrators, and researchers. In order to improve results for students with disabilities, this program should focus on ensuring that Ph.D level leadership personnel in both regular and special education have the skills and training necessary to help students with disabilities achieve to high standards.

The new authority would continue to provide scholarships and stipends, but

would maximize their effectiveness in improving pre-service training by: (1) giving preferences to institutions that connect their special education and general education programs; (2) supporting attention to special education issues in regular education programs for principals and other administrators; and (3) targeting awards to programs that are research-based and support best practices.

(iii) Grants to institutions of higher education for increasing supply and quality of low-incidence personnel. In many areas of the country there are significant shortages of personnel qualified to work with students with low-incidence disabilities -- autism, traumatic brain injury, deaf, blind, deaf-blind, significant and multiple disabilities. However, the current program is not effectively meeting the need. There are now several hundred separate grants supporting pre-service for low-incidence personnel. Not only does the geographical distribution of grants bear no relationship to the distribution of teacher shortages, but also most programs are extremely small -- many with only one professor.

A restructured low-incidence pre-service program would phase in a regional approach to support the development and long-term support of high-quality programs. Elements of the program would include: (1) grants would be made for pre-service programs by region for each low-incidence disability category; (2) grants would be fewer and larger to promote high quality programs and to promote cross-categorical approaches; (3) grants would be made to institutions of higher education or to regional consortia of such institutions and SEAs; (4) grantees would have to show how their program would meet the needs of the States in the region; and (5) grants would support portability of credentials by requiring States to indicate how they are working with other States in the region and with the grantee to ensure portability of certification for students trained in the program.

(iv) Grants to SEAs for IDEA professional development plan to support training of all teachers working with students with disabilities. The new authority would build on the newly enacted professional development authorities of Goals 2000 and ESEA to create a cohesive approach to the training of all teachers. It would also make IDEA professional development a driving force for improving the entire IDEA program by giving States the tools to address professional development under IDEA in return for increased accountability for attaining positive outcomes for students with disabilities.

In order to give States the ability to develop viable training systems, funds would be distributed to the States on a formula basis to meet their professional development needs for teachers of students with disabilities. At the heart of

this new authority would be a state plan for IDEA professional development linked to both the overall state IDEA plan and to the State's Goals 2000 and ESEA plans for professional development.

The State IDEA professional development plan would provide the framework for professional development for all teachers and administrators working with students with disabilities and the framework for expenditure of all IDEA funds used by the State for professional development (both grants under Part D and any of the Part B 20% State set-aside used for professional development).

The new authority would encourage deep attention to in-service training and increasing the quality of the current work force, while also recognizing the State's obligation to take responsibility for teacher shortages in high incidence areas. We believe that, except in exceptional circumstances, market forces should ensure an adequate supply of high incidence personnel.

In addition, the state plan would be tied to OSEP monitoring by requiring States to show how their professional development strategy addresses deficiencies identified in monitoring (including insufficient numbers of personnel). Currently, there is no link between state CSPD efforts and monitoring findings. Requiring state plans to address monitoring findings -- and giving states resources to address problems -- would create a "continuous improvement feedback loop" that could be a significant step in our efforts to improve implementation of IDEA.

o **Research and Knowledge Development**

This authority would support research, development, model demonstrations, outreach, and synthesis studies for all disability categories and all age ranges. It would invite broad-based planning from various constituencies in developing a comprehensive, long-range research and development agenda and would support large scale evaluations and assessments that have the potential to significantly increase our knowledge and improve the implementation of IDEA. Research would be systematically developed through demonstrations, disseminated through outreach systematically, and linked to technical assistance.

o **Technical Assistance and Systems Change**

This authority would support a range of coordinated technical assistance activities, such as statewide systems change grants, resource centers, and linkages to the comprehensive technical assistance centers to be funded under ESEA. Activities would be designed to ensure that the most current knowledge is rapidly communicated to educators; to enhance the ability of

State education agencies to carry out their own plans for program improvement; and to promote better coordination with other program improvement activities funded under such authorities as Goals 2000 and ESEA in order to leverage those resources and provide for the inclusion of students with disabilities in school reform activities.

o **Family Training**

This authority would build upon and strengthen current family training projects.

B. Strengthening Working Relations between Families and Schools

Families are a child's first and best teacher and their most important advocates. While the IDEA creates a strong framework for family-school collaboration, more could be done to strengthen working relationships between families and schools. Building upon current family training centers and heightening their focus on improving educational results for children is an essential element of an overall strategy. We believe that other key elements of an overall strategy include increasing involvement of families in decision making, improving notice requirements, and reducing the adversarial nature of the complaint and hearing process.

Involvement of families in decisions about their child's education are at the heart of the IDEA framework for family-school collaboration. Yet, families are often excluded from fundamental decisions regarding the placement of their child. While families are required by law to be included in IEP meetings, there is no requirement that placement decisions be made by the IEP team or that families be included in making placement decisions.

Detailed notice to families of their rights is a critical safeguard, yet families often receive notice of their rights in a blizzard of overwhelming and duplicative notices written in confusing "legalese." Current law requires full explanation of all rights whenever the school notifies the family of a proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to the child -- which can happen several times a year. IDEA reauthorization should ensure that families receive -- in understandable language and format, and with appropriate frequency -- the information they need to make informed decisions; and should also reduce the amount of redundant information that public agencies are currently required to provide to families.

The complaint and hearing process are central to implementation of the law. However, due process should be a last resort when less adversarial methods of resolving differences have failed. Due process hearings generally are very costly in terms of time and financial resources, and severely strain families' and school personnel's emotional resources and good will. Moreover, our experience under the Act indicates that due process is most commonly a very lengthy process and student needs may go months or years without being addressed while lawyers continue to battle. Many states have created mediation systems which have

been extremely successful in resolving family-school disputes quickly and effectively. However, states are not required to offer mediation to families, and in a number of states, families often have no opportunity to resolve disputes by mediation.

New Directions:

- o Modify regulations to require states to include families in placement decisions.
- o Amend IDEA notice provision to require that families receive notice of all essential safeguards once a year and that they receive notice of specialized information whenever that information is relevant. (For example, notice of specific due process hearing requirements would be provided when the school proposes an initial evaluation, when the family or agency initiates a hearing, or when the family requests information.)
- o Require state agencies to offer mediation as an option for dispute resolution and require the school district to engage in mediation if the family wishes to mediate. Ensure that mediation cannot be used to delay or deny access to due process.

V. FOCUS RESOURCES ON TEACHING AND LEARNING

Over the past twenty years, the IDEA and the implementation of the law have focused on process without sufficient attention to educational results for children with disabilities. The focus on process without an equally strong focus on educational results for children with disabilities, in turn, burdens schools, teachers and families with instructionally irrelevant activities and unnecessary paperwork. It will be far more difficult to achieve the significant improvements embodied in the other four principles without concomitant changes in how states and (locals) focus their attention and use their resources. The IDEA reauthorization must maximize the extent to which special education resources are devoted to teaching and learning of children with disabilities and must promote a greater focus on quality and results, not solely on process and compliance.

Many of the new directions discussed above will help to focus resources on teaching and learning. In particular, our proposed new directions for IEPs, eligibility, initial and triennial evaluations, and mediation will help to focus energy and resources on activities with clear educational benefits.

In the case of IEPs, new attention to access to the general curriculum and state assessments will help ensure a focus on educational results. And, the replacement of short-term objectives with meaningful annual goals and regular reporting to the family of the child's progress, will eliminate a paperwork requirement that most agree has little educational value

5:35 -
6:40

124
Particulars -
740 746

THE WHITE HOUSE

Carol H. Rasco

Secretary Riley -

Bill Halston has given me a report on your August 31 meeting on IDEA Reauthorization.

Thank you for the personal time and commitment you are giving to this issue!

Sincerely,
Carol

August 31, 1994

orig: CHR
xc: Stan
Jeremy / fyi

TO: CHR
FROM: Bill Galston
SUBJ: Reauthorization of IDEA

This morning I attended a two-hour meeting on IDEA chaired by Secretary Riley at the Department of Education. A number of outside experts were present (a list is attached to this memo).

As you might imagine, many issues were discussed, including:

- o the significance of Goals 2000 as a framework for special education; the distinction between kids who can meet national education goals with special services and those for whom the goals must be realistically adjusted

- o performance-based evaluation rather than the current special education obsession with process

- o perverse program incentives that generate overassignment to special education programs

- o the need to avoid programmatic and physical segregation of special ed from "regular ed" whenever possible

- o the importance of moving to earlier and more concentrated intervention as an alternative to longterm placement in special ed for many kids

- o the central role of programs such as Reading Recovery in effective early intervention

No firm conclusions were reached, but it's clear that Secretary Riley is now taking a personal interest in this legislation and intends to conduct a series of meetings--including some with critics and skeptics, none of whom were present in the room today.

List of experts and invited guests for the August 31 IDEA meeting with Secretary Riley

Brian McNulty, Ph.D. is Assistant to the Commissioner of Education in Colorado and Executive Director of the Office of Special Services. Prior to this, Dr. McNulty was State Director of the Special Education Services unit for seven years.

Diane Lipton is Staff Attorney with Disability Rights Education and Defense Fund (DREDF), a national law and policy center working for the civil rights of people with disabilities. She is the director of DREDF's State Support Center, which provides technical assistance on disability and special education law to legal services offices throughout California. Ms. Lipton is also the Director of DREDF's Children with Disabilities and Family Advocacy Program.

Robert Slavin is Director of the Early and Elementary School Program at the Center for Research on Effective Schooling for Disadvantaged Students at Johns Hopkins University. Dr. Slavin has authored and co-authored more than 140 articles and 14 books. He focuses on early reading intervention programs such as Success for All. He has coined the term ("neverstreaming") to describe a focus on keeping all children in the mainstream curriculum and class by intervening early to prevent academic difficulties.

Charlene Green is Associate Superintendent in the Chicago Public Schools. She is disabled and comes from a minority background.

Asa Hilliard is a professor of educational psychology in the Department of Educational Psychology and Special Education at Georgia State University. He focuses on the evaluation and assessment used to place students into special education. He recommends changing the assessment tools and to provide "dynamic assessments" with meaningful information and full description of how each student functions.

Edward Lee Vargas is Division Superintendent for Support Services, Santa Ana Unified School District, Santa Ana, California. He has a background as a special education teacher. He is mostly concerned about increasing accountability and about providing schools with the flexibility to improve the academic performance of special education students.

John Pannell is principal at Malcolm X Elementary School. His school is part of the early childhood inclusion programs in the District of Columbia.

Nancy Williams is a third grade teacher at Myersville Elementary School in Myersville, Maryland. She has experience with both regular and special education students.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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Carol

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The U.S. News and World Report's recent investigative report, "Special Education: Separate and Unequal", identified a number of critical issues which the education system must address. Although ~~these of us in the field of education recognize that we must do a better job educating children with disabilities and ensuring that they are included in educational reform and improvement efforts, we also realize that in many areas children with disabilities are being appropriately educated with the majority of them being educated in the regular classroom and included in every phase of educational reform.~~ It is the recognition of what the education system is doing right that I believe to be painfully omitted from the article. Unfortunately, this omission will result in the public having a less than balanced view of what is happening in special education. There have been significant accomplishments and positive changes for children and youth with disabilities as a result of the passage of P.L. 94-142.

When P.L. 94-142 was passed there were hundreds of thousands of students with disabilities who were denied public education. Also, it is important to remember that at the time of its passage large numbers of students with developmental disabilities were placed in institutions. The abusive conditions that these children experienced in these settings were well-documented at the time. The provision of free appropriate public education for these students has enabled thousands of children to stay with their families in their community.

I would like to also point out that when the law was passed education was just beginning to recognize the needs of children with learning disabilities, students with normal intelligence who had significant difficulties learning to read, write, or calculate. Though we have much to do to improve the education these children receive, we know from research that when these students receive sufficient help and access to appropriate curriculum, they are likely to be successful, employed adults. We also know that when these students are simply placed in general education programs without support and accommodations, they often fail and are far more likely to drop out of school and be unemployed.

If we are to make the promise of P.L. 94-142 a reality for all of our nation's 5 million children and youth with disabilities, we must address the problems encountered by the field while preserving our hard-won gains. We should never return to the days when disabled children and their families were denied the right to appropriate education.

Although we have devoted significant resources to educate disabled children, the cost of neglecting their needs, will be far greater. Disabled Americans have the highest unemployment rate of any minority group in the United States. President Clinton has emphatically stated that, "We do not have a person to waste." Improved access to effective education for people with

disabilities is central to achieving that vision. We are thus committed to insuring that the right of children with disabilities to an effective, individualized, education is preserved through improved implementation of the IDEA.

Judy Heumann (--) nature in Fed register
re request for county

Kathy Arnold

2 hrs / Sec Riley + Smith --

2 more briefings w/ Riley -- open

More briefings w/ assistants of Pallas
Law fundamentally good -- Part B

Region had score -- wholesale change

-- Special cont. make req. ed change --

impact on State Chap Exes

Superintendents

Principals

models that work

CHR: • Create system that will divert construction
rule -- reaching FAX + personal call limits
specific mandated by L.A. --

ACTION in MD

(Baltimore County

Mason
Warkel

JH: FAPE/LRE -

Continuum language in legislation

Lerin

NAPSE -- Peterson -- relevant

Klein CHR -- inventories out there for support in
reg relevant

Non dialogue teacher training +
school systems

Higher Ed + special ed disconnected
(help)

JH -- Field teacher training -

10-12
W 3-5

Responsibilities in enforcement

Appropriate

will call mid to look at style of Admin -

JH - - could just call - Bill C
re faculty inclusion

JH - - demand of therapies for autistic
kids

• district gets lot of \$ to ed in
separate setting / subwork
in integrated school

QKAR - 18 member IEP team

JH -> State & don't follow kids - Funding
Formula - authority re financing
system

JH - enforcement action against NY + NJ
Suzanne Kids + don't appropriate
placement

q BG -> research re outcomes + 94-142
principles

JH -> class visits - ^{commitment} principles committee
Chief State EO VT, NY, CO

- - social gains / disabled kids being
helped by comm -

JH - - don't have big - data set

Congress Mandated: National Longitudinal Study
5,000 kids in special
mid 80s

Kids wrapping around support
do better in reg. ed than other
But those receiving no supports
more likely to drop out;
generally supports LRE
Strong cautionary

In past 40 years, no data to
support special works -

JH: 50% orthopedic in special.

very much a civil rights issue
because general ed doesn't
work for those
teachers can set a kid off to
become disruptive
TR not available

40% more likely to be employed?
41% en live 1-dependently
never had evidence (Bulge)

= Continuum and sufficient needs in
interested part

-- One place

-- Improper applicant

-- avoid "Full inclusion" all time --

CHR: these kids (special) take
~~take~~ time from reg ed kids
tactic → part of kids

deaf issue → 78% non-handicapped school
will change

Tripod --

Many kids have the opt. r

JIT: 38% of OPs drop and
double reg ed
mildly mild d. -
already in reg ed -
no one talks to T
reasonable accommodation

Lain Brown -- much more than what
does on in the resource
room (seem room)

25% of day in reg ed so make
or break it phase

IEP ~~total~~ to funds allocated
school day - only just 25%

7LD funding

average 15:1 in Chicago, IL

(not my job to talk w/rag need
extra outside help of
kids in L.O.

Mark Kent w/d already in
reg ed already ^{50%} 50%

50% of kids normal intelligence
w/LDs

need different tests to identify
physics

J Klein -- Coverage re therapies --
JH: left burden from state

Judy W -- ^{who pays?}
plan say want pay for it

JH: willing to be involved in further
meeting re committee of
Health Care

Arbstein: LD -- appropriate labors? funding driver?

JH: referrals correlate to funding --

JH: kids w/LD underidentified

Some states up/some down
dispute in classification

Identification of LD - minorities; important to
overidentify for remedial purposes

-
-
-
-
-

lack of science
discouraging intellectual ability
& learning performance

(quality)

(6x)

overidentified some kids - -
but girls

2-8 boys

1- girls

involutes difficulty of reading

LD as hypothetical construct

5-7%

□

discipline issues - - could blow-up
appreciated it/ violence

50% - - not historically there

balanced
discuss but not address effects
~~of behavior~~ and prevent kids

only 13% of behavior kids -
some behavior management plans

□ How would you like to be treated?
- - briefing

□ London / Content of Leg ^{in reg} ^{in statute (reform state)}
in vitro (⊙)
• inclusion Merchandise
Mills bill -- sub Bar over



OFFICE OF
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Stan -

Here are the regulations —

Sorry I forgot to put them

in the big package —

Tom

F0Y Stan

federal register

**Tuesday
September 29, 1992**

Part II

**Department of
Education**

**34 CFR Parts 300 and 301
Assistance to States for the Education
of Children with Disabilities Program and
Preschool Grants for Children with
Disabilities; Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 301

RIN 1820-AA89

Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities**AGENCY:** Department of Education.**ACTION:** Final regulations with comments invited.

SUMMARY: The Secretary issues final regulations for the Assistance to States for the Education of Children with Disabilities Program under part B of the Individuals with Disabilities Education Act (part B). The regulations are needed (1) to implement the amendments to part B that were made by the Handicapped Programs Technical Amendments Act of 1988, the Education of the Handicapped Act Amendments of 1990 (1990 Amendments), the National Literacy Act of 1991, and the Individuals with Disabilities Education Act Amendments of 1991 (1991 Amendments), and (2) to make changes based on the Department's experience in administering part B. The Secretary also amends existing regulations to implement the amendments to the Preschool Grants Program under section 619 of the Individuals with Disabilities Education Act that were made by the 1991 Amendments.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of the following sections: § 300.110; §§ 300.121-300.123; §§ 300.1253-300.134; § 300.136; §§ 300.138-300.141; § 300.144; § 300.146; § 300.148; § 300.149; § 300.152; § 300.153; § 300.180; § 300.192; § 300.220; § 300.222-300.227; § 300.231; § 300.235; § 300.238; § 300.240; § 300.280; § 300.281; § 300.284; § 300.341; § 300.343; § 300.345; § 300.346; § 300.349; § 300.380-300.383; § 300.402; § 300.482; § 300.483; § 300.505; § 300.510; § 300.512; § 300.532; § 300.533; § 300.543; §§ 300.561-300.563; § 300.565; § 300.569; § 300.571; § 300.572; § 300.574; § 300.575; § 300.589; § 300.600; § 300.653; §§ 300.660-300.662; § 300.750; § 300.751; and § 300.754.

These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

ADDRESSES: All comments should be addressed to: Lucille Sledger, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3615), Washington, DC 20202-2720.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3615), Washington, DC, 20202-2720. Telephone: (202) 205-8825. Individuals with deafness or hearing impairments may call (202) 205-9090 for TDD services.

SUPPLEMENTARY INFORMATION:**I. Part B Program**

Part B authorizes formula grants to States and, through the State educational agencies (SEAs), to local educational agencies (LEAs) and intermediate educational units (IEUs) to assist them in meeting the special educational needs of children with disabilities. In order to be eligible for funding under this program, SEAs, LEAs, and IEUs are responsible for ensuring that all children with disabilities have available to them a free appropriate public education (FAPE), and that the procedural protections in part B and the implementing regulations are extended to these children and their parents.

These final regulations implement the changes made to part B by the Handicapped Programs Technical Amendments Act of 1988, the 1990 Amendments (Pub. L. 101-476, enacted October 30, 1990), the National Literacy Act of 1991 (Pub. L. 102-73, enacted July 25, 1991), and the 1991 Amendments (Pub. L. 102-119, enacted October 7, 1991). In addition, these regulations make changes based on the Department's experience in administering part B.

On August 19, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the Federal Register (56 FR 41268). The NPRM proposed to make the following changes to implement the 1990 Amendments:

(1) Add "autism" and "traumatic brain injury" as separate disability categories in the definition of children with disabilities, and include definitions of those terms.

(2) Delete "in schools" from "social work services in schools" in the list of eligible related services in § 300.13(a) of the current regulations for this part and

delete "in schools" from the definition of "social work services in schools" included at § 300.13(b)(11) of the current regulations for this part.

(3) Add a definition of "rehabilitation counseling services" to implement the statutory amendment to the definition of "related services" in section 602(a)(17) of the Act.

(4) Add the statutory definitions of "assistive technology device" and "assistive technology service" and include a requirement that if a child with a disability requires these devices and services in order to receive FAPE, the public agency must ensure that they are made available.

(5) Add provisions on transition services, including (a) a definition of "transition services" in § 300.18; (b) a provision specifying that the public agency must ensure that certain transition services personnel participate in meetings to develop, review, or revise a student's individualized education program (IEP) if transition services are being considered; (c) a Note, based on § 300.344(a)(4) of the current regulations, stating that, if appropriate, the public agency must include the student in IEP meetings concerning transition services; (d) a requirement that the content of the IEP must include a statement of needed transition services and of interagency responsibilities or linkages if other State agencies have responsibility for providing or paying for those services; and (e) a provision specifying that if a participating agency fails to provide agreed upon transition services, the public agency must reconvene the IEP team to identify alternative strategies to be implemented to meet the transition objectives in the student's IEP.

(6) Replace the current regulations on the comprehensive system of personnel development (CSPD) in §§ 300.380-300.387 with new provisions reflecting changes made by the 1990 Amendments, and make other changes to simplify and update the CSPD provisions of the regulations.

The NPRM also proposed to make other changes in the current regulations for this part, including (1) deleting the data collection reporting provisions in § 300.124 and portions of §§ 300.125-300.127 of the current regulations; (2) deleting the current regulation in § 300.382 regarding inservice training, and at § 300.321(c) prohibiting the use of part B funds for preservice training; (3) adding a Note following § 300.128 to clarify the responsibility of the SEA and the State's part H lead agency for child find activities for infants and toddlers with disabilities if those agencies are different; (4) adding a provision to

§ 300.504 to clarify the conditions that must be met if a State adds consent requirements beyond those in the Federal regulations; (5) specifying that findings of fact and decisions in due process hearings must be made available to the public, after deleting personally identifiable information; (6) adding a provision to § 300.510 regarding which officials may not conduct State-level reviews; and (7) transferring requirements on State complaint procedures from the Education Department General Administrative Regulations (EDGAR) (34 CFR §§ 76.780-76.782) to this part in §§ 300.660-300.662, and making some modifications to those requirements.

These final regulations incorporate technical changes made to part B, including changes made by the 1990 Amendments, to update the terminology and references used in the current regulations. Examples of these technical changes include: (1) Deleting all references to "handicapped children" in the regulations and substituting "children with disabilities;" (2) deleting all references to "annual program plan" and substituting "State plan;" (3) revising the list of other regulations that apply to this program in § 300.3 to include all currently applicable provisions of EDGAR; and (4) abbreviating certain frequently used terms and adding a new note following the heading in subpart A, "Definitions," to specify that abbreviations will be used in place of certain terms in the regulations (e.g., "IEP" for "individualized education program" and "SEA" for "State educational agency").

These final regulations also implement changes to part B made by the National Literacy Act, by amending the list of jurisdictions eligible to participate in the part B program (i.e., by deleting the Trust Territory of the Pacific Islands and adding the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau).

In addition, these final regulations incorporate certain technical changes to part B made by the 1991 Amendments. These changes conform the regulations to the statutory changes and are implemented as final regulations. The Secretary, however, invites comment on these changes and on whether additional regulatory changes are needed with respect to the statutory changes made by the 1991 Amendments.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 280 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes that have

been made in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Major Changes in the Regulations

The following discussion in section A, Technical Changes, identifies the changes made to reflect statutory amendments to Part B made by the National Literacy Act. Section B, Substantive Changes, identifies all major changes made in the regulations based on the NPRM published on August 19, 1991. Additional changes made in the regulations in this document as a result of the 1991 Amendments are identified separately in section C.

A. Technical Changes

In accordance with changes made by the National Literacy Act, § 300.700 has been revised to reflect the current names of the successor entities to the Trust Territories of the Pacific Islands. Similarly, § 300.711 (previously numbered § 300.710) now lists the current names of these entities, consistent with a statutory change made by the National Literacy Act as amended by the 1991 Amendments.

B. Substantive Changes

Below is a summary of the major substantive changes in these final regulations based on the August 19, 1991 NPRM. References to section numbers are to the final regulations.

1. Changes in Subpart A—General

- The proposed definition of "autism" (§ 300.7(b)(1)) has been revised to clarify that the characteristics listed as generally associated with autism are not an exhaustive list of characteristics necessary for a child to be considered as having autism.

- The proposed definition of "traumatic brain injury" (§ 300.7(b)(12)) has been revised to describe this disability category more appropriately, and to clarify that the term "traumatic brain injury" refers to injuries acquired after birth.

- The proposed definition of "rehabilitation counseling services" (§ 300.16(b)(10)) has been revised to change the term "qualified counseling professional" to "qualified personnel."

- The phrase "in schools" has been retained in the definition of "social work services in schools" (§ 300.16(b)(12)), and the phrase "to receive maximum benefit" in the statement concerning mobilizing school and community resources has been changed.

- The last sentence of the proposed Note following the definition of "transition services" at § 300.18 has

been revised to delete the statement that the listed activities are only examples.

2. Changes in Subpart B—State Plans and Local Applications

- Proposed Note 2 following § 300.128 ("Identification, location, and evaluation of children with disabilities") has been revised to clarify that where the part H lead agency is different from the SEA, actual implementation of the child find activities for infants and toddlers with disabilities by the part H lead agency does not alter or diminish the SEA's responsibility for ensuring compliance with child find and evaluation requirements.

3. Changes in Subpart C—Services

- Proposed § 300.308 ("Assistive technology") has been revised to specify that assistive technology devices and services must be provided if required as part of special education under § 300.17, related services under § 300.16, or supplementary aids and services under § 300.550(b)(2).

- Section 300.344 ("Participants in meetings") has been revised (1) to specify that if a purpose of a student's IEP meeting is the consideration of transition services to the student, the public agency must invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services, and (2) to clarify what the public agency must do if either the student or the agency representative does not attend.

- Section 300.345 ("Parent participation") has been revised to provide that if a purpose of the IEP meeting is the consideration of transition services, the notice to the parents about the meeting must indicate this purpose and indicate that the student will be invited.

- Section 300.346 ("Content of IEP") has been revised to specify that the statement of needed transition services in a student's IEP must include the three areas listed in the definition of "transition services" in § 300.18(b), unless the IEP team determines that services are not needed in one or more of those areas and includes in the IEP a statement to that effect and the basis for making the determination.

- Proposed § 300.347 ("Agency responsibility for transition services") has been revised (1) to clarify that, if a participating agency does not provide agreed-upon services, the public agency must initiate another IEP meeting "as soon as possible"; (2) to delete the phrase "to be implemented," following "alternative strategies"; and (3) to add

"and if necessary, revising the student's IEP."

- The proposed provision requiring States to describe procedures for enabling teacher aides to acquire the necessary credentials for teaching special education has been deleted from § 300.381 ("Adequate supply of qualified personnel").

- The proposed definition of "regular education personnel," which would have limited the regular education personnel that a State's continuing education system would need to address, has been deleted from § 300.382 ("Personnel preparation and continuing education").

4. Changes in Subpart E—Procedural Safeguards

- Section 300.504 ("Prior notice; parent consent") has been revised (1) to delete the proposed provision requiring States to establish and use informal and formal procedures to deal with parental withholding of consent for services and activities beyond those required in § 300.504(b); and (2) to clarify that if a State has additional parental consent requirements, the State must determine the procedures it will use to ensure that a parent's failure to consent does not result in a failure to provide FAPE to the child. Proposed Note 3 has been revised to reflect these changes. The preexisting provision concerning the circumstances under which a public agency can condition a benefit on parent consent has been moved and modified to accommodate additional State parent consent provisions.

- Section 300.510 ("Administrative appeal; impartial review") has been revised to add a new provision requiring the SEA to transmit review findings and decisions to the State advisory panel and to make those findings and decisions available to the public. The proposed provisions regarding the impartiality of State-level review officials have been deleted.

5. Changes in Subpart F—State Administration

On July 8, 1992, the Department published final regulations making certain amendments to EDGAR and conforming changes in program regulations (57 FR 30328). That regulatory action removed the State complaint procedures (§§ 76.780-76.782) from EDGAR and amended part 300 by adding identical requirements in §§ 300.670-300.672. These final regulations make changes, as described below, to those regulations based on the comments received on the August 19, 1991 NPRM. The State complaint

procedures also are renumbered as §§ 300.660-300.662.

- Proposed § 300.660 (Adoption of State complaint procedures) has been revised to clarify that, while the State complaint procedures must provide for filing complaints with the SEA, the SEA may expand its procedures to provide for (1) the filing of a complaint directly with a public agency in lieu of the SEA; and (2) the right to have the SEA review the public agency's decision on the complaint.

- Proposed § 300.661 ("Minimum State complaint procedures") has been revised to clarify that a public agency also has the right to request Secretarial review.

C. Changes Made to Part B by the 1991 Amendments

The primary purpose of the 1991 Amendments was to amend and reauthorize part H of the Act (the Infants and Toddlers with Disabilities program). However, the 1991 Amendments also included revisions to other parts of the Act, including part B.

The following discussion includes descriptions of the revisions to part B made by the 1991 Amendments that have been incorporated into these final regulations:

1. Permitting Children, Aged 3-5, with Developmental Delays to be Included by States in the Definition of "Children with Disabilities"

The 1991 Amendments revised the definition of "children with disabilities" in section 602(a)(1) of the IDEA. In accordance with that change, § 300.7(b)(2) provides that the term "children with disabilities" may, at a State's discretion, include children, aged 3-5, "(i) who are experiencing developmental delays * * * and (ii) who, for that reason, need special education and related services." (Throughout this document, age ranges referred to in the text are inclusive.) The legislative history of the 1991 Amendments makes clear that the purpose of permitting a State to include these children in its definition of children with disabilities, "is not to expand or diminish the population of children eligible under part B, but rather to provide a State with the discretion to ensure that all eligible preschoolers are served and that children are not inappropriately labeled." (House Report No. 102-198, 4 (1991); Senate Report No. 102-84, 15 (1991).)

The legislative history further clarifies that, although the 1991 revision to the definition of "children with disabilities" in section 602(a)(1) of the IDEA is comparable to a component of the part

H definition of "infants and toddlers with disabilities," the amendment should not be construed as requiring a State to use the same criteria for children aged 3-5 as it uses for infants and toddlers. A State may develop different or more stringent criteria for children aged 3-5, inclusive, than it uses for infants and toddlers so long as the criteria do not deny eligibility to a child who would otherwise be eligible under other categories included in section 602(a)(1) of the Act. (House Report No. 102-198, 4 (1991); Senate Report No. 102-84, 15 (1991).)

2. Transition of Individuals from Part H to Part B

The 1991 Amendments added a new provision at section 613(a)(15) that requires that each State plan set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program under part H who will participate in preschool programs under part B. This would include a method of ensuring that when a child turns age three an IEP or, if consistent with sections 614(a)(5) and 677(d) of the Act, an individualized family service plan (IFSP) has been developed and is being implemented by the child's third birthday. This change is reflected in a new § 300.154.

3. Permitting LEAs to use IFSPs for Children Aged 3-5

To assist in the transition of children from the part H program to the part B program, the 1991 Amendments added a provision to section 614(a)(5) to permit LEAs to use IFSPs, in lieu of IEPs, for children with disabilities aged 3-5 if consistent with State policy and with the concurrence of the parents. This change is reflected in revised § 300.343 of the regulations. The Secretary notes that the "content of IFSP" provision in the part H regulations (34 CFR 303.344) is more detailed than section 677(d) of the Act. States are encouraged to implement the requirements in 34 CFR 303.344 for the IFSPs that they develop and implement for children aged 3-5.

4. Comprehensive System of Personnel Development (CSPD)

Consistent with a revision of section 613(a)(3) made by the 1991 Amendments, § 300.380 of the regulations has been amended to require that a State's CSPD under part B be consistent with the CSPD for the part H program described in § 303.360. (The 1991 Amendments also add a companion provision to the part H CSPD provision in section 676(b)(8) of the Act.)

5. State Administrative Set-Aside for Small States

The 1991 Amendments revised section 611(c)(2) of the IDEA to increase from \$350,000 to \$450,000 the minimum amount that each State may reserve from its part B allocation for administrative expenses. This change is reflected in § 300.620.

6. Part B Services for Indian Children with Disabilities

The 1991 Amendments significantly revised section 611(f), which authorizes payments to the Secretary of the Interior under part B for the education of certain Indian children with disabilities. Section 300.709 has been revised in its entirety, consistent with the new section 611(f)(1) of the IDEA. Section 300.709 now provides that, subject to meeting the requirements in § 300.260, the Secretary makes payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations, aged 5-21, who are enrolled in elementary and secondary schools for Indian children operated by the Secretary of the Interior, and for Indian students aged 3-5 who are enrolled in programs affiliated with Bureau of Indian Affairs (BIA) schools that are required by the States in which the schools are located to attain or maintain State accreditation and which schools had such accreditation before the enactment of the 1991 Amendments. Previously, the Secretary of the Interior had been responsible for the education of all Indian children with disabilities, aged 3-21, on reservations (1) served by elementary and secondary schools operated by the Department of the Interior, and (2) for whom services were provided through contract with an Indian tribe or organization prior to FY 1989. The amount of payment is one percent of the aggregate amount of funds available to all States for that fiscal year.

In accordance with the new section 611(f)(3) of the IDEA, and in light of the revised responsibilities of the Secretary of the Interior for the education of Indian children with disabilities aged 3-21 as specified in section 611(f)(1) of the IDEA, § 300.260 also has been revised. That section identifies the specific provisions of sections 612, 613, and 614 of the IDEA that the Secretary has determined continue to be appropriate to applications from the Secretary of the Interior. Similarly, § 300.283 has been revised to reflect the regulatory requirements that continue to apply to the Secretary of the Interior in the implementation of the program supported by part B.

While the 1991 Amendments limited the responsibilities of the Secretary of the Interior for the education of Indian children with disabilities, it expanded the responsibilities of SEAs for Indian children with disabilities on reservations. Consistent with the requirements of the new section 611(f)(2) of the IDEA, § 300.300 (Timelines for FAPE) has been revised by adding a new paragraph (c) to specify that, with the exception of children identified in § 300.709(a) (1) and (2), the SEA shall be responsible for ensuring that all of the requirements of part B are implemented for all children aged 3-21 on reservations.

In addition, in accordance with the new section 611(f)(4) of the IDEA, a new § 300.710 has been added to provide that the Secretary make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities, aged 3-5, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payment is .25 percent of the aggregate amount of funds available to all States under this part for that fiscal year. These funds are to be used for child find, screening, and other procedures for the early identification of children, aged 3-5, parent training, and for direct services.

The Secretary believes that those statutory changes resulting from the 1991 Amendments can be effectively implemented by incorporation into existing regulations without additional regulatory guidance. However, if experience in the implementation of these provisions indicates that additional regulatory guidance is needed, the Secretary will undertake additional rulemaking at a future date.

II. Preschool Grants Program

The Preschool Grants program under section 619 of part B of the Act provides additional Federal financial assistance to States for providing special education and related services to children with disabilities aged 3-5 and, at a State's discretion, for providing FAPE to two-year-old children with disabilities who will reach age three during the school year. The Preschool Grants regulations in 34 CFR part 301 establish the administrative procedures for applying for and distributing Preschool Grants funds.

The substantive rights and protections established under part B of the Act and its implementing regulations at 34 CFR

part 300 apply to 3-5 year old children with disabilities. Therefore, these rights and protections, which include the right to FAPE, placement in the least restrictive environment, and the availability of due process procedures, are not repeated in the part 301 regulations.

The 1991 Amendments included several revisions to section 619. The following is a summary of those revisions:

- The 1991 Amendments expanded the age range for which SEAs and LEAs may use Preschool Grants funds to include two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under part H of the Act. These children are entitled to receive FAPE.

The use of Preschool Grants funds to provide FAPE to two-year-old children with disabilities is at a State's discretion and must be consistent with State policy. This is not a requirement to provide FAPE to all two-year-old children with disabilities who will reach age three during the school year. Rather, this provision increases States' options for use of Preschool Grants funds to meet the needs of children with disabilities and their families during the transition from early intervention services under part H of the Act to preschool special education under part B of the Act. Although children below age 3 cannot be included in the annual part B child count, States are permitted to use their part B funds to serve these children.

- Part H of the Act does not apply to any two-year-old child with disabilities receiving FAPE, in accordance with part B of the Act, with Preschool Grants funds. However, part H of the Act continues to apply to all other two-year-old children with disabilities, including those receiving FAPE with other sources of funds, such as part B funds under section 611 of the Act.

These statutory amendments are incorporated into these final regulations in §§ 301.1, 301.3, 301.6, 301.10, and 301.30.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on all changes proposed to be made in the Department's regulations. However, since the additional changes made in

these final regulations that were not included in the NPRM published for public comment merely incorporate statutory amendments and do not establish new substantive policy, further public comment could have no effect on the content of the final regulations. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these changes is unnecessary and contrary to public interest.

Invitation to Comment on Provisions Added to Part B by the 1991 Amendments

Although the Secretary publishes these regulations as final, the Secretary invites comments on whether additional guidance is required with respect to the regulatory changes made to part 300 and described above that reflect statutory changes made by the 1991 Amendments. In addition, the Secretary invites comments on whether other regulatory changes are desirable to implement the provisions of the 1991 Amendments relating to the transition of children from the part H program to the part B program.

Interested parties may send comments to Ms. Lucille Slegler at the address given at the beginning of this document until November 30, 1992.

All comments submitted in response to this document will be available for public inspection, during and after the comment period, in room 3615, 300 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

The following sections contain information collection requirements: § 300.110; §§ 300.121-300.123; §§ 300.125-300.134; § 300.136; §§ 300.138-300.141; § 300.144; § 300.146; § 300.148; § 300.149; § 300.152; § 300.153; § 300.180; § 300.192; § 300.220; §§ 300.222-300.227; § 300.231; § 300.235; § 300.238; § 300.240; § 300.280; § 300.281; § 300.284; § 300.341; § 300.343; § 300.345; § 300.346; § 300.349; §§ 300.360-300.383; § 300.402; § 300.482; § 300.483; § 300.505; § 300.510; § 300.512; § 300.532; § 300.533; § 300.543; §§ 300.561-300.563; § 300.565; § 300.569; § 300.571; § 300.572; § 300.574; § 300.575; § 300.589; § 300.600; § 300.653; §§ 300.660-300.662; § 300.750; § 300.751;

and § 300.754. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(b))

The 50 States, the District of Columbia, Puerto Rico, 7 territories, and the Department of the Interior are eligible to apply for grants under this part. The Department needs and uses information submitted by these entities to determine whether they meet the regulatory requirements listed above. The 60 eligible entities under this program submit triennial State plans in order to receive part B grant awards. The annual public reporting burden for this information collection for the year of an entity's submission is estimated at 29 hours, including the time for gathering the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects

34 CFR Part 300

Administrative practice and procedures, Education, Education of individuals with disabilities, Grant programs—education, Privacy, Private schools, Reporting and record keeping requirements.

34 CFR Part 301

Education, Education of children with disabilities, Grant programs—education, Reporting and record keeping requirements.

Dated: August 18, 1992.

(Catalog of Federal Domestic Assistance number 84.027, Assistance to States for

Education of Children with Disabilities; 84.173, Preschool Grants Program)

Lamar Alexander,
Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 300 and amending part 301 as follows:

1. Part 300 is revised to read as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart A—General

Purpose, Applicability, and Regulations that Apply to this Program

Sec.	
300.1	Purpose.
300.2	Applicability to State, local, and private agencies.
300.3	Regulations that apply.
300.4	Act.
300.5	Assistive technology device.
300.6	Assistive technology service.
300.7	Children with disabilities.
300.8	Free appropriate public education.
300.9	Include.
300.10	Intermediate educational unit.
300.11	Local educational agency.
300.12	Native language.
300.13	Parent.
300.14	Public agency.
300.15	Qualified.
300.16	Related services.
300.17	Special education.
300.18	Transition services.

Subpart B—State Plans and Local Educational Agency Applications

State Plans—General

300.110	Condition of assistance.
300.111	Contents of plan.

State Plans—Contents

300.121	Right to a free appropriate public education.
300.122	Timelines and ages for free appropriate public education.
300.123	Full educational opportunity goal.
300.124	[Reserved]
300.125	Full educational opportunity goal—timetable.
300.126	Full educational opportunity goal—facilities, personnel, and services.
300.127	Priorities.
300.128	Identification, location, and evaluation of children with disabilities.
300.129	Confidentiality of personally identifiable information.
300.130	Individualized education programs.
300.131	Procedural safeguards.
300.132	Least restrictive environment.
300.133	Protection in evaluation procedures.
300.134	Responsibility of State educational agency for all educational programs.
300.135	[Reserved]
300.136	Implementation procedures—State educational agency.
300.137	Procedures for consultation.
300.138	Other Federal programs.

300.139 Comprehensive system of personnel development.

300.140 Private schools.

300.141 Recovery of funds for misclassified children.

300.142-300.143 [Reserved]

300.144 Hearing on application.

300.145 Prohibition of commingling.

300.146 Annual evaluation.

300.147 State advisory panel.

300.148 Policies and procedures for use of Part B funds.

300.149 Description of use of Part B funds.

300.150 State-level nonsupplanting.

300.151 Additional information if the State educational agency provides direct services.

300.152 Interagency agreements.

300.153 Personnel standards.

300.154 Transition of individuals from Part H to Part B.

Local Educational Agency Applications—General

300.180 Submission of application.

300.181 [Reserved]

300.182 The excess cost requirement.

300.183 Meeting the excess cost requirement.

300.184 Excess costs—computation of minimum amount.

300.185 Computation of excess costs—consolidated application.

300.186 Excess costs—limitation on use of Part B funds.

300.187-300.189 [Reserved]

300.190 Consolidated applications.

300.191 [Reserved]

300.192 State regulation of consolidated applications.

300.193 State educational agency approval; disapproval.

300.194 Withholding.

Local Educational Agency Applications—Contents

300.220 Child identification.

300.221 Confidentiality of personally identifiable information.

300.222 Full educational opportunity goal—timetable.

300.223 Facilities, personnel, and services.

300.224 Personnel development.

300.225 Priorities.

300.226 Parent involvement.

300.227 Participation in regular education programs.

300.228 [Reserved]

300.229 Excess cost.

300.230 Nonsupplanting.

300.231 Comparable services.

300.232-300.234 [Reserved]

300.235 Individualized education programs.

300.236 [Reserved]

300.237 Procedural safeguards.

300.238 Use of Part B funds.

300.239 [Reserved]

300.240 Other requirements.

Application from Secretary of the Interior

300.280 Submission of application; approval.

300.281 Public participation.

300.282 Use of Part B funds.

300.263 Applicable regulations.

Public Participation

300.280 Public hearings before adopting a State plan.

300.281 Notice.

300.282 Opportunity to participate; comment period.

300.283 Review of public comments before adopting plan.

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300.301 Free appropriate public education—methods and payments.

300.302 Residential placement.

300.303 Proper functioning of hearing aids.

300.304 Full educational opportunity goal.

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Priorities in the Use of Part B Funds

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300.321 Priorities.

300.322 [Reserved]

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300.343 Meetings.

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300.348 Private school placements by public agencies.

300.349 Children with disabilities in parochial or other private schools.

300.350 Individualized education program—accountability.

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300.360 Use of local educational agency allocation for direct services.

300.361 Nature and location of services.

300.370 Use of State agency allocations.

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300.372 Applicability of nonsupplanting requirement.

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300.381 Adequate supply of qualified personnel.

300.382 Personnel preparation and continuing education.

300.383 Data system on personnel and personnel development.

300.384-300.387 [Reserved]

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300.504 Prior notice; parent consent.

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300.509 Hearing decision; appeal.

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Authority: 20 U.S.C. 1411-1420, unless otherwise noted.

Subpart A—General**Purpose, Applicability, and Regulations That Apply to this Program****§ 300.1 Purpose.**

The purpose of this part is—
 (a) To ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States and localities to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate those children.

(Authority: 20 U.S.C. 1401 Note)

§ 300.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State that receives payments under Part B of the Act.

(b) *Public agencies within the State.* The State plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of children with disabilities. These would include:

(1) The State educational agency;

(2) Local educational agencies and intermediate educational units;

(3) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for students with deafness or students with blindness); and

(4) State correctional facilities.

(c) *Private schools and facilities.* Each public agency in the State is responsible for ensuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency. (See §§ 300.400-300.402)

(Authority: 20 U.S.C. 1412(1), (8); 1413(a); 1413(a)(4)(B))

Note: The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

§ 300.3 Regulations that apply.

The following regulations apply to this program:

(a) 34 CFR part 76 (State-Administered Programs) except for §§ 76.780-76.782.

(b) 34 CFR part 77 (Definitions).

(c) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(d) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(e) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(f) 34 CFR part 82 (New Restrictions on Lobbying).

(g) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(h) 34 CFR part 86 (Drug-Free Schools and Campuses).

(i) The regulations in this part—34 CFR part 300 (Assistance to States for Education of Children with Disabilities).

(Authority: 20 U.S.C. 1221e-3(a)(1))

Definitions

Note 1: Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Appropriate professional requirements in the State (§ 300.153(a)(1))

Average per pupil expenditure in public elementary and secondary schools in the United States (§ 300.701(c))

Consent (§ 300.500)

Destruction (§ 300.560)

Direct services (§ 300.370(b)(1))
 Education records (§ 300.500)
 Evaluation (§ 300.500)
 First priority children (§ 300.320(a)) Highest requirements in the State applicable to a specific profession or discipline (§ 300.153(a)(2))
 Independent educational evaluation (§ 300.503(a)(3)(i))
 Individualized education program (§ 300.340)
 Participating agency, as used in the IEP requirements in §§ 300.346 and 300.347 (§ 300.340(b))
 Participating agency, as used in the confidentiality requirements in §§ 300.560-300.576 (§ 300.500)
 Party or parties (§ 300.584(a))
 Personally identifiable (§ 300.500)
 Private school children with disabilities (§ 300.450)
 Profession or discipline (§ 300.153(a)(3))
 Public expense (§ 300.503(a)(3)(ii))
 Second priority children (§ 300.320(b))
 Special definition of "State" (§ 300.700)
 State-approved or recognized certification, licensing, registration, or other comparable requirements (§ 300.153(a)(4))
 Support services (§ 300.370(b)(2))

Note 2: Below are abbreviations for selected terms that are used throughout these regulations:

"FAPE" means "free appropriate public education."
 "IEP" means "individualized education program."
 "IEU" means "intermediate educational unit."
 "LEA" means "local educational agency."
 "LRE" means "least restrictive environment."
 "SEA" means "State educational agency."

As appropriate, each abbreviation is used interchangeably with its nonabbreviated term.

§ 300.4 Act.

As used in this part, "Act" means the Individuals with Disabilities Education Act, formerly the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1400)

§ 300.5 Assistive technology device.

As used in this part, "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(Authority: 20 U.S.C. 1401(a)(25))

§ 300.6 Assistive technology service.

As used in this part, "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes —

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(Authority: 20 U.S.C. 1401(a)(26))

Note: The definitions of "assistive technology device" and "assistive technology service" used in this part are taken directly from section 802(a)(25)-(26) of the Act, but in accordance with Part B, the statutory reference to "individual with a disability" has been replaced with "child with a disability." The Act's definitions of "assistive technology device" and "assistive technology service" incorporate verbatim the definitions of these terms used in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.

§ 300.7 Children with disabilities.

(a)(1) As used in this part, the term "children with disabilities" means those children evaluated in accordance with §§ 300.530-300.534 as having mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who because of those impairments need special education and related services.

(2) The term "children with disabilities" for children aged 3 through 5 may, at a State's discretion, include children—

(i) Who are experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, for that reason, need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance, as defined in paragraph (b)(9) of this section.

(2) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(5) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Multiple disabilities" means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(7) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital

anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(8) "Other health impairment" means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes that adversely affects a child's educational performance.

(9) "Serious emotional disturbance" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance—

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.

(10) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) "Speech or language impairment" means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance.

(12) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting

in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(13) "Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(a)(1))

Note: If a child manifests characteristics of the disability category "autism" after age 3, that child still could be diagnosed as having "autism" if the criteria in paragraph (b)(1) of this section are satisfied.

§ 300.8 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an IEP that meets the requirements of §§ 300.340–300.350.

(Authority: 20 U.S.C. 1401(a)(18))

§ 300.9 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1417(b))

§ 300.10 Intermediate educational unit.

As used in this part, the term "intermediate educational unit" means any public authority, other than an LEA, that—

(a) Is under the general supervision of an SEA;

(b) Is established by State law for the purpose of providing free public education on a regional basis; and

(c) Provides special education and related services to children with disabilities within that State.

(Authority: 20 U.S.C. 1401(a)(23))

§ 300.11 Local educational agency.

(a) [Reserved]

(b) For the purposes of this part, the term "local educational agency" also includes intermediate educational units.

(Authority: 20 U.S.C. 1401(a)(8))

§ 300.12 Native language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

The term "native language," when used with reference to an individual of limited English proficiency, means the language normally used by that individual, or in the case of a child, the language normally used by the parents of the child.

(Authority: 20 U.S.C. 3283(a)(2); 1401(a)(22))

Note: Section 602(a)(22) of the Act states that the term "native language" has the same meaning as the definition from section 703(a)(2) of the Bilingual Education Act. (The term is used in the prior notice and evaluation sections under § 300.505(b)(2) and § 300.532(a)(1).) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual (such as sign language, braille, or oral communication).

§ 300.13 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 300.514. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1415)

Note: The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

§ 300.14 Public agency.

As used in this part, the term "public agency" includes the SEA, LEAs, IEPs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(2)(B); 1412(6); 1413(a))

§ 300.15 Qualified.

As used in this part, the term "qualified" means that a person has met SEA approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services.

(Authority: 20 U.S.C. 1417(b))

§ 300.16 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes—

- (i) Identification of children with hearing loss;
- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- (iv) Creation and administration of programs for prevention of hearing loss;
- (v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
- (vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need

for special education and related services.

(5) "Occupational therapy" includes—

- (i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
 - (ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
 - (iii) Preventing, through early intervention, initial or further impairment or loss of function.
- (6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.
- (7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" includes—

- (i) Administering psychological and educational tests, and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.
- (iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
- (v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes—

- (i) Assessment of leisure function;
 - (ii) Therapeutic recreation services;
 - (iii) Recreation programs in schools and community agencies; and
 - (iv) Leisure education.
- (10) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(11) "School health services" means services provided by a qualified school nurse or other qualified person.

(12) "Social work services in schools" includes—

- (i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

(13) "Speech pathology" includes—

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(14) "Transportation" includes—

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(a)(17))

Note: With respect to related services, the Senate Report states:

The Committee bill provides a definition of related services, making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(S. Rep. No. 94-168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education.

There are certain kinds of services that might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and

supervisory activities that are necessary for program planning, management, and evaluation.

§ 300.17 Special education.

(a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adaptive physical education, movement education, and motor development.

(Authority: 20 U.S.C. 1401(a)(16))

(3) "Vocational education" means organized educational programs offering a sequence of courses that are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society.

Such term also includes applied technology education.

(Authority: 20 U.S.C. 1401(16))

Note 1: The definition of special education is a particularly important one under these regulations, since a child does not have a disability under this part unless he or she needs special education. (See the definition of children with disabilities in § 300.7.) The definition of related services (§ 300.16) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related services, and the child is not a child with a disability and is therefore not covered under the Act.

Note 2: The above definition of vocational education is taken from the Carl D. Perkins Vocational and Applied Technology Education Act (Pub. L. 96-524, as amended by Pub. L. 101-392). Section 118(a)(3)(A)-(B) of this statute further provides—

Vocational education programs and activities for individuals with handicaps will be provided in the least restrictive environment in accordance with section 612(5)(B) of the Individuals with Disabilities Education Act and will, whenever appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of such Act. Students with handicaps who have individualized education programs developed under section 614(a)(5) of the Individuals with Disabilities Education Act shall, with respect to vocational education programs, be afforded the rights and protections guaranteed such students under sections 612, 614, and 615 of such Act.

§ 300.18 Transition services.

(a) As used in this part, "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(b) The coordinated set of activities described in paragraph (a) of this section must—

(1) Be based on the individual student's needs, taking into account the student's preferences and interests; and

(2) Include needed activities in the areas of—

(i) Instruction;

(ii) Community experiences;

(iii) The development of employment and other post-school adult living objectives; and

(iv) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(Authority: 20 U.S.C. 1401(a)(19))

Note: Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. The list of activities in paragraph (b) is not intended to be exhaustive.

Subpart B—State Plans and Local Educational Agency Applications

State Plans—General

§ 300.110 Condition of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit a State plan to the Secretary through its SEA, which plan shall be effective for a period of 3 fiscal years.

(Authority: 20 U.S.C. 1231g, 1412, 1413)

§ 300.111 Contents of plan.

Each State plan must contain the provisions required in §§ 300.121-300.153.

(Authority: 20 U.S.C. 1412, 1413)

State Plans—Contents

§ 300.121 Right to a free appropriate public education.

(a) Each State plan must include information that shows that the State has in effect a policy that ensures that all children with disabilities have the right to FAPE within the age ranges and timelines under § 300.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State documents that show the source of the policy.

(c) The information must show that the policy—

(1) Applies to all public agencies in the State;

(2) Applies to all children with disabilities;

(3) Implements the priorities established under §§ 300.320-300.324; and

(4) Establishes timelines for implementing the policy, in accordance with § 300.122.

(Authority: 20 U.S.C. 1412(1), (2)(B), (6); 1413(a)(1))

§ 300.122 Timelines and ages for free appropriate public education.

(a) *General.* Each State plan must include in detail the policies and procedures that the State will undertake or has undertaken in order to ensure that FAPE is available for all children with disabilities aged 3 through 18 within the State not later than September 1, 1978, and for all children with disabilities aged 3 through 21

within the State not later than September 1, 1990.

(b) *Documents relating to timelines.* Each State plan must include a copy of each State statute, court order, Attorney General decision, and other State documents that demonstrate that the State has established timelines in accordance with paragraph (a) of this section.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to children with disabilities aged 3, 4, 5, 18, 19, 20, or 21 to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each State plan must—

(1) Describe in detail the extent that the exception in paragraph (c) of this section applies to the State; and

(2) Include a copy of each State law, court order, and other documents that provide a basis for the exception.

(Authority: 20 U.S.C. 1412(2)(B))

§ 300.123 Full educational opportunity goal.

Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure that the State has a goal of providing full educational opportunity to all children with disabilities aged birth through 21.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.124 [Reserved]

§ 300.125 Full educational opportunity goal—timetable.

Each State plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.126 Full educational opportunity goal—facilities, personnel, and services.

Each State plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.127 Priorities.

Each State plan must include information that shows that—

(a) The State has established priorities that meet the requirements of §§ 300.320–300.324;

(b) The State priorities meet the timelines under § 300.122; and

(c) The State has made progress in meeting those timelines.

(Authority: 20 U.S.C. 1412(3))

§ 300.128 Identification, location, and evaluation of children with disabilities.

(a) *General requirement.* Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, to ensure that—

(1) All children with disabilities, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each State plan must:

(1) Designate the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section.

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation.

(3) Describe the extent that—

(i) The activities described in paragraph (a) of this section have been achieved under the current State plan; and

(ii) The resources named for these activities in that plan have been used.

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes.

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains—

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures.

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(Authority: 20 U.S.C. 1412(2)(C))

Note 1: The State is responsible for ensuring that all children with disabilities are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements of §§ 300.560–300.576.

Note 2: Under both Parts B and H of the Act, States are responsible for identifying, locating, and evaluating infants and toddlers from birth through 2 years of age who have disabilities or who are suspected of having disabilities. In States where the SEA and the State's lead agency for the Part H program are different and the Part H lead agency will be participating in the child find activities described in paragraph (a) of this section, the nature and extent of the Part H lead agency's participation must, under paragraph (b)(2) of this section, be included in the State plan. With the SEA's agreement, the Part H lead agency's participation may include the actual implementation of child find activities for infants and toddlers. The use of an interagency agreement or other mechanism for providing for the Part H lead agency's participation would not alter or diminish the responsibility of the SEA to ensure compliance with all child find requirements, including the requirement in paragraph (a)(1) of this section that all children with disabilities who are in need of special education and related services are evaluated.

§ 300.129 Confidentiality of personally identifiable information.

(a) Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Secretary shall use the criteria in §§ 300.560–300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: The confidentiality regulations were published in the *Federal Register* in final form on February 27, 1978 (41 FR 8603–8610), and met the requirements of Part B of the Act. Those regulations are incorporated in §§ 300.560–300.576.

§ 300.130 Individualized education programs.

(a) Each State plan must include information that shows that each public agency in the State maintains records of the IEP for each child with disabilities, and each public agency establishes, reviews, and revises each program as provided in §§ 300.340–300.350.

(b) Each State plan must include—

(1) A copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed, and revised; and

(2) The procedures that the SEA follows in monitoring and evaluating those programs.

(Authority: 20 U.S.C. 1412(4), 1413(a)(1))

§ 300.131 Procedural safeguards.

Each State plan must include procedural safeguards that ensure that the requirements of §§ 300.500-300.514 are met.

(Authority: 20 U.S.C. 1412(5)(A))

§ 300.132 Least restrictive environment.

(a) Each State plan must include procedures that ensure that the requirements of §§ 300.550-300.556 are met.

(b) Each State plan must include the following information:

(1) The number of children with disabilities in the State, within each disability category, who are participating in regular education programs, consistent with §§ 300.550-300.556.

(2) The number of children with disabilities who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.133 Protection in evaluation procedures.

Each State plan must include procedures that ensure that the requirements of §§ 300.530-300.534 are met.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.134 Responsibility of State educational agency for all educational programs.

(a) Each State plan must include information that shows that the requirements of § 300.600 are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with that paragraph.

(Authority: 20 U.S.C. 1412(6))

§ 300.135 [Reserved]

§ 300.136 Implementation procedures—State educational agency.

Each State plan must describe the procedures the SEA follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(6))

§ 300.137 Procedures for consultation.

Each State plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents of children with disabilities.

(Authority: 20 U.S.C. 1412(7)(A))

§ 300.138 Other Federal programs.

Each State plan must provide that programs and procedures are established to ensure that funds received by the State or any public agency in the State under any other Federal program, including subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1985, under which there is specific authority for assistance for the education of children with disabilities, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing FAPE for all children with disabilities, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(Authority: 20 U.S.C. 1413(a)(2))

§ 300.139 Comprehensive system of personnel development.

Each State plan must include the procedures required under §§ 300.380-300.383.

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.140 Private schools.

Each State plan must include policies and procedures that ensure that the requirements of §§ 300.400-300.403 and §§ 300.450-300.452 are met.

(Authority: 20 U.S.C. 1413(a)(4))

§ 300.141 Recovery of funds for misclassified children.

Each State plan must include policies and procedures that ensure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(Authority: 20 U.S.C. 1413(a)(5))

§§ 300.142-300.143 [Reserved]

§ 300.144 Hearing on application.

Each State plan must include procedures to ensure that the SEA does not take any final action with respect to an application submitted by an LEA before giving the LEA reasonable notice and an opportunity for a hearing under § 76.401(d) of this title.

(Authority: 20 U.S.C. 1413(a)(8))

§ 300.145 Prohibition of commingling.

Each State plan must provide assurance satisfactory to the Secretary that funds provided under part B of the Act are not commingled with State funds.

(Authority: 20 U.S.C. 1413(a)(9))

Note: This assurance is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the part B funds. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

§ 300.146 Annual evaluation.

Each State plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities, including evaluation of IEPs.

(Authority: 20 U.S.C. 1413(a)(11))

§ 300.147 State advisory panel.

Each State plan must provide that the requirements of §§ 300.650-300.653 are met.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.148 Policies and procedures for use of Part B funds.

Each State plan must set forth policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.149 Description of use of Part B funds.

(a) State allocation. Each State plan must include the following information about the State's use of funds under § 300.370 and § 300.620:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the SEA will carry out during the next school year with those funds.

(4) A description of each direct service and each support service that the SEA will provide during the next period covered by the State plan with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) Local educational agency allocation. Each State plan must include—

(1) An estimate of the number and percent of LEAs in the State that will receive an allocation under this part (other than LEAs that submit a consolidated application);

(2) An estimate of the number of LEAs that will receive an allocation under a consolidated application;

(3) An estimate of the number of consolidated applications and the average number of LEAs per application; and

(4) A description of direct services that the SEA will provide under § 300.360.

(Authority: 20 U.S.C. 1412(6))

§ 300.150 State-level nonsupplanting.

Each State plan must provide assurance satisfactory to the Secretary that funds provided under this part will be used so as to supplement and increase the level of Federal (other than funds available under this part), State, and local funds—including funds that are not under the direct control of the SEA or LEAs—expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal (other than funds available under this part), State, and local funds unless a waiver is granted in accordance with § 300.589.

(Authority: 20 U.S.C. 1413(a)(9))

Note: This requirement is distinct from the LEA nonsupplanting provision already contained in these regulations at § 300.230. Under this State-level provision, the State must assure that Part B funds distributed to LEAs and IEs will be used to supplement and not supplant other Federal, State, and local funds (including funds not under the control of educational agencies) that would have been expended for special education and related services provided to children with disabilities in the absence of the Part B funds. The portion of Part B funds that are not distributed to LEAs or IEs under the statutory formula (20 U.S.C. 1411(d)) are not subject to this nonsupplanting provision. See 20 U.S.C. 1411(c)(3). States may not permit LEAs or IEs to use Part B funds to satisfy a financial commitment for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in the IEPs of children with disabilities.

(H.R. Rep. No. 860, 99th Cong., 21-22 (1986))

§ 300.151 Additional information if the State educational agency provides direct services.

If an SEA provides FAPE for children with disabilities or provides them with direct services, its State plan must include the information required under §§ 300.226, 300.227, 300.231, and 300.235.

(Authority: 20 U.S.C. 1413(b))

§ 300.152 Interagency agreements.

(a) Each State plan must set forth policies and procedures for developing and implementing interagency agreements between—

(1) The SEA; and
(2) All other State and local agencies that provide or pay for services required under this part for children with disabilities.

(b) The policies and procedures referred to in paragraph (a) of this section must—

(1) Describe the role that each of those agencies plays in providing or paying for services required under this part for children with disabilities; and

(2) Provide for the development and implementation of interagency agreements that—

(i) Define the financial responsibility of each agency for providing children with disabilities with FAPE;

(ii) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

(iii) Establish procedures under which LEAs may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.

(Authority: 20 U.S.C. 1413(a)(13))

§ 300.153 Personnel standards.

(a) As used in this part:

(1) "Appropriate professional requirements in the State" means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under this part to children and youth with disabilities who are served by State, local, and private agencies (see § 300.2).

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) "Profession or discipline" means a specific occupational category that—

(i) Provides special education and related services to children with disabilities under this part;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or

other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each State plan must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State plan must include the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the SEA, and available to the public.

(e) In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children and youth with disabilities must be considered.

(Authority: 20 U.S.C. 1413(a)(14))

Note: The regulations require that the State use its own existing highest requirements to determine the standards appropriate to personnel who provide special education and

related services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part. In some instances, States will be required to show that they are taking steps to retrain or to hire personnel to meet the standards adopted by the SEA that are based on requirements for practice in a specific profession or discipline that were established by other State agencies. States in this position need not, however, require personnel providing services under this part to apply for and obtain the license, registration, or other comparable credential required by other agencies of individuals in that profession or discipline. The regulations permit each State to determine the specific occupational categories required to provide special education and related services and to revise or expand these categories as needed. The professions or disciplines defined by the State need not be limited to traditional occupational categories.

§ 300.154 Transition of individuals from Part H to Part B.

Each State plan must set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program under Part H of the Act who will participate in preschool programs assisted under this part, including a method of ensuring that when a child turns age 3 an IEP, or, if consistent with sections 614(a)(5) and 677(d) of the Act, an individualized family service plan, has been developed and implemented by the child's third birthday.
(Authority: 20 U.S.C. 1413(e)(15))

Local Educational Agency Applications—General

§ 300.180 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year, an LEA must submit an application to the SEA.

(Authority: 20 U.S.C. 1414(a))

§ 300.181 [Reserved]

§ 300.182 The excess cost requirement.

An LEA may only use funds under part B of the Act for the excess costs of providing special education and related services for children with disabilities.

(Authority: 20 U.S.C. 1414(a)(1), (a)(2)(B)(i))

§ 300.183 Meeting the excess cost requirement.

(a) An LEA meets the excess cost requirement if it has on the average spent at least the amount determined under § 300.184 for the education of each of its children with disabilities. This amount may not include capital outlay or debt service.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

Note: The excess cost requirement means that the LEA must spend a certain minimum amount for the education of its children with disabilities before part B funds are used. This ensures that children served with part B funds have at least the same average amount spent on them, from sources other than part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of children with disabilities is computed under a statutory formula. Section 300.184 implements this formula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services that exceed the minimum amount. Therefore, if an LEA can show that it has (on the average) spent the minimum amount for the education of each of its children with disabilities, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to the other requirements of part B (priorities, etc.). In the Note under § 300.184, there is an example of how the minimum amount is computed.

§ 300.184 Excess costs—computation of minimum amount.

The minimum average amount that an LEA must spend under § 300.183 for the education of each of its children with disabilities is computed as follows:

(a) Add all expenditures of the LEA in the preceding school year, except capital outlay and debt service—

- (1) For elementary school students, if the child with a disability is an elementary school student; or
- (2) For secondary school students, if the child with a disability is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be—

- (1) Amounts the agency spent in the preceding school year from funds awarded under part B of the Act and titles I and VII of the Elementary and Secondary Education Act of 1965; and
- (2) Amounts from State and local funds that the agency spent in the preceding school year for—

- (i) Programs for children with disabilities;
- (ii) Programs to meet the special educational needs of educationally deprived children; and
- (iii) Programs of bilingual education for limited English proficient children.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year—

- (1) In its elementary schools, if the child with a disability is an elementary school student; or

- (2) In its secondary schools, if the child with a disability is a secondary school student.

(Authority: 20 U.S.C. 1414(a)(1))

Note: The following is an example of how an LEA might compute the average minimum amount it must spend for the education of each of its children with disabilities, under § 300.183. This example follows the formula in § 300.184. Under the statute and regulations, the LEA must make one computation for children with disabilities in its elementary schools and a separate computation for children with disabilities in its secondary schools. The computation for elementary school students with disabilities would be done as follows:

a. First, the LEA must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including part B)—in the preceding school year. Only capital outlay and debt service are excluded.

Example: An LEA spent the following amounts last year for elementary school students (including its elementary school students with disabilities):

(1) From local tax funds	\$2,750,000
(2) From State funds	7,000,000
(3) From Federal funds	750,000

10,500,000

Of this total, \$500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

\$10,500,000
— 500,000

Total expenditures for elementary school students (less capital outlay and debt service)..... 10,000,000

b. Next, the LEA must subtract amounts spent for:

- (1) Programs for children with disabilities;
- (2) Programs to meet the special educational needs of educationally deprived children; and
- (3) Programs of bilingual education for limited English proficient children.

These are funds that the LEA actually spent, not funds received last year but carried over for the current school year.

Example: The LEA spent the following amounts for elementary school students last year:

(1) From funds under Chapter 1 of title I of the Elementary and Secondary Education Act of 1965.....	300,000
(2) From a special State program for educationally deprived children.....	200,000
(3) From a grant under Part B.....	200,000
(4) From State funds for the education of children with disabilities.....	500,000
(5) From a locally-funded program for children with disabilities.....	250,000

(6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1985.....	150,000
Total.....	1,800,000

(An LEA would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: Children with disabilities, educationally deprived children, and bilingual education for limited English proficient children.)

This amount is subtracted from the LEA's total expenditure for elementary school students computed above:

\$10,000,000
-1,800,000
8,400,000

c. The LEA next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its students with disabilities).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph: \$8,400,000/7,000 students = \$1,200/student.

This figure is in the minimum amount the LEA must spend (on the average) for the education of each of its students with disabilities. Funds under Part B may be used only for costs over and above this minimum. In this example, if the LEA has 100 elementary school students with disabilities, it must keep records adequate to show that it has spent at least \$120,000 for the education of those students (100 students times \$1,200/student), not including capital outlay and debt service.

This \$120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the LEA has secondary school students with disabilities, it must do the same computation for them. However the amounts used in the computation would be those the LEA spent last year for the education of secondary school students, rather than for elementary school students.

§ 300.185 Computation of excess costs—consolidated application.

The minimum average amount under § 300.183, if two or more LEAs submit a consolidated application, is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1414(a)(1))

§ 300.186 Excess costs—limitation on use of Part B funds.

(a) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay

for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for nondisabled children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

§ 300.187-300.189 [Reserved]

§ 300.190 Consolidated applications.

(a) [Reserved]

(b) *Required applications.* An SEA may require LEAs to submit a consolidated application for payments under Part B of the Act if the SEA determines that an individual application submitted by an LEA will be disapproved because—

(1) The agency's entitlement is less than the \$7,500 minimum required by section 611(c)(4)(A)(i) of the Act (§ 300.360(a)(1)); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

(c) *Size and scope of program.* The SEA shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1414(c)(1))

§ 300.191 [Reserved]

§ 300.192 State regulation of consolidated applications.

(a) The SEA shall issue regulations with respect to consolidated applications submitted under this part.

(b) The SEA's regulations must—

(1) Be consistent with sections 612(1)-(7) and 613(a) of the Act; and

(2) Provide participating LEAs with joint responsibilities for implementing programs receiving payments under this part.

(Authority: 20 U.S.C. 1414(c)(2)(B))

(c) If an IEU is required by State law to carry out this part, the joint responsibilities given to LEAs under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the IEU. Those administrative responsibilities must be carried out exclusively by the IEU.

(Authority: 20 U.S.C. 1414(c)(2)(C))

§ 300.193 State educational agency approval; disapproval.

(a)-(b) [Reserved]

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.506-300.513 that is adverse to the LEA involved in the decision.

(Authority: 20 U.S.C. 1414(b)(3))

§ 300.194 Withholding.

(a) If an SEA, after giving reasonable notice and an opportunity for a hearing to an LEA, decides that the LEA in the administration of an application approved by the SEA has failed to comply with any requirement in the application, the SEA, after giving notice to the LEA, shall—

(1) Make no further payments to the LEA until the SEA is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the LEA under § 300.180; or

(3) Both.

(b) [Reserved]

(Authority: 20 U.S.C. 1414(b)(2))

Local Educational Agency Applications—Contents

§ 300.220 Child identification.

Each application must include procedures that ensure that all children residing within the jurisdiction of the LEA who have disabilities, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated, including a practical method for determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(A))

Note: The LEA is responsible for ensuring that all children with disabilities within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements of §§ 300.560-300.578.

§ 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures that ensure that the criteria in §§ 300.560-300.574 are met.

(Authority: 20 U.S.C. 1414(a)(1)(B))

§ 300.222 Full educational opportunity goal—timetable.

Each application must—(a) Include a goal of providing full educational opportunity to all children with disabilities, aged birth through 21; and (b) Include a detailed timetable for accomplishing the goal.

(Authority: 20 U.S.C. 1414(a)(1)(C), (D))

§ 300.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in § 300.222.

(Authority: 20 U.S.C. 1414(a)(1)(E))

§ 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the SEA under § 300.139.

(Authority: 20 U.S.C. 1414(a)(1)(C)(i))

§ 300.225 Priorities.

Each application must include priorities that meet the requirements of §§ 300.320–300.324.

(Authority: 20 U.S.C. 1414(a)(1)(C)(ii))

§ 300.226 Parent involvement.

Each application must include procedures to ensure that, in meeting the goal under § 300.222, the LEA makes provision for participation of and consultation with parents or guardians of children with disabilities.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iii))

§ 300.227 Participation in regular education programs.

(a) Each application must include procedures to ensure that to the maximum extent practicable, and consistent with §§ 300.550–300.553, the LEA provides special services to enable children with disabilities to participate in regular educational programs.

(b) Each application must describe—(1) The types of alternative placements that are available for children with disabilities; and

(2) The number of children with disabilities within each disability category who are served in each type of placement.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iv))

§ 300.228 [Reserved]**§ 300.229 Excess cost.**

Each application must provide assurance satisfactory to the SEA that the LEA uses funds provided under part B of the Act only for costs that exceed the amount computed under § 300.184

and that are directly attributable to the education of children with disabilities.

(Authority: 20 U.S.C. 1414(a)(2)(B))

§ 300.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the SEA that the LEA uses funds provided under part B of the Act to supplement and, to the extent practicable, increase 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.

(b) To meet the requirement in paragraph (a) of this section, the total amount or average per capita amount of State and local school funds budgeted by the LEA for expenditures in the current fiscal year for the education of children with disabilities must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of children with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(1) Decreases in enrollment of children with disabilities; and

(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities.

(Authority: 20 U.S.C. 1414(a)(2)(B))

§ 300.231 Comparable services.

(a) Each application must provide assurance satisfactory to the SEA that the LEA meets the requirements of this section.

(b) An LEA may not use funds under part B of the Act to provide services to children with disabilities unless the LEA uses State and local funds to provide services to those children that, taken as a whole, are at least comparable to services provided to other children with disabilities in that LEA.

(c) Each LEA shall maintain records that show that the LEA meets the requirement in paragraph (b) of this section.

(Authority: 20 U.S.C. 1414(a)(2)(C))

Note: Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all children with disabilities in the LEA who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under §§ 300.320–300.324.

§§ 300.232–300.234 [Reserved]**§ 300.235 Individualized education programs.**

Each application must include procedures to assure that the LEA complies with §§ 300.340–300.350.

(Authority: 20 U.S.C. 1414(a)(5))

§ 300.236 [Reserved]**§ 300.237 Procedural safeguards.**

Each application must provide assurance satisfactory to the SEA that the LEA has procedural safeguards that meet the requirements of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1414(a)(7))

§ 300.238 Use of Part B funds.

Each application must describe how the LEA will use the funds under part B of the Act during the next school year.

(Authority: 20 U.S.C. 1414(a))

§ 300.239 [Reserved]**§ 300.240 Other requirements.**

Each local application must include additional procedures and information that the SEA may require in order to meet the State plan requirements of §§ 300.121–300.153.

(Authority: 20 U.S.C. 1414(a)(6))

Application From Secretary of the Interior**§ 300.250 Submission of application; approval.**

(a) In order to receive a grant under this part, the Secretary of the Interior shall submit an application that—

(1) Meets the requirements of section 612(1), 612(2)(C)–(E), 612(4), 612(5), 612(6), and 612(7) of the Act (including monitoring and evaluation activities);

(2) Meets the requirements of section 613(a), (2), (3), (4)(B), (5), (6), (7), (10), (11), (12), (13), (14), and (15), 613(b), and 613(e) of the Act;

(3) Meets the requirements of section 614(a)(1)(A)–(B), (2)(A), (C), (3), (4), (5), and (7) of the Act;

(4) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a)(1)–(3) of this section.

(5) Includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with LEAs, tribes and tribal organizations, and other private and Federal service providers;

(6) Includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected

local school boards before the adoption of the policies, programs, and procedures required under paragraphs (a)(1)-(3) of this section:

(7) Includes an assurance that the Secretary of the Interior will provide such information as the Secretary may require to comply with section 618(b)(1) of the Act, including data on the number of children and youth with disabilities served and the types and amounts of services provided and needed;

(8) Includes an assurance that, by October 1, 1992, the Secretaries of the Interior and Health and Human Services will enter into a memorandum of agreement, to be provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations. That agreement must provide for the apportionment of responsibilities and costs, including, but not limited to, those related to child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies, or both, as needed for a child to remain in school or a program; and

(9) Includes an assurance that the Department of the Interior will cooperate with the Department of Education in the latter's exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under the Act and will fulfill its duties under the Act.

(b) Sections 300.581-300.585 apply to grants available to the Secretary of the Interior under this part.

(Authority: 20 U.S.C. 1411(f))

§ 300.261 Public participation.

In the development of the application for the Department of the Interior, the Secretary of the Interior shall provide for public participation consistent with §§ 300.280-300.284.

(Authority: 20 U.S.C. 1411(f))

§ 300.262 Use of Part B funds.

(a)(1) The Department of the Interior may use five percent of its payment under § 300.709 in any fiscal year, or \$350,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

(2) The remainder of the payments to the Secretary of the Interior under § 300.709 in any fiscal year must be used in accordance with the priorities under §§ 300.320-300.324.

(b) Payments to the Secretary of the Interior under § 300.710 must be used in accordance with that section.

(Authority: 20 U.S.C. 1411(f))

§ 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements of §§ 300.301-300.303, §§ 300.305-300.307, and §§ 300.340-300.347, § 300.350, §§ 300.380-300.383, §§ 300.400-300.402, §§ 300.500-300.585, §§ 300.600-300.621, and §§ 300.680-300.682.

(Authority: 20 U.S.C. 1411(f)(2))

Public Participation

§ 300.280 Public hearings before adopting a State plan.

Prior to its adoption of a State plan, the SEA shall—

- (a) Make the plan available to the general public;
- (b) Hold public hearings; and
- (c) Provide an opportunity for comment by the general public on the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.281 Notice.

(a) The SEA shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the general public about—

- (1) The purpose and scope of the State plan and its relation to part B of the Act;
- (2) The availability of the State plan;
- (3) The date, time, and location of each public hearing;
- (4) The procedures for submitting written comments about the plan; and
- (5) The timetable for developing the final plan and submitting it to the Secretary for approval.

(c) The notice must be published or announced—

- (1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1412(7))

§ 300.282 Opportunity to participate; comment period.

(a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

(Authority: 20 U.S.C. 1412(7))

§ 300.283 Review of public comments before adopting plan.

Before adopting its State plan, the SEA shall—

- (a) Review and consider all public comments; and
- (b) Make any necessary modifications in the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.284 Publication and availability of approved plan.

After the Secretary approves a State plan, the SEA shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(Authority: 20 U.S.C. 1412(7))

Subpart C—Services.

Free Appropriate Public Education

§ 300.300 Timelines for free appropriate public education.

(a) *General.* Each State shall ensure that FAPE is available to all children with disabilities aged 3 through 18 within the State not later than September 1, 1978, and to all children with disabilities aged 3 through 21 within the State not later than September 1, 1990.

(b) *Age ranges 3-5 and 18-21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21:

(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(4) If a public agency provides education to a child with a disability in any of these age groups, it must make

FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make FAPE available to a child with a disability in one of these age groups if—

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group; or

(ii) The requirement is inconsistent with a court order that governs the provision of free public education to children with disabilities in that State.

(c) *Children aged 3 through 21 on reservations.* With the exception of children identified in § 300.709(a)(1) and (2), the SEA shall be responsible for ensuring that all of the requirements of Part B of the Act are implemented for all children aged 3 through 21 on reservations.

(Authority: 20 U.S.C. 1411(f); 1412(2)(B); S. Rep. No. 94-168, p. 19 (1975))

Note 1: The requirement to make FAPE available applies to all children with disabilities within the State who are in the age ranges required under § 300.300 and who need special education and related services. This includes children with disabilities already in school and children with less severe disabilities, who are not covered under the priorities under § 300.321.

Note 2: In order to be in compliance with § 300.300, each State must ensure that the requirement to identify, locate, and evaluate all children with disabilities is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§ 300.530-300.533. If, as a result of the evaluation, it is determined that a child needs special education and related services, an IEP must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

Note 3: The requirement to identify, locate, and evaluate children with disabilities (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to ensure that the system is fully operational and effective on a State-wide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing FAPE. One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement

that has the same age range as child find. Moreover, while a State is not required to provide FAPE to children with disabilities below the age ranges mandated under § 300.300, the State may, at its discretion, extend services to those children, subject to the priority requirements of §§ 300.320-300.324.

§ 300.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(Authority: 20 U.S.C. 1401 (18); 1412(2)(B))

§ 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

Note: This requirement applies to placements that are made by public agencies for educational purposes, and includes placements in State-operated schools for children with disabilities, such as a State school for students with deafness or students with blindness.

§ 300.303 Proper functioning of hearing aids.

Each public agency shall ensure that the hearing aids worn by children with hearing impairments including deafness in school are functioning properly.

(Authority: 20 U.S.C. 1412(2)(B))

Note: The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

In its report on the 1978 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(Authority: H. R. Rep. No. 95-381, p. 67 (1977))

§ 300.304 Full educational opportunity goal.

(a) Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency.

(b) Subject to the priority requirements of §§ 300.320-300.324, an SEA or LEA may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Note: In meeting the full educational opportunity goal, the Congress also encouraged LEAs to include artistic and cultural activities in programs supported under this part, subject to the priority requirements of §§ 300.320-300.324. This point is addressed in the following statements from the Senate Report on Public Law 94-142:

The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Authority: S. Rep. No. 94-168, p. 13 (1975))

§ 300.305 Program options.

Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Note: The above list of program options is not exhaustive, and could include any program or activity in which nondisabled students participate.

§ 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employer* of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

§ 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

- (1) The child is enrolled full time in a separate facility; or
- (2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1401(a)(16); 1412(5)(B); 1414(a)(8))

Note: The Report of the House of Representatives on Public Law 94-142 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in

our school systems, they are often viewed as a luxury for handicapped children.

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(Authority: H. R. Rep. No. 94-332, p. 9 (1975))

§ 300.308 Assistive technology.

Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5-300.6, are made available to a child with a disability if required as a part of the child's—

- (a) Special education under § 300.17;
- (b) Related services under § 300.16; or
- (c) Supplementary aids and services under § 300.550(b)(2).

(Authority: 20 U.S.C. 1412(2), (5)(B))

Priorities in the Use of Part B Funds**§ 300.320 Definitions of first priority children and second priority children.**

For the purposes of §§ 300.321-300.324, the term:

- (a) "First priority children" means children with disabilities who—
 - (1) Are in an age group for which the State must make FAPE available under § 300.300; and
 - (2) Are not receiving any education.
- (b) "Second priority children" means children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education.

(Authority: 20 U.S.C. 1412(3))

Note 1: After September 1, 1978, there should be no second priority children, since States must ensure, as a condition of receiving Part B funds for fiscal year 1979, that all children with disabilities will have FAPE available by that date.

Note 2: The term "free appropriate public education," as defined in § 300.8, means special education and related services that . . . are provided in conformity with an IEP . . .

New first priority children will continue to be found by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all children with disabilities.

§ 300.321 Priorities.

(a) Each SEA and LEA shall use funds provided under part B of the Act in the following order of priorities:

- (1) To provide FAPE to first priority children, including the identification,

location, and evaluation of first priority children.

- (2) To provide FAPE to second priority children, including the identification, location, and evaluation of second priority children.

- (3) To meet the other requirements of this part.

(b) The requirements of paragraph (a) of this section do not apply to funds that the State uses for administration under § 300.620.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

Note: SEAs as well as LEAs must use part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, part B funds may be used—

- (1) To continue supporting child identification, location, and evaluation activities;
- (2) To provide FAPE to newly identified first priority children;
- (3) To meet the full educational opportunity goal required under § 300.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual children with disabilities; and
- (4) To meet the other requirements of part B.

§ 300.322 [Reserved]**§ 300.323 Services to other children.**

If a State or an LEA is providing FAPE to all of its first priority children, that State or LEA may use funds provided under part B of the Act—

- (a) To provide FAPE to children with disabilities who are not receiving any education and who are in the age groups not covered under § 300.300 in that State; or

- (b) To provide FAPE to second priority children; or

- (c) Both.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

§ 300.324 Application of local educational agency to use funds for the second priority.

An LEA may use funds provided under part B of the Act for second priority children, if it provides assurance satisfactory to the SEA in its application (or an amendment to its application)—

- (a) That all first priority children have FAPE available to them;

- (b) That the LEA has a system for the identification, location, and evaluation of children with disabilities, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the LEA makes FAPE available to the child.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii))

Individualized Education Programs

§ 300.340 Definitions.

(a) As used in this part, the term "individualized education program" means a written statement for a child with a disability that is developed and implemented in accordance with §§ 300.341–300.350.

(b) As used in §§ 300.346 and 300.347, "participating agency" means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(a)(20))

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The SEA shall ensure that each public agency develops and implements an IEP for each of its children with disabilities.

(b) *Private schools and facilities.* The SEA shall ensure that an IEP is developed and implemented for each child with a disability who—

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial school or other private school and receives special education or related services from a public agency.

(Authority: 20 U.S.C. 1412 (4), (6); 1413(a)(4))

Note: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare) that provide special education to a child with a disability either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a child with a disability, that agency would be responsible for ensuring that an IEP is developed for the child.

§ 300.342 When individualized education programs must be in effect.

(a) At the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.

(b) An IEP must—

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, sec. 8(c) (1975))

Note: Under paragraph (b)(2) of this section, it is expected that the IEP of a child with a disability will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with State policy and at the discretion of the LEA, and with the concurrence of the parents, an individualized family service plan described in section 677(d) of the Act for each child with a disability, aged 3 through 5).

(b) [Reserved]

(c) *Timeline.* A meeting to develop an IEP for a child must be held within 30 calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

Note: The date on which agencies must have IEPs in effect is specified in § 300.342 (the beginning of each school year). However, except for new children with disabilities (i.e., those evaluated and determined to need special education and related services for the first time), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect at the beginning of the school year, agencies could hold meetings either at the end of the preceding school year or during the summer prior to the next school year. Meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review and, if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the child's last IEP meeting, but this is left to the discretion of the agency.

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall ensure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 300.345.

(4) The child, if appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a child with a disability who has been evaluated for the first time, the public agency shall ensure—

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(c) *Transition services participants.*

(1) If a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite—

(i) The student; and

(ii) A representative of any other agency that is likely to be responsible for providing or paying for transition services.

(2) If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered; and

(3) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(Authority: 20 U.S.C. 1401(a)(19), (a)(20); 1412(2)(B), (4), (6); 1414(a)(5))

Note 1: In deciding which teacher will participate in meetings on a child's IEP, the agency may wish to consider the following possibilities:

(a) For a child with a disability who is receiving special education, the teacher could be the child's special education teacher. If the child's disability is a speech impairment, the teacher could be the speech-language pathologist.

(b) For a child with a disability who is being considered for placement in special education, the teacher could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

For a child whose primary disability is a speech or language impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

Note 2: Under paragraph (c) of this section, the public agency is required to invite each student to participate in his or her IEP

meeting. If a purpose of the meeting is the consideration of transition services for the student. For all students who are 18 years of age or older, one of the purposes of the annual meeting will always be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 18, if transition services are initially discussed at a meeting that does not include the student, the public agency is responsible for ensuring that, before a decision about transition services for the student is made, a subsequent IEP meeting is conducted for that purpose, and the student is invited to the meeting.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b)(1) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance;

(2) If a purpose of the meeting is the consideration of transition services for a student, the notice must also—

(i) Indicate this purpose;

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

(Authority: 20 U.S.C. 1401(a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

Note: The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

§ 300.346 Content of individualized education program.

(a) *General.* The IEP for each child must include—

(1) A statement of the child's present levels of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(b) *Transition services.* (1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in § 300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in § 300.18 (b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.

(Authority: 20 U.S.C. 1401 (a)(19), (a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

Note 1: The legislative history of the transition services provisions of the Act suggests that the statement of needed transition services referred to in paragraph (b) of this section should include a commitment by any participating agency to meet any financial responsibility it may have in the provision of transition services. See House Report No. 101-544, p. 11 (1990).

Note 2: With respect to the provisions of paragraph (b) of this section, it is generally expected that the statement of needed transition services will include the areas listed in § 300.18 (b)(2)(i) through (b)(2)(iii). If the IEP team determines that services are not

needed in one of those areas, the public agency must implement the requirements in paragraph (b)(2) of this section. Since it is a part of the IEP, the IEP team must reconsider its determination at least annually.

Note 3: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but permits transition services to students below age 16 (i.e., " . . . and, when determined appropriate for the individual, beginning at age 14 or younger."). Although the statute does not mandate transition services for all students beginning at age 14 or younger, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16. With respect to the provision of transition services to students below age 16, the Report of the House Committee on Education and Labor on Public Law 101-476 includes the following statement:

Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101-544, 10 (1990).)

§ 300.347 Agency responsibilities for transition services.

(a) If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1401 (a)(18), (a)(19), (a)(20); 1412(2)(B))

§ 300.348 Private school placements by public agencies.

(a) *Developing individualized education programs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with § 300.343.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) [Reserved]

(b) *Reviewing and revising individualized education programs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative:

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.349 Children with disabilities in parochial or other private schools.

If a child with a disability is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall—

(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child, in accordance with § 300.343; and

(b) Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.350 Individualized education program—accountability.

Each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, Part B of the Act does not require that any

agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(Authority: 20 U.S.C. 1412(2)(B); 1414(a)(5); (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Note: This section is intended to relieve concerns that the IEP constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the goals and objectives listed in the IEP. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

Direct Service by the State Educational Agency**§ 300.360 Use of local educational agency allocation for direct services.**

(a) An SEA may not distribute funds to an LEA, and shall use those funds to ensure the provision of FAPE to children with disabilities residing in the area served by the LEA, if the LEA, in any fiscal year—

(1) Is entitled to less than \$7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of §§ 300.220–300.240;

(3) Is unable or unwilling to establish and maintain programs of FAPE;

(4) Is unable or unwilling to be consolidated with other LEAs in order to establish and maintain those programs; or

(5) Has one or more children with disabilities who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements in paragraph (a) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements of §§ 300.182–300.186 do not apply to the SEA.

(Authority: 20 U.S.C. 1411(c)(4); 1413(b); 1414(d))

Note: Section 300.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The SEA, as a recipient of Part B funds, is responsible for ensuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If an LEA elects not to apply for its Part B entitlement, the State would be required to use those funds to ensure that FAPE is made available to

children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to ensure that FAPE and the other requirements of the Act are met.

Moreover, if the LEA is the recipient of any other Federal funds, it would have to be in compliance with 34 CFR §§ 104.31–104.39 of the regulations implementing Section 504 of the Rehabilitation Act of 1973. It should be noted that the term "FAPE" has different meanings under Part B and Section 504. For example, under Part B, FAPE is a statutory term that requires special education and related services to be provided in accordance with an IEP. However, under Section 504, each recipient must provide an education that includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met . . ." Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the FAPE requirement.

§ 300.361 Nature and location of services.

The SEA may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions of §§ 300.550–300.556).

(Authority: 20 U.S.C. 1414(d))

§ 300.370 Use of State agency allocations.

(a) The State may use the portion of its allocation that it does not use for administration under §§ 300.620–300.621—

(1) For support services and direct services in accordance with the priority requirements of §§ 300.320–300.324; and

(2) For the administrative costs of the State's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

(b) For the purposes of paragraph (a) of this section—

(1) "Direct services" means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and

(2) "Support services" includes implementing the comprehensive system of personnel development of §§ 300.380–300.383, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to FAPE for children with disabilities.

(Authority: 20 U.S.C. 1411 (b)(2), (c)(2))

§ 300.371 State matching.

Beginning with the period July 1, 1978-June 30, 1979, and for each following fiscal year, the funds that a State uses for direct and support services under § 300.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 300.360.

(Authority: 20 U.S.C. 1411 (c)(2)(B), (c)(4)(B))

Note: The requirement in § 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

§ 300.372 Applicability of nonsupplanting requirement.

Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under § 300.708(a) for administration, direct services, or support services.

(Authority: 20 U.S.C. 1411(c)(3))

Comprehensive System of Personnel Development**§ 300.380 General.**

Each State shall—

(a) Develop and implement a comprehensive system of personnel development that—

(1) Is consistent with the purposes of the Act and with the comprehensive system of personnel development described in 34 CFR § 303.360;

(2) Meets the requirements in §§ 300.381–300.383; and

(3) Is consistent with the provisions on personnel standards in § 300.153; and

(b) Include in its State plan a description of the personnel development system required in paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1413 (a)(3), (a)(14))

§ 300.381 Adequate supply of qualified personnel.

Each State plan must include a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified personnel (as the term "qualified" is defined at § 300.15), including special education and related services personnel and leadership personnel, necessary to carry out the purposes of this part. The procedures and activities must include the development, updating, and implementation of a plan that—

(a) Addresses current and projected special education and related services

personnel needs, including the need for leadership personnel; and

(b) Coordinates and facilitates efforts among SEA and LEAs, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

(Authority: 20 U.S.C. 1413(a)(3)(A))

§ 300.382 Personnel preparation and continuing education.

Each State plan must include a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared. The procedures and activities must include—

(a) A system for the continuing education of regular and special education and related services personnel to enable these personnel to meet the needs of children with disabilities under this part;

(b) Procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(c) Procedures for adopting, if appropriate, promising practices, materials, and technology, proven effective through research and demonstration.

(Authority: 20 U.S.C. 1413(a)(3)(B))

§ 300.383 Data system on personnel and personnel development.

(a) *General.* The procedures and activities required in §§ 300.381 and 300.382 must include the development and maintenance of a system for determining, on an annual basis, the data required in paragraphs (b) and (c) of this section.

(b) *Data on qualified personnel.* (1) The system required by paragraph (a) of this section must enable each State to determine, on an annual basis—

(i) The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

(ii) The number and type of personnel who are employed with emergency, provisional, or temporary certification in each profession or discipline who do not hold appropriate State certification, licensure, or other credentials comparable to certification or licensure for that profession or discipline; and

(iii) The number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of

the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

(2) The data on special education and related services personnel required in paragraph (b)(1) of this section must include audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides, recreation and therapeutic recreation specialists, vocational education teachers, work-study coordinators, and other instructional and noninstructional staff.

(3) The data on leadership personnel required by paragraph (b)(1) of this section must include administrators and supervisors of State or local agencies who are involved in the provision or supervision of services or activities necessary to carry out the purposes of this part.

(c) *Data on personnel development.* The system required in paragraph (a) of this section must enable each State to determine, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

(1) The numbers of students enrolled in programs for the preparation of special education and related services personnel administered by these institutions of higher education; and

(2) The numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related services personnel administered by institutions of higher education.

(Authority: 20 U.S.C. 1413(a)(3)(A))

§§ 300.384–300.387 (Reserved).**Subpart D—Private Schools****Children With Disabilities in Private Schools Placed or Referred by Public Agencies****§ 300.400 Applicability of §§ 300.400–300.402.**

Sections 300.401–300.402 apply only to children with disabilities who are or have been placed in or referred to a

private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.401 Responsibility of State educational agency.

Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.340–300.350;

(2) At no cost to the parents; and

(3) At a school or facility that meets the standards that apply to the SEA and LEAs (including the requirements of this part); and

(b) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.402 Implementation by State educational agency.

In implementing § 300.401, the SEA shall—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.403 Placement of children by parents.

(a) If a child with a disability has FAPE available and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under §§ 300.450–300.452.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1412(2)(B); 1415)

Children With Disabilities Enrolled by Their Parents in Private Schools

§ 300.450 Definition of "private school children with disabilities."

As used in this part, "private school children with disabilities" means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§ 300.400–300.402.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.451 State educational agency responsibility.

The SEA shall ensure that—

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school children with disabilities in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The requirements of 34 CFR §§ 76.651–76.662 are met.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.452 Local educational agency responsibility.

Each LEA shall provide special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of the agency.

(Authority: 20 U.S.C. 1413(a)(4)(A); 1414(a)(6))

Procedures for By-Pass

§ 300.480 By-pass—general.

(a) The Secretary implements a by-pass if an SEA is, and was on December 2, 1983, prohibited by law from providing for the participation of private school children with disabilities in the program assisted or carried out under this part, as required by section 613(a)(4)(A) of the Act and by §§ 300.451–300.452.

(b) The Secretary waives the requirement of section 613(a)(4)(A) of the Act and of §§ 300.451–300.452 if the Secretary implements a by-pass.

(Authority: 20 U.S.C. 1413(d)(1))

§ 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State to consider matters such as—

(1) The prohibition imposed by State law that results in the need for a by-pass;

(2) The scope and nature of the services required by private school children with disabilities in the State,

and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school children with disabilities receive services consistent with the requirements of section 613(a)(4)(A) of the Act, §§ 300.451–300.452, and 34 CFR §§ 76.651–76.662.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State in a manner consistent with the requirements of section 613(a)(4)(A) of the Act and §§ 300.451–300.452 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount that may not exceed the amount per child provided by the Secretary under this part for all children with disabilities in the State for the preceding fiscal year; by

(2) The number of private school children with disabilities (as defined by §§ 300.7(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State's allocation under this part the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(Authority: 20 U.S.C. 1413(d)(2))

Due Process Procedures

Source: Sections 300.482 through 300.486 appear at 49 FR 48526, Dec. 12, 1984, unless otherwise noted.

§ 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA to respond; and

(2) Advises the SEA that it has a specific period of time (at least 45 days) from receipt of the written notice to

submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.483 Request to show cause.

An SEA seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(Authority: 20 U.S.C. 1413(d)(3)(A);)

§ 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the SEA of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.486 Judicial review.

If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. The procedures for judicial review are described in section 613(d)(3)(B)-(D) of the Act.

(Authority: 20 U.S.C. 1413(d)(3)(B)-(D))

Subpart E—Procedural Safeguards

Due Process Procedures for Parents and Children

§ 300.500 Definitions of "consent," "evaluation," and "personally identifiable."

(a) As used in this part: "Consent" means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) "Evaluation" means procedures used in accordance with §§ 300.530-300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

(c) "Personally identifiable" means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's social security number or student number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415, 1417(c))

§ 300.501 General responsibility of public agencies.

Each SEA shall ensure that each public agency establishes and implements procedural safeguards that meet the requirements of §§ 300.500-300.515.

(Authority: 20 U.S.C. 1415(a))

§ 300.502 Opportunity to examine records.

The parents of a child with a disability shall be afforded, in accordance with the procedures of §§ 300.562-300.568, an opportunity to inspect and review all education records with respect to—

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 300.508 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice that meets the requirements of § 300.505 must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) *Consent; procedures if a parent refuses consent.* (1) Parental consent must be obtained before—

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a child with a disability in a program providing special education and related services.

(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(3) If there is no State law requiring consent before a child with a disability is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 300.506–300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 300.510–300.513.

(c) *Additional State consent requirements.* In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other

services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(d) *Limitation.* A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraphs (b) or (c) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (6))

Note 1: Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements in paragraph (b)(1) of this section, but are subject to the prior notice requirement in paragraph (a) of this section and the IEP requirements of §§ 300.340–300.350.

Note 2: Paragraph (b)(2) of this section means that if State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures of §§ 300.506–300.508 to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

Note 3: If a State adopts a consent requirement in addition to those described in paragraph (b) of this section and consent is refused, paragraph (d) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (c) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

§ 300.505 Content of notice.

(a) The notice under § 300.504 must include—

(1) A full explanation of all of the procedural safeguards available to the

parents under § 300.500, §§ 300.502–300.515, and §§ 300.582–300.589;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors that are relevant to the agency's proposal or refusal.

(b) The notice must be—

(1) Written in language understandable to the general public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice; and

(3) That there is written evidence that the requirements in paragraphs (c)(1) and (2) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(1)(D))

§ 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a)(1) and (2).

(b) The hearing must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(Authority: 20 U.S.C. 1415(b)(2))

Note: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and

the provision of FAPE to those children. Mediations have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under §§ 300.500-300.515.

§ 300.507 Impartial hearing officer.

- (a) A hearing may not be conducted—
- (1) By a person who is an employee of a public agency that is involved in the education or care of the child; or
 - (2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.
- (b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
- (c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

§ 300.508 Hearing rights.

- (a) Any party to a hearing has the right to:
- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
 - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.
 - (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.
 - (4) Obtain a written or electronic verbatim record of the hearing.
 - (5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information, shall—
 - (i) Transmit those findings and decisions to the State advisory panel established under § 300.650; and
 - (ii) Make those findings and decisions available to the public.
- (b) Parents involved in hearings must be given the right to—
- (1) Have the child who is the subject of the hearing present; and
 - (2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

§ 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under § 300.506 is final,

unless a party to the hearing appeals the decision under § 300.510 or § 300.511.

(Authority: 20 U.S.C. 1415(c))

§ 300.510 Administrative appeal; impartial review.

- (a) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.
- (b) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:
- (1) Examine the entire hearing record.
 - (2) Ensure that the procedures at the hearing were consistent with the requirements of due process.
 - (3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.508 apply.
 - (4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.
 - (5) Make an independent decision on completion of the review.
 - (6) Give a copy of written findings and the decision to the parties.

(c) The SEA, after deleting any personally identifiable information, shall—

- (1) Transmit the findings and decisions referred to in paragraph (b)(6) of this section to the State advisory panel established under § 300.650; and
 - (2) Make those findings and decisions available to the public.
- (d) The decision made by the reviewing official is final unless a party brings a civil action under § 300.511.

(Authority: 20 U.S.C. 1415(c), (d); H. R. Rep. No. 94-864, et p. 49 (1975))

Note 1: The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

Note 2: All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.508 relating to hearings also apply.

§ 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 300.510, and any party aggrieved by the decision of a reviewing officer under § 300.510, has the right to bring a civil action under section 815(e)(2) of the Act. (Authority: 20 U.S.C. 1415)

§ 300.512 Timeliness and convenience of hearings and reviews.

- (a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—
- (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.
- (b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—
- (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.
- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.
- (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

§ 300.513 Child's status during proceedings.

- (a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

Note: Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

§ 300.514 Surrogate parents.

- (a) *General.* Each public agency shall ensure that the rights of a child are protected when—
- (1) No parent (as defined in § 300.13) can be identified;
 - (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
 - (3) The child is a ward of the State under the laws of that State.
- (b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for

the parents. This must include a method: (1) For determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.*

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate—

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(B))

§ 300.515 Attorneys' fees.

Each public agency shall inform parents that in any action or proceeding under section 615 of the Act, courts may award parents reasonable attorneys' fees under the circumstances described in section 615(e)(4) of the Act.

(Authority: 20 U.S.C. 1415(b)(1)(D); 1415(e)(4))

Protection in Evaluation Procedures

§ 300.530 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.530–300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of § 300.532.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.532 Evaluation procedures.

State educational agencies and LEAs shall ensure, at a minimum, that:

(a) Tests and other evaluation materials—

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer.

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(Authority: 20 U.S.C. 1412(5)(C))

Note: Children who have a speech or language impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would: (1) Evaluate each child with a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall—

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Ensure that the placement decision is made in conformity with the LRE rules in §§ 300.550–300.554.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.340–300.350.

(Authority: 20 U.S.C. 1412(5)(C); 1414(a)(5))

Note: Paragraph (a)(1) of this section includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use: (1) A standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

§ 300.534 Reevaluation.

Each SEA and LEA shall ensure—

(a) That the IEP of each child with a disability is reviewed in accordance with §§ 300.340–300.350; and

(b) That an evaluation of the child, based on procedures that meet the requirements of § 300.532, is conducted every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation.

(Authority: 20 U.S.C. 1412(5)(c))

Additional Procedures for Evaluating Children With Specific Learning Disabilities

§ 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 300.532, each public agency shall include on the multidisciplinary evaluation team—

(a)(1) The child's regular teacher; or
 (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
 (Authority: 20 U.S.C. 1411 note)

§ 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas—

- (i) Oral expression;
- (ii) Listening comprehension;
- (iii) Written expression;
- (iv) Basic reading skill;
- (v) Reading comprehension;
- (vi) Mathematics calculation; or
- (vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—

- (1) A visual, hearing, or motor impairment;
- (2) Mental retardation;
- (3) Emotional disturbance; or
- (4) Environmental, cultural or economic disadvantage.

(Authority: 20 U.S.C. 1411 note)

§ 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1411 note)

§ 300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1411 note)

Least Restrictive Environment

§ 300.550 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.550-300.556.

(b) Each public agency shall ensure—

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

§ 300.551 Continuum of alternative placements.

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or

itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.552 Placements.

Each public agency shall ensure that:

(a) The educational placement of each child with a disability—

- (1) Is determined at least annually;
- (2) Is based on his or her IEP; and
- (3) Is as close as possible to the child's home.

(b) The various alternative placements included at § 300.551 are available to the extent necessary to implement the IEP for each child with a disability.

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can be educated with children who are nondisabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs.

The requirements of § 300.552, as well as the other requirements of §§ 300.550-300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for nondisabled preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the LRE embodied in §§ 300.550-300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550-300.556 include—

(1) Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);

(2) Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and nondisabled children; and

(3) Locating classes for preschool children with disabilities in regular elementary schools.

In each case the public agency must ensure that each child's placement is in the LRE in which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of §§ 300.340-300.350 and §§ 300.550-300.556.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR part 104—Appendix, Paragraph 24) includes several points regarding educational placements of children with disabilities that are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "... it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impeded, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs"

2. With respect to placing a child with a disability in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home, and this issue may be raised by the parent under the due process provisions of this subpart.

§ 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Section 300.553 is taken from a requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[This paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR part 104—Appendix, Paragraph 24.)

§ 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions

(such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that § 300.550 is effectively implemented.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Under section 612(5)(B) of the statute, the requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

§ 300.555 Technical assistance and training activities.

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.556 Monitoring activities.

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(5)(B))

Confidentiality of Information

§ 300.560 Definitions.

As used in §§ 300.560-300.576—
Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of education records in part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.128, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in part 99 of this title.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance

with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.570 Hearing procedures.

(1) A hearing held under § 300.568 must be conducted according to the procedures under § 99.23 of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99 of this title.

(c) The SEA shall include policies and procedures in its State plan that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.129 and part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: Under § 300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

§ 300.574 Children's rights.

The SEA shall include policies and procedures in its State plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

§ 300.575 Enforcement.

The SEA shall describe in its State plan the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.576 Department.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Secretary shall apply the requirements of 5 U.S.C. section 552a (b)(1)-(2), (4)-(11); (c); (d); (e)(1); (2); (3)(A), (B), and (D); (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in part 5b of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Department Procedures**§ 300.580 [Reserved]****§ 300.581 Disapproval of a State plan.**

Before disapproving a State plan, the Secretary gives the SEA written notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.582 Content of notice.

(a) In the written notice, the Secretary—

- (1) States the basis on which the Secretary proposes to disapprove the State plan;
- (2) May describe possible options for resolving the issues;
- (3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and
- (4) Provides information about the procedures followed for a hearing.

(b) The Secretary sends the written notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(c))

§ 300.583 Hearing official or panel.

(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(Authority: 20 U.S.C. 1413(c))

§ 300.584 Hearing procedures.

(a) As used in §§ 300.581-300.586 the term *party* or *parties* means the following:

- (1) An SEA that requests a hearing regarding the proposed disapproval of its State plan under this part.
- (2) The Department of Education official who administers the program of financial assistance under this part.
- (3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

- (1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.
- (2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.
- (3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.
- (4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

- (i) Narrowing and clarifying issues;
- (ii) Assisting the parties in reaching agreements and stipulations;
- (iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held; and

(v) Setting dates for—
(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m) (1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p) (1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1413(c))

§ 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.582.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 calendar days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial

comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven calendar days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

§ 300.586 Judicial review.

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60 calendar days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 1416(b)(1))

§§ 300.587-300.588 [Reserved]

§ 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, SEAs and LEAs must ensure that Federal funds provided under this part are used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal, State, and local funds. The nonsupplanting requirement applies only to funds allocated to LEAs (See § 300.372).

(b) If the State provides clear and convincing evidence that all children with disabilities have FAPE available to them, the Secretary may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Secretary in writing. The Secretary then provides the State with a finance and membership report form that provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of FAPE to all children with disabilities. The special study must include

statements by a representative sample of organizations that deal with children with disabilities, and parents and teachers of children with disabilities, relating to the following areas—

(1) The adequacy and comprehensiveness of the State's system for identifying, locating, and evaluating children with disabilities;

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions; and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of FAPE for all children with disabilities, including—

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year; and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Secretary considers the information that the State provides under paragraphs (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have FAPE available to them, and if so, the extent of the waiver.

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(Authority: 20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

Subpart F—State Administration**General****§ 300.600 Responsibility for all educational programs.**

(a) The SEA is responsible for ensuring—

- (1) That the requirements of this part are carried out; and
- (2) That each educational program for children with disabilities administered within the State, including each program administered by any other public agency—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the education standards of the SEA (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(c) This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(Authority: 20 U.S.C. 1412(6))

Note: The requirement in § 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of children with disabilities within each State. With respect to SEA responsibility, the Senate Report on Pub. L. 94-142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency . . .

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (S. Rep. No. 94-168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options that may be adopted, including the following:

- (1) Written agreements are developed between respective State agencies concerning SEA standards and

monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the SEA responsibility.

(3) State law, regulation, or policy designates the SEA as responsible for establishing standards for all educational programs for individuals with disabilities, and includes responsibility for monitoring.

(4) State law mandates that the SEA is responsible for all educational programs.

§ 300.601 Relation of part B to other Federal programs.

This part may not be construed to permit a State to reduce medical and other assistance available to children with disabilities, or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE.

(Authority: 20 U.S.C. 1413(e))

Use of Funds**§ 300.620 Federal funds for State administration.**

A State may use five percent of the total State allotment in any fiscal year under part B of the Act, or \$450,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than twenty-five percent of the State's total allotment for the fiscal year under part B of the Act.

(Authority: 20 U.S.C. 1411(b), (c))

§ 300.621 Allowable costs.

(a) The SEA may use funds under § 300.620 for—

(1) Administration of the State plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;

(3) Technical assistance to LEAs with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for children with disabilities; and

(5) Other State leadership activities and consultative services.

(b) The SEA shall use the remainder of its funds under § 300.620 in accordance with § 300.370.

(Authority: 20 U.S.C. 1411(b), (c))

State Advisory Panel**§ 300.650 Establishment.**

(a) Each State shall establish, in accordance with the provisions of §§ 300.650-300.653, a State advisory panel on the education of children with disabilities.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 300.652, the State may modify the existing panel so that it fulfills all of the requirements of §§ 300.650-300.653, instead of establishing a new advisory panel.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of children with disabilities. The membership must include at least one person representative of each of the following groups—

- (1) Individuals with disabilities;
- (2) Teachers of children with disabilities;
- (3) Parents of children with disabilities;
- (4) State and local educational officials; and
- (5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(Authority: 20 U.S.C. 1413(a)(12))

Note: The membership of the State advisory panel, as listed in paragraphs (a)(1)-(5) of this section, is required in section 613(a)(12) of the Act. As indicated in paragraph (b) of this section, the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having—

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and individuals with disabilities);

(2) Broad representation within the consumer-advocate groups, to ensure that the interests and points of view of various parents, advocates and individuals with disabilities are appropriately represented;

(3) Broad representation within professional groups (e.g., regular education personnel, special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of

children with disabilities; and appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to ensure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

§ 300.652 Advisory panel functions.

The State advisory panel shall—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on the State plan and rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Secretary in the performance of his responsibilities under section 618 of the Act.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 300.620 for this purpose.

(Authority: 20 U.S.C. 1413(a)(12))

State Complaint Procedures

§ 300.660 Adoption of State complaint procedures.

Each SEA shall adopt written procedures for:

(a) Resolving any complaint that meets the requirements of § 300.662 by—

(1) Providing for the filing of a complaint with the SEA; and
(2) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint.

(b) Informing parents and other interested individuals about the procedures in §§ 300.660-300.662.

(Authority: 20 U.S.C. 2831(a))

§ 300.661 Minimum State complaint procedures.

Each SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 300.660(a) to—

(1) Carry out an independent on-site investigation, if the SEA determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of part B of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) The right of the complainant or the public agency to request the Secretary to review the SEA's final decision.

(Authority: 20 U.S.C. 2831(a))

§ 300.662 Filing a complaint.

An organization or individual may file a signed written complaint under the procedures described in §§ 300.600-300.661. The complaint must include—

(a) A statement that a public agency has violated a requirement of part B of the Act or of this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

Subpart G—Allocation of Funds; Reports

Allocations

§ 300.700 Special definition of the term State.

For the purposes of § 300.701, § 300.702, and §§ 300.704-300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau.

(Authority: 20 U.S.C. 1411(a)(2))

§ 300.701 State entitlement; formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 3 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 6 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the United States (which, for the purpose of this section, means the 50 States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the

source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1411(a)(4))

§ 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 300.701:

(1) If a State serves all children with disabilities aged 3 through 5 in the State, the Secretary does not count children with disabilities aged 3 through 17 in the State to the extent that the number of those children is greater than 12 percent of the number of all children aged 3 through 17 in the State.

(2) If a State does not serve all children with disabilities aged 3 through 5 in the State, the Secretary does not count children with disabilities aged 5 through 17 to the extent that the number of those children is greater than 12 percent of the number of all children aged 5 through 17 in the State.

(3) The Secretary does not count children with disabilities who are counted under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged 3 through 17 and 5 through 17 in any State is determined by the Secretary on the basis of the most recent satisfactory data available.

(Authority: 20 U.S.C. 1411(a)(5))

§ 300.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 811 of the Act are not sufficient to pay in full the total amounts that all States are entitled to receive for that fiscal year, the maximum amount that all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(Authority: 20 U.S.C. 1411(g)(1))

(b) Reporting dates for Local educational agencies and reallocations.

(1) In any fiscal year that the State entitlement has been ratably reduced, and that additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the SEA shall fix dates before which each LEA shall report to the State the amount of funds available to it under this part that it estimates it will expend.

(2) The amounts available under paragraph (a) of this section, or any amount that would be available to any other LEA if it were to submit an application meeting the requirements of this part, that the SEA determines will not be used for the period of its availability shall be available for allocation to those LEAs, in the manner provided in § 300.707, that the SEA determines will need and be able to use additional funds to carry out approved programs.

(Authority: 20 U.S.C. 1411(g)(2))

§ 300.704 Hold harmless provision.

No State shall receive less than the amount it received under part B of the Act for fiscal year 1977.

(Authority: 20 U.S.C. 1411(a)(1))

§ 300.705 Allocation for State in which by-pass is implemented for private school children with disabilities.

In determining the allocation under §§ 300.700–300.703 of a State in which the Secretary will implement a by-pass for private school children with disabilities under §§ 300.451–300.486, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§ 300.7(a) and 300.450) in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1411(a)(1)(A), 1411(a)(3), 1413(d))

§ 300.706 Within-State distribution: fiscal year 1979 and after.

Of the funds received under § 300.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979—

(a) 25 percent may be used by the State in accordance with § 300.620 and § 300.370; and

(b) 75 percent shall be distributed to the LEAs in the State in accordance with § 300.707.

(Authority: 20 U.S.C. 1411(c)(1))

§ 300.707 Local educational agency entitlement; formula.

From the total amount of funds available to all LEAs, each LEA is entitled to an amount that bears the same ratio to the total amount as the number of children with disabilities aged 3 through 21 in that agency who are receiving special education and related services bears to the aggregate number of children with disabilities

aged 3 through 21 receiving special education and related services in all LEAs that apply to the SEA for funds under part B of the Act.

(Authority: 20 U.S.C. 1411(d))

§ 300.708 Reallocation of local educational agency funds.

If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by the local agency with State and local funds otherwise available to the local agency, the SEA may reallocate funds (or portions of those funds that are not required to provide special education and related services) made available to the local agency under § 300.707, to other LEAs within the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by the other LEAs.

(Authority: 20 U.S.C. 1414(e))

§ 300.709 Payments to the Secretary of the Interior for the education of Indian children.

(a) *General.* (1) The Secretary makes payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations, aged 5 through 21, who are enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior.

(2) In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with Bureau of Indian Affairs (BIA) schools that are required by the States in which the schools are located to attain or maintain State accreditation and had State accreditation prior to October 7, 1991, the schools may count those children for the purpose of distribution of the funds provided under paragraph (a)(1) of this section to the Secretary of the Interior.

(3) The amount of the payment under paragraph (a)(1) of this section for any fiscal year is one percent of the aggregate amounts available to all States under this part for that fiscal year.

(b) *Responsibility for meeting the requirements of part B.* The Secretary of the Interior shall be responsible for meeting all of the requirements of part B of the Act for the children described in paragraph (a) of this section, in accordance with § 300.280.

(Authority: 20 U.S.C. 1411(f))

§ 300.710 Payments to the Secretary of the Interior for Indian tribes or tribal organizations.

(a) *General.* (1) Beginning with funds appropriated under part B of the Act for fiscal year 1992, the Secretary, subject to this section, makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortiums of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities, aged 3 through 5, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.

(2) The amount of the payment under paragraph (b)(1) of this section for any fiscal year is .25 percent of the aggregate amounts available for all States under this part for that fiscal year.

(3) None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(b) *Distribution of funds.* The Secretary of the Interior shall distribute the total amount of the .25 percent under paragraph (a) of this section in accordance with section 611(f)(4) of the Act.

(Authority: 20 U.S.C. 1411(f))

§ 300.711 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau, (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99-658).

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged 3 through 21 in each jurisdiction. However, no jurisdiction shall receive less than \$150,000, and other allocations shall be ratably reduced if necessary to

ensure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or \$35,000, whichever is greater.

(Authority: 20 U.S.C. 1411(e))

Reports

§ 300.750 Annual report of children served—report requirement.

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in the State who are receiving special education and related services.

(Authority: 20 U.S.C. 1411(a)(3))

(b) The SEA shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411(a)(3))

Note: It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make FAPE available. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged 3 through 17 (in States that serve all children with disabilities aged 3 through 5) or 5 through 17 (in States that do not serve all children with disabilities aged 3 through 5), a State might find that 14 percent (or some other percentage) of its children have disabilities. In that case, the State must make FAPE available to all of those children with disabilities.

§ 300.751 Annual report of children served—information required in the report.

(a) In its report, the SEA shall include a table that shows—

(1) The number of children with disabilities receiving special education and related services on December 1 of that school year;

(2) The number of children with disabilities aged 3 through 5 who are receiving FAPE;

(3) The number of those children with disabilities aged 6 through 21 within each disability category, as defined in the definition of "children with disabilities" in § 300.7; and

(4) The number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.).

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1.

(c) The SEA may not report a child aged 6 through 21 under more than one disability category.

(d) If a child with a disability aged 6 through 21 has more than one disability, the SEA shall report that child in accordance with the following procedure:

(1) A child with deaf-blindness must be reported under the category "deaf-blindness."

(2) A child who has more than one disability (other than deaf-blindness) must be reported under the category "multiple disabilities."

(Authority: 20 U.S.C. 1411(a)(3); (5)(A)(ii); 1418(b))

§ 300.752 Annual report of children served—certification.

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

§ 300.753 Annual report of children served—criteria for counting children.

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that either—

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(b) The SEA may not include children with disabilities in its report who—

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefiting from special education;

(4) Are counted by a State agency under subpart 2 of part D of chapter 1 of Title I of the Elementary and Secondary Education Act of 1965; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.186(b).

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

Note 1: Under paragraph (a) of this section, the State may count children with disabilities in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

Note 2: Special education, by statutory definition, must be at no cost to parents. As

of September 1, 1978, under the FAPE requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Department expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech services is the only special education required by the child. For example, the child's parents may have enrolled the child in a regular program in a private school, but the child might be receiving speech services in a program funded by the LEA. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 619(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children enrolled by their parents in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that if a public agency places or refers a child with a disability to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If an SEA or LEA is responsible for serving these children, and does provide them special education and related services, they may be counted.

§ 300.754 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements of §§ 300.750–300.753, the SEA shall—

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.750–300.753; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

Note: States should note that the data required in the annual report of children

served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

Appendix A to Part 300—[Reserved]

Appendix B to Part 300—[Reserved]

Appendix C to Part 300—Notice of Interpretation

I. Purpose of the IEP

II. IEP Requirements

§ 300.340 Definition

§ 300.341 State educational agency responsibility

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

§ 300.342 When individualized education programs must be in effect

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

4. How much of a delay is permissible between the time an IEP of a child with a disability is finalized and when special education is provided?

5. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?

6. If a child with a disability has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

§ 300.343 Meetings

7. What is the purpose of the 30 day timeline in § 300.343(c)?

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

9. Must IEPs be reviewed or revised at the beginning of each school year?

10. How frequently must IEP meetings be held and how long should they be?

11. Who can initiate IEP meetings?

12. May IEP meetings be tape-recorded?

§ 300.344 Participants in meetings

(Agency representative)

13. Who can serve as the representative of the public agency at an IEP meeting?

14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?

16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

17. If a child with a disability in high school attends several regular classes, must all of

the child's regular teachers attend the IEP meeting?

18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?

19. If a child is enrolled in a special education class because of a primary disability and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?

21. When may a child with a disability attend an IEP meeting?

22. Do the parents of a student with a disability retain the right to attend the IEP meeting when the student reaches the age of majority?

23. Must related services personnel attend IEP meetings?

24. Are agencies required to use a case manager in the development of an IEP for a child with a disability?

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

§ 300.345 Parent participation

26. What is the role of the parents at an IEP meeting?

27. What is the role of a surrogate parent at an IEP meeting?

28. Must the public agency let the parents know who will be at the IEP meeting?

29. Are parents required to sign IEPs?

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

31. Do parents have the right to a copy of their child's IEP?

32. Must parents be informed at the IEP meeting of their right to appeal?

33. Does the IEP include ways for parents to check the progress of their children?

34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

§ 300.346 Content of the individualized education program (Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term instructional objectives)

37. Why are goals and objectives required in the IEP?

38. What are annual goals in an IEP?

39. What are short term instructional objectives in an IEP?

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

41. Should there be a relationship between the goals and objectives in the IEP and those that are in the instructional plans of special education personnel?

42. When must IEP objectives be written—before placement or after placement?

43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

46. Must the public agency itself directly provide the services set out in the IEP?

47. Does the IEP include only special education and related services or does it describe the total education of the child?

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

49. When must physical education (PE) be described or referred to in an IEP?

50. If a child with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

52. Must an IEP for a child with a disability indicate the extent that the child will be educated in the regular educational program? (Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

56. Is there a prescribed format or length for an IEP?

57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?

58. What provisions on confidentiality of information apply to IEPs?

§ 300.348 Private school placements by Public Agencies

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

§ 300.349 Children with Disabilities Enrolled in Parochial or Other Private Schools

§ 300.350 Individualized education programs—accountability

60. Is the IEP a performance contract?

Authority: Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411–1420), unless otherwise noted.

Individualized Education Programs (IEPs)

Interpretation of Requirements of Part B of the Individuals With Disabilities Education Act

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and

regulations: (1) The IEP meeting(s), where parents and school personnel jointly make decisions about an educational program for a child with a disability, and (2) the IEP document itself, that is, a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning the special education needs of a child with a disability: first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each child with a disability is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether a child with a disability is actually receiving the FAPE agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Note: The Act does not require that teachers or other school personnel be held accountable if a child with a disability does not achieve the goals and objectives set forth in the IEP. See § 300.350, Individualized education program—accountability.

II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340–300.350 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every child with a disability in the State has FAPE available, regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

Note: Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of children with disabilities, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for students with deafness or students with blindness), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a child with a disability in a school or program operated by another State agency:

a. **SEA POLICIES OR INTERAGENCY AGREEMENTS.** The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all children with disabilities in the State. This applies to each interagency situation that exists in the State, including any of the following:

(1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

Note: This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and non-educational purposes.

Frequently, more than one agency is involved in developing or implementing an IEP of a child with a disability (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of FAPE to a child with a disability. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

Note: The SEA must also ensure that any agency involved in the education of a child with a disability is in compliance with the LRE provisions of the Act and regulations.

and, specifically, with the requirement that the placement of each child with a disability (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§ 300.552(a), Placements.)

b. **LEA-INITIATED PLACEMENTS.** When an LEA is responsible for the education of a child with a disability, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

Note: The IEP must be developed before the child is placed. (See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 6, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has FAPE available.

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, if appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. How much of a delay is permissible between the time an IEP of a child with a disability is finalized and when special education is provided?

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The Note following § 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances that

require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

Note: Section 300.346(e) requires that the IEP include the projected dates for initiation of services.

5. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?

An IEP must be in effect before special education and related services are provided to a child. (§ 300.342(b)(1), emphasis added.) The appropriate placement for a given child with a disability cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an interim IEP for the child that sets out the specific conditions and timelines for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

Note: Once the IEP of the child with a disability is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives based on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 37-43, below, regarding IEP goals and objectives.)

6. If a child with a disability has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

It would not be necessary for the new LEA to conduct an IEP meeting if:

(1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should

take place within a short time after the child enrolls in the new LEA (normally, within one week).

Note: The child must be placed in a special education program immediately after the IEP is finalized. (See Question 4, above.)

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

7. What is the purpose of the 30 day timeline in § 300.343(c)?

The 30 day timeline in § 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child has a disability, the public agency has up to 30 days to hold an IEP meeting.

Note: See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

Paragraph (e) of § 300.532 (Evaluation procedures) provides that the evaluation of each child with a disability must be "made by a multidisciplinary team or group of persons * * *". The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

Note: When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See § 300.345 for requirements on parent participation.)

Note: If, at a separate eligibility meeting, a decision is made that a child is not eligible for special education, the parents should be notified about the decision.

9. Must IEPs be reviewed or revised at the beginning of each school year?

No. The basic requirement in the regulations is that IEPs must be in effect at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise the IEP of each child with a disability. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. How frequently must IEP meetings be held and how long should they be?

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. Who can initiate IEP meetings?

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a child with a disability believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

Note: Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. May IEP meetings be tape-recorded?

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an education record, within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR part 99) and Part B (34 CFR §§ 300.580-300.575).

13. Who can serve as the representative of the public agency at an IEP meeting?

The representative of the public agency could be any member of the school staff, other than the child's teacher, who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities. (Section 602(a)(20) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not

be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a child with a disability who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

Note: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following:

(1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

Note: In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

Note: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is

given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, as necessary, to consult with and be a resource to the child's regular teacher.

17. If a child with a disability in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

b. While large meetings are generally inappropriate, there may be specific circumstances where the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?

No. A speech-language pathologist would usually serve as the child's teacher for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. If a child is enrolled in a special education class because of a primary disability, and also receives speech-language pathology services, must both specialists attend the IEP meeting?

No. It is not required that both attend. The special education teacher would attend the meeting as the child's teacher. The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. When may representatives of teacher organizations attend IEP meetings?

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g) and implementing regulations (34 CFR part 99) and the confidentiality requirements of part B, officials of teacher organizations may not attend IEP meetings if personally identifiable information from the student's education records is discussed—except with the prior written consent of the parents. (See 34 CFR §§ 99.30(a)(1) and 300.571(a)(1).)

In addition, part B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. When may a child with a disability attend an IEP meeting?

Generally, a child with a disability should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made. In order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child, the agency should inform the parents before each IEP meeting—as part of the notice of meeting required under § 300.345(b)—that they may invite their child to participate.

Note: The parents and agency should encourage older children with disabilities (particularly those at the secondary school level) to participate in their IEP meetings.

22. Do the parents of a student with a disability retain the right to attend the IEP meeting when the student reaches the age of majority?

The Act is silent concerning any modification of the rights of the parents of a student with a disability when the student reaches the age of majority.

23. Must related services personnel attend IEP meetings?

No. It is not required that they attend. However, if a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

Note: This written recommendation could be a part of the evaluation report.

24. Are agencies required to use a case manager in the development of the IEP of a child with a disability?

No. However, some agencies have found it helpful to have a special educator or some

other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all children with disabilities served by the agency. Examples of the kinds of activities that case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary disability is a speech impairment, there may be no other evaluation personnel involved. The note following § 300.532 (Evaluation procedures) states:

Children who have a speech impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each child with a speech impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

26. What is the role of the parents at an IEP meeting? The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

Note: In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. What is the role of a surrogate parent at an IEP meeting?

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under Part B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.514, Surrogate parents.)

28. Must the public agency let the parents know who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), emphasis

added.) If possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. Are parents required to sign IEPs? Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

The following are some of the ways that IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

Note: This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

Note: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

Note: Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (§ 300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement that meets the definition of consent in § 300.500:

Consent means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought . . .

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary . . . and may be revoked at any time.

31. Do parents have the right to a copy of their child's IEP?

Yes. Section 300.345(f) states that the public agency shall give the parent, on request, a copy of the IEP. In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself within a reasonable time following the meeting.

32. Must parents be informed at the IEP meeting of their right to appeal?

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504-300.505), it would not be necessary for the agency to do so again at the IEP meeting.

Section 300.504(a) of the regulations states that "written notice that meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child."

Section 300.506(a) states that the notice must include "(1) A full explanation of all of the procedural safeguards available to the parents under § 300.500, §§ 300.502-300.515, and §§ 300.532-300.589."

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures under the Act.

Note: Section 300.508(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a) (1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See § 300.506, Impartial due process hearing.)

33. Does the IEP include ways for parents to check the progress of their children?

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding the special education program of a child with a disability. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel. In a general way, in checking on a child's progress in the special education program. (See Questions 37-43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?

No. The IEP of a child with a disability is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual

situations, specific meeting dates could be designated in the IEP. If the parents and school personnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following:

(1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§ 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies if there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended—(1) that the IEP be implemented in all areas where there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps:

(1) Remind the parents that they may resolve their differences through the due process procedures under part B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) that both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See § 300.513, Child's status during proceedings.) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A child with a disability is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

Note: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service would continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

36. What should be included in the statement of the child's present levels of educational performance?

The statement of present levels of educational performance will be different for each child with a disability. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points that should be taken into account in writing this part of the IEP:

a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

Note: Labels such as mental retardation or deafness may not be used as a substitute for the description of present levels of educational performance.

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, if appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the disability on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. Why are goals and objectives required in the IEP?

The statutory requirements for including annual goals and short term instructional objectives (Section 802(a)(20)(B)), and for having at least an annual review of the IEP of a child with a disability (Section 814(a)(5)) provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. What are annual goals in an IEP?

The annual goals in the IEP are statements that describe what a child with a disability can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. What are short term instructional objectives in an IEP?

Short term instructional objectives (also called IEP objectives) are measurable, intermediate steps between the present levels of educational performance of a child with a disability and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent that the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

IEP goals and objectives are concerned primarily with meeting the needs of a child with a disability for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's disability that interfere with learning and educational performance in school. For example, if a child with a learning disability is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a child with severe mental retardation would be more comprehensive and cover more of the child's school program than if the child has only a mild disability.

41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?

Yes. There should be a direct relationship between the IEP goals and objectives for a given child with a disability and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

Note: See Question 56, below, regarding the length of IEPs.

42. When must IEP objectives be written—before placement or after placement?

IEP objectives must be written before placement. Once a child with a disability is placed in a special education program, the

teacher might develop lesson plans or more detailed objectives based on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. Can short term instructional objectives be changed without initiating another IEP meeting?

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability" (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see § 300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see § 300.345(c)).

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

Each public agency must provide FAPE to all children with disabilities under its jurisdiction. Therefore, the IEP for a child with a disability must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

Yes. The IEP of each child with a disability must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. Must the public agency itself directly provide the services set out in the IEP?

The public agency responsible for the education of a child with a disability could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)). However, the services must be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

47. Does the IEP include only special education and related services or does it describe the total education of the child?

The IEP is required to include only those matters concerning the provision of special education and related services and the extent that the child can participate in regular education programs.

(Note: The regulations define special education as specially designed instruction to meet the unique needs of a child with a

disability, and related services as those services that are necessary to assist the child to benefit from special education.) (See §§ 300.17 and 300.18, respectively.)

For some children with disabilities, the IEP will only address a very limited part of their education (e.g., for a child with a speech impairment, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those with profound mental retardation), the IEP might cover their total education. An IEP for a child with a physical disability with no mental or emotional disability might consist only of specially designed physical education. However, if the child also has a mental or emotional disability, the IEP might cover most of the child's education.

Note: The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a child with a hearing impairment, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. When must physical education (PE) be described or referred to in the IEP?

Section 300.307(a) provides that physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE. The following paragraphs (1) set out some of the different PE program arrangements for students with disabilities, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. Regular PE with nondisabled students. If a student with a disability can participate fully in the regular PE program without any special modifications to compensate for the student's disability, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. Specially designed PE. If a student with a disability needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. PE in separate facilities. If a student with a disability is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the

physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for students with deafness), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

50. If a student with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

The answer depends on the kind of vocational education program to be provided. If a student with a disability is able to participate in the regular vocational education program without any modifications to compensate for the student's disability, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

Note: The parents should be notified whenever this occurs.

52. Must the IEP of a child with a disability indicate the extent that the child will be educated in the regular educational program?

Yes. Section 300.348(c) provides that the IEP for each child with a disability must include a "statement of . . . the extent that the child will be able to participate in regular educational programs." One way of meeting

this requirement is to indicate the percent of time the child will be spending in the regular education program with nondisabled students. Another way is to list the specific regular education classes the child will be attending.

Note: If a child with a severe disability, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with nondisabled students (e.g., lunch, assembly periods, club activities, and other special events).

53. Can the anticipated duration of services be for more than twelve months?

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term instructional objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term instructional objectives.

Note: In many instances, these components are incorporated directly into the objectives.

Other Questions About the Content of an IEP

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(a)(20) of the Act defines the IEP as a written statement developed in any meeting with the agency representative, the teacher, the parent, and, if appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94-142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their children with disabilities. (See, e.g., S.

Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47-50 (1975).)

56. Is there a prescribed format or length for an IEP?

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

57. Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?

Yes. In instances where a child with a disability must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document only if: (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans that might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. What provisions on confidentiality of information apply to IEPs?

IEPs are subject to the confidentiality provisions of both (1) Part B (Section 617(c) of the Act; §§ 300.560-300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. 1232g) and implementing regulations in 34 CFR part 99. An IEP is an education record as that term is used in the FERPA and implementing regulations (34 CFR § 99.3) and is, therefore, subject to the same protections as other education records relating to the student.

Note: Under Section 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or LEA who have been determined by the agency or institution to have legitimate educational interests . . . in that information. Insert illus. 01788

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or

school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

60. Is the IEP a performance contract?

No. Section 300.350 makes it clear that the IEP is not a performance contract that imposes liability on a teacher or public agency if a child with a disability does not meet the IEP objectives. While the agency must provide special education and related services in accordance with the IEP of each child with a disability, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

2. The authority citation for part 301 continues to read as follows:

Authority: 20 U.S.C. 1419, unless otherwise noted.

3. Section 301.1 is amended by revising paragraph (a) to read as follows:

§ 301.1 What is the Preschool Grants for Children with Disabilities program?

(a) Providing special education and related services to children with disabilities aged three through five years, and, at a State's discretion, providing a free appropriate public education to two-year-old children with disabilities who will reach age three during the school year;

§ 301.2 [Amended]

4. The heading for § 301.2 in the table of contents is revised to read "Who is eligible for an award?"

5. Section 301.3 is amended by revising paragraphs (a) and (c) to read as follows:

§ 301.3 What kinds of activities may be assisted?

(a) Provide subgrants to LEAs and IEPs to assist them in providing special education and related services to children with disabilities aged three through five years, and, if consistent with State policy, provide a free appropriate public education to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under Part H of the Act.

(c) Provide direct and support services from the SEA to children with disabilities aged three through five years, and, at the State's discretion, provide a free appropriate public education, in accordance with the Act, to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under Part H.

(Authority: 20 U.S.C. 1419)

6. A new § 301.6 is added to Subpart A to read as follows:

§ 301.6 Does Part H of the Act apply to two-year-old children with disabilities?

Part H of the Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with Part B of the Act, with funds received under the Preschool Grants program.

(Authority: 20 U.S.C. 1419(g))

7. Section 301.10 is amended by revising paragraph (b)(2) to read as follows:

§ 301.10 How does a State become eligible to receive a grant?

(b) . . .

(2) The State has policies and procedures in its State plan under 34 CFR part 300 that assure the provision of a free appropriate public education—

(i) For all children with disabilities aged three through five years in accordance with the requirements in 34 CFR part 300; and

(ii) For any two-year-old children, provided services by the State under 301.30(b)(3) or by a LEA or IEP under 301.30(a)(2); and

8. Section 301.30 is amended by revising paragraphs (a), (b)(2), and (d), and adding a new paragraph (b)(3) to read as follows:

§ 301.30 How does a State distribute the grant money?

(a) A state shall distribute at least 75 percent of its grant to LEAs and IEPs to be used to provide:

(1) Special education and related services to children with disabilities aged three through five years; and

(2) If consistent with State policy, a free appropriate public education, in accordance with Part B, to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving or have received, services under Part H of the Act.

(b) . . .

(2) The provision of direct and support services for children with disabilities aged three through five years; and

(3) At the State's discretion, the provision of a free appropriate public education to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under Part H of the Act.

(d) If a State provides services to preschool children with disabilities because some or all LEAs and IEOs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or IEOs to provide special education and related services to children with disabilities aged three through five years, and to two-year-old children with disabilities in accordance with paragraph (b)(3) of this section, residing in the area served by those LEAs and IEOs.

(Authority: 20 U.S.C. 1414(d), 1419(c)(2), 1419(f))

Appendix

(Not to be Codified in the Code of Federal Regulations)

Appendix

Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations.)

The following is an analysis of the comments and of the changes in the regulations since publication of the NPRM on August 19, 1991 (56 FR 41266). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed. References to section numbers in this appendix are to the final regulations.

Assistive Technology Device; Assistive Technology Service (§§ 300.5 and 300.6)

Comment: One commenter requested that the proposed definitions of "assistive technology device" and "assistive technology service" be modified to make them as educationally relevant as possible. Another commenter stated that, in the definition of "assistive technology service" (§ 300.6(f)), the term "children" should be used in lieu of "individuals." Another commenter suggested that each State be required to include in the State plan its system for providing information and technological assistance for LEAs

regarding assistive technology acquisition.

A commenter requested that procedures for determining when a child needs assistive technology be added to the final regulations. Another commenter requested that evaluations be done by personnel qualified to assess the technological needs of children with disabilities. Another commenter was concerned that school personnel would not have the training and knowledge to provide required services.

Discussion: The definitions of "assistive technology device" and "assistive technology service" are taken from sections 602(a)(25) and 602(a)(26) of the Act, and there is no authority to change the substance of those definitions. However, the requirement in § 300.308 limits the provision of assistive technology to educational relevancy—i.e., an assistive technology device or service is only required if it is determined, through the IEP process, to be (1) special education, as defined in § 300.17, (2) a related service, as defined in § 300.16, or (3) supplementary aids and services required to enable a child to be educated in the least restrictive environment. The Secretary believes that the effect of § 300.308 is to limit the provision of assistive technology devices and services to those situations in which they are required in order for a child to receive FAPE.

The Note following "assistive technology service" in the NPRM explained that, except for replacing "child" for "individual," the definition is taken directly from section 602(a)(25)–(26) of the Act. The term "individuals" was inadvertently included in paragraph (f) of that definition. Therefore, that term is being changed to "children" in these final regulations.

The Secretary believes that while an SEA, at its discretion, might choose to provide technical assistance to LEAs about assistive technology or other provisions required in this part, it would be inappropriate and burdensome to require that a State include a description of a technical assistance system on assistive technology in the State plan.

It is not necessary to add procedures for determining the need for assistive technology services because this determination is made as part of the individual evaluation of each child required in §§ 300.530–300.534. These evaluations must be done by qualified individuals, as specified in § 300.532(a)(3).

In instances where LEA personnel do not have the knowledge to provide assistive technology services, funds under this part may be used to obtain the necessary expertise, and, if

appropriate, to train existing school personnel. The Secretary does not believe that further guidance is needed on the matters raised by these commenters.

Changes: In § 300.6(f), the clause "or are otherwise substantially involved in the major life functions of individuals with disabilities" has been revised to substitute the term "children" for "individuals."

Autism (§ 300.7(b)(1))

Comment: Some commenters proposed that the phrase "generally evident before the age of three" be eliminated because it may result in excluding children who exhibit those characteristics after age three. One commenter requested that the regulations clarify that autism is a medical diagnosis, while another commenter asked if a medical diagnosis would be required for this disability.

Discussion: The reference to age three is not an age limitation, but merely indicates that children identified as having autism generally exhibit characteristics of this disability before age three. The Secretary does not agree that a medical diagnosis is required to determine whether a child falls within the disability category of "autism." The definition of "children with disabilities" in § 300.7(a)(1) states that the term means "those children evaluated in accordance with §§ 300.530–300.534 . . ." The required procedures in those sections are broad enough to ensure that diagnostic and placement decisions are based on comprehensive information about the child, including medical information that may be needed to determine whether the child has a disability and is in need of special education and related services.

Changes: None.

Comment: Several commenters raised issues regarding the characteristics listed in the definition of "autism." For example, some commenters stated that the proposed definition implies that a child must exhibit all of the characteristics listed to be considered to have autism. In addition, a commenter asked that impairments in the development of social relationships be added to the list of characteristics. Commenters raised two concerns about the term "stereotyped movements"—that the term is too vague and that, in some instances, older children may not exhibit stereotyped movements.

One commenter proposed that the phrase "that markedly restricts activities and interests" be included after "generally evident before age three" to be consistent with the

definition of "Pervasive Developmental Disorder" in the Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R). Several commenters requested that the term "Pervasive Developmental Disorder" be included to ensure that the definition is not restrictive. One commenter requested that a statement be added noting that the term "autistic" does not include children with "autistic-like tendencies."

Discussion: The definition in the NPRM was not intended to require the presence of all of the characteristics listed, nor to be an exhaustive list of characteristics. Children with autism must have impairments in both communication and social interaction. In addition, there are other characteristics that are often, but not always, associated with autism. The term "stereotyped movements" is used by most special educators and medical and health professionals to describe behaviors of many children with autism. The phrase "that markedly restricts activities and interests" does not need to be added because it is implicit in the definition. Children with "autistic-like tendencies" are included if they meet the definition of "autism." Inclusion of the definition of "Pervasive Developmental Disorder" is not needed because the definition of "autism" is sufficiently broad to encompass children who exhibit a range of characteristics of autism.

Changes: The definition has been revised to (1) include, in the first sentence, characteristics generally common to children with autism, and (2) list, in the second sentence, "Other characteristics often associated with autism * * *"

Comment: Several commenters requested that the last sentence in the definition of "autism" regarding the exclusion of children with characteristics of the disability "serious emotional disturbance" be eliminated. They indicated that some characteristics of autism are similar to some characteristics of serious emotional disturbance. A few commenters stated that, in the past, autism was classified under the definition of "serious emotional disturbance."

Discussion: A clarifying change has been made in the definition. However, the Secretary believes that it is important that the regulations distinguish between serious emotional disturbance and autism because children may exhibit characteristics of both disabilities. While the commenters are correct that, in the past, autism was included in the category of "serious emotional disturbance," the current regulations include "autism" in the

category of "other health impaired." The legislative history of Public Law 101-476 indicates that autism has suffered from an inaccurate identification with mental illness, and that the designation of autism as a disability category is meant to clarify it as a developmental disability and not as a form of mental illness. (See House Report No. 101-544, 5 [1990].)

Changes: The last sentence of the definition of "autism" has been modified to clarify that the term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

Traumatic Brain Injury (§ 300.7(b)(12))

Comment: A commenter suggested that the first sentence of the proposed definition of "traumatic brain injury" be amended by adding "acquired" before "injury," and substituting "impairment" for "maladjustment". The commenter also pointed out that "functional disability" and "psychosocial impairment" resulting from an injury to the brain are not always mutually exclusive, and recommended that the definition be amended to allow for both. One commenter requested the inclusion of adverse effects on social-emotional development, not just academic performance.

Discussion: The Secretary agrees that the definition of "traumatic brain injury" should clarify that the injury (1) occurs after birth, and (2) results in total or partial functional disability, or psychosocial impairment, or both, to provide a more accurate and comprehensive description of children in this disability category. It is not necessary to include a statement of adverse effects on social-emotional development in the definition because social-emotional developmental consequences may be reflected in adverse effects on educational performance.

Changes: The definition has been revised to incorporate the commenter's suggestions, to the extent indicated in the above discussion.

Comment: Some commenters requested clarification as to whether medical verification or physician documentation would be required. In addition, a few commenters requested that specific assessment procedures be developed and required. One commenter stated that LEAs do not have individuals skilled in assessing children with traumatic brain injury and expressed concern about assessment costs.

Discussion: The definition of "children with disabilities" in § 300.7(a)(1) states

that the term means "those children evaluated in accordance with §§ 300.530-300.534 * * *." The required procedures in those sections are broad enough to ensure that diagnostic and placement decisions are based on comprehensive information about the child, including medical information if it is needed to determine whether the child has a disability and is in need of special education and related services. There should not be a significant increase in the cost of assessing children with traumatic brain injury, since these children are being currently assessed and are receiving special education, although they are identified as having other disabling conditions. The establishment of a separate category should facilitate the development of improved assessment and program planning efforts. These efforts, together with improved personnel training, should help to ensure that required personnel in LEAs are appropriately skilled in the identification, evaluation, and placement of children with traumatic brain injury. (See House Report No. 101-544, 5 [1990].)

Changes: None.

Comment: Several commenters requested clarification as to whether there is any overlap between the definitions of "traumatic brain injury" and "other health impaired." The commenters asked if an injury resulting from infection, tumor, fever, exposure to a toxic substance, or near-drowning would be considered a traumatic brain injury. A commenter also requested that the definition not exclude other acquired brain injuries when the resulting functional areas of disability are similar to the disabilities resulting from traumatic brain injury.

Discussion: The term "traumatic brain injury," as used in professional practice, applies only to children with acquired brain injuries caused by an external physical force. It does not apply to injuries caused by internal occurrences, such as infections, tumors, fever, and exposure to toxic substances. Children whose educational performance is affected as a result of acquired injuries to the brain caused by internal occurrences may meet the criteria of one of the other disability categories, such as "other health impaired," "specific learning disabilities," or "multiple disabilities." The definition of "traumatic brain injury" does include an acquired injury to the brain caused by the external physical force of near-drowning.

Changes: The phrase "or by an internal occurrence such as a stroke or

aneurysm" has been deleted from the first sentence of the definition.

Comment: A commenter suggested that the word "mild" be deleted from the second sentence of the definition of "traumatic brain injury." Another commenter asked that descriptions of the degree of a child's impairment be eliminated from the definition.

Discussion: The Secretary believes that the degree of impairment is not a factor in determining whether a child has a "traumatic brain injury." Therefore, the terms "mild," "moderate," and "severe" should be deleted from this definition. The factors for determining whether a child is eligible under this disability category for services under part B are (1) an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment that adversely affects educational performance, and (2) a need for special education and related services because of that disability or impairment. The particular services provided to the child are determined on an individual basis. Thus, as long as the factors described above are met, children are eligible whether or not they have mild, moderate, or severe impairments.

Changes: The descriptions of degree of impairment (mild, moderate, and severe) have been deleted from the definition.

Rehabilitation Counseling Services (§ 300.16(b)(10))

Comment: Some commenters indicated that rehabilitation counseling services should be provided by State vocational rehabilitation agencies under title I of the Rehabilitation Act of 1973, and not be a requirement under this part. Commenters also expressed concern regarding the potential responsibility and the financial burden to LEAs to provide services that were previously the responsibility of other agencies, as well as the inability of LEAs to commit the resources of other agencies. Two commenters requested that the definition of "rehabilitation counseling services" be broadened to mention additional services. A commenter requested clarification about the intent of the new requirement, especially with respect to services provided under the Rehabilitation Act of 1973.

Discussion: Public Law 101-476 added "rehabilitation counseling" as a type of "counseling service" in the list of related services in part B. The Report of the House Committee on Education and Labor on Public Law 101-476 describes rehabilitation counseling as an

important related service in special education, as well as an important transition service in preparing students with disabilities for employment or postsecondary education. In addition, the report states, "It is the intent of the Committee that rehabilitation counseling * * * be provided to all students with disabilities for whom this service is necessary for the achievement of the individualized education program." (See House Report No. 101-544, 7-8 (1990).)

"Rehabilitation counseling services," as defined in § 300.16(b)(10), includes a variety of services, such as career development, employment counseling, and employment preparation. The term also includes vocational rehabilitation services provided to students with disabilities under the Rehabilitation Act of 1973. The Secretary believes that the definition is broad enough not to require the listing of additional services.

Because "rehabilitation counseling services" is a type of related service under "counseling services" in part B, public agencies must provide that service to any student with a disability, if the IEP team determines that the service is required to assist the student to benefit from special education. As indicated in the discussion to the comment that follows, rehabilitation counseling may be provided by existing LEA staff, if they are qualified under § 300.15 to provide those services in areas appropriate to their disciplines.

The Secretary recognizes that LEAs do not have the authority to commit the resources of another agency. However, the SEA is responsible—through the use of interagency agreements required under § 300.151, or other means—to ensure that services that would have been provided by other agencies will continue to be provided, either by those agencies, or by the LEA responsible for providing FAPE to the child. In accordance with § 300.150, States may not permit LEAs to use funds under this part to provide or pay for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in a student's IEP.

Changes: None.

Comment: Many commenters requested that the term "qualified counseling professional" be deleted from the definition of "rehabilitation counseling services." They were concerned that it would add a new personnel category that would require States to adopt new certification or licensure standards, and preclude the continued provision of services by existing school staff, who are otherwise

qualified. A few commenters suggested that "certified" be used in lieu of "qualified."

Discussion: The Secretary believes that existing school staff (e.g., prevocational counselors, work-study coordinators, or special education teachers), who are qualified under § 300.15, should be permitted to provide rehabilitation counseling services appropriate to their disciplines. The qualifications of personnel providing those services, like the qualifications of personnel providing other services, is a matter to be determined by each State. The method used to specify the qualifications of personnel (e.g., certification, licensure, or registration) is also a matter that is left to State discretion.

Changes: The term "a qualified counseling professional" has been changed to "qualified personnel."

Social Work Services in Schools (300.16(b)(12))

Comment: A large number of commenters did not support the proposed deletion of "in schools" from the definition of "social work services," and requested that the current term "social work services in schools" be retained in the final regulations. These commenters stated, among other reasons, that the existing term helps to ensure that the services provided will be educationally relevant and directly linked to the IEP. Some commenters requested that the term be changed to "school social work services."

A few commenters supported the deletion of "in schools" from the defined term, asserting that the change would enable broader services to be provided. One commenter stated that the proposed change would allow schools and other public and private agencies to work together in providing appropriate mental health services to children with serious emotional disturbance.

Another commenter requested the following changes: (1) Substituting developmental "history" for developmental "assessment," (2) adding the phrase "making home visits," to be consistent with the definition in 34 CFR 303.12(d)(11), and (3) changing "mobilizing" to "identifying and coordinating." A few commenters requested that the qualifications of social workers be clarified. Commenters also urged that services be provided by credentialed school social workers.

Discussion: The phrase "in schools" was proposed to be omitted from the defined term because the Secretary believed that public agencies understood that phrase to limit the

setting in which social work could be provided as a related service. The comments received make clear that this is not the case. The substance of the definition, which was not proposed to be amended, permits these services to be provided in any environment, including a child's home, if they are required to assist the child to benefit from special education.

Because the term "social work services in schools" has been used in this part since 1977 and is commonly accepted by LEAs and other public agencies throughout the Nation, the Secretary does not believe that it is necessary to change the term to "school social work services" or to make other changes to the substance of the definition.

Social work services in schools must be provided by personnel who are qualified under § 300.15. The qualifications of personnel providing those services is a matter to be determined by each State. The method used to specify the qualifications of personnel (e.g., certification, licensure, or registration) is also a matter that is left to State discretion.

Changes: The phrase "in schools" has been retained in the defined term.

Comment: Several commenters requested that, in § 300.16(b)(12)(iv), the goal of receiving "maximum benefit" be deleted. These commenters asserted that "maximum benefit" exceeds the legally required standard for providing FAPE. Some of the commenters stated that the phrase "to receive maximum benefit from his or her educational program" is inconsistent with the decision of the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982)—that part B does not entitle children to maximization of their educational potential, but only to educational benefit.

Discussion: The definition of "social work services in schools," included at § 300.12(b)(12) of the current regulations has remained unchanged since 1977. The phrase "to receive maximum benefit," as used in that definition, was intended only to provide that one activity carried out by personnel qualified to provide social work services in schools is to mobilize resources so that a child can learn as effectively as possible in his or her educational program. This provision did not set a legal standard for that program or entitle the child to a particular educational benefit. However, because of the commenters' concerns that the phrase "to receive maximum benefit" appears to be inconsistent with the Rowley decision, the Secretary believes that the phrase should be revised.

Changes: Section 300.18(b)(12)(iv) has been revised to read: "Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program."

Transition Services (§ 300.18)

Comment: A large number of comments were received on the proposed Note following the definition of transition services. The majority of commenters requested that the last sentence of the Note be revised to delete the statement that the listed activities in the definition are only examples of different types of post-school activities, and, instead, to specify that the listed activities are the minimum that must be provided. Other commenters requested that the listed activities be permissive and not mandatory. One commenter requested that the final regulations define the limits of transition services. (See other comments on transition services relating to §§ 300.344–300.347 in this appendix.)

Discussion: The Secretary agrees with commenters that the statement in the Note—that the listed activities are only examples—must be deleted. The statute defines both "transition services" and "individualized education program." 20 U.S.C. 1401(a)(19) and 1401(a)(20). Paragraph (D) of the definition of IEP provides that an IEP must include a statement of the needed transition services for students with disabilities who are 16 years of age or older, and for certain students below age 16. The Secretary interprets these provisions to require that, at a minimum, the IEP team for each student must address each of the areas listed in § 300.18(b)(2)(i) through § 300.18(b)(2)(iii) (as incorporated from section 602(a)(19) of the Act), and determine what services are needed by the student in each area. If the IEP team determines that no services within a particular area are needed by the student, the IEP must include a statement to this effect, and the basis upon which that determination was made. See § 300.346(i).

Although the definition of transition services in § 300.18 includes a specific list of activities, that list is not intended to be exhaustive. The Secretary does not believe that further guidance is needed regarding the limits of transition services.

Changes: The last sentence of the Note following § 300.18 has been revised to delete the statement that the listed activities are only examples of different types of post-school activities.

Comment: One commenter requested clarification of what is meant by the term "outcomes," as used in "outcome-oriented process." Some commenters

requested clarification of the term "coordinated," as used in "a coordinated set of activities." A few commenters requested that recreation and leisure, and orientation and mobility, be added to the coordinated set of activities.

A few commenters requested that the term "if appropriate" be deleted as a modifier of the phrases "acquisition of daily living skills" and "functional evaluation," stating that these activities are needed by all students. Another commenter requested deletion of "if appropriate," stating that the IEP is already individualized.

One commenter requested an emphasis on the responsibility of schools to prepare students with severe disabilities to work and live in the community. Another commenter requested that the definition emphasize the importance of involving the student, parents, other family members, employers, and other community representatives earlier in the student's educational process. One commenter requested a definition of "functional vocational evaluation."

Discussion: The term "outcome," as used in the phrase "outcome-oriented process," refers to the results, or intended effect, of the activities on a student. The Secretary interprets the term "coordinated" to mean both (1) the linkage between each of the component activities that comprise transition services, and (2) the interrelationship between the various agencies that are involved in the provision of transition services to a student. With respect to the comment on "outcomes and the request to clarify the term "coordinated," the Secretary does not believe that further guidance is needed in these regulations. It also is not necessary to specify recreation and leisure, and orientation activities because they could be included under other post-school adult living objectives. As used in § 300.18, the term "if appropriate" is incorporated from the statutory definition of transition services.

It is not necessary to emphasize the responsibility of schools in preparing students with severe disabilities for post-school activities, since transition services are to be provided to each student who is eligible for those services.

The Secretary agrees with the commenter that it is important to involve students, their parents, and appropriate community representatives as early as possible in the educational process—to facilitate a smooth transition from school to employment.

However, it is not appropriate to add this as a requirement in the definition under § 300.18. It also is not necessary to add a definition of "functional vocational evaluation." The term is intended to be sufficiently broad to enable States and LEAs to include whatever services or activities are determined appropriate for individual students.

Changes: None.

**Full Educational Opportunity Goal—
Data Requirement (§ 300.124)**

Comment: Two commenters requested clarification regarding whether the effect of the removal of this section was simply to require data to be submitted separately from the State plan or whether the data requirements would be less specific or otherwise substantively different.

Discussion: When the original regulations in this part were published in 1977, States were required to submit State plans on an annual basis. State plans are now submitted on a triennial basis; but the data for the Part B program are required to be submitted each year as part of the Department's Annual Data Report under section 618 of the Act. This change does not affect the substance of the data requirements.

Changes: None.

Child Identification (§ 300.128, Note 2)

Comment: One commenter felt that the issue of coordination between the Part B and Part H programs was so important that it should be addressed in the regulation rather than a note. The commenter requested clarification regarding the responsibility of the Part H lead agency when it is not the SEA. Another commenter suggested that the two agencies be required to coordinate child find activities with other agencies. Other commenters requested clarification of the components of these activities and applicable procedural safeguards. One commenter questioned whether Part B requires child find activities for children from birth to two years of age.

Discussion: A specific provision requiring the lead agency for Part H to coordinate its child find system with all other child find efforts in the State, including those under Part B, is contained in 34 CFR 303.321(c). Therefore, a Note following § 300.128 is sufficient to address the importance of effective coordination between the two programs.

The Secretary believes that, in States where the SEA and the lead agency for Part H are different, effective coordination between the two agencies is essential to the implementation of the

child find activities. The nature and extent of that participation must be included in the State plan. With the agreement of the SEA, the Part H lead agency may undertake the actual implementation of child find efforts for infants and toddlers with disabilities. However, the SEA remains responsible in all events for ensuring compliance with all child find requirements, including those relating to the evaluation of children.

With respect to the scope of the child find requirements under this part, the Secretary interprets those requirements to apply to all children from birth through twenty-one.

Changes: Note 2 has been revised to reflect the above discussion.

Assistive Technology (§ 300.308)

Comment: A few commenters questioned the Department's authority to require assistive technology devices and services under § 300.308, stating that the only new statutory provisions affecting Part B are the definitions of these terms in 20 U.S.C. 1401 (a)(25) and (a)(26).

Several commenters requested that the provisions on assistive technology devices and services be amended to clarify that the cost of personal or medical devices should be borne by parents or other public agencies and not educational agencies. A few commenters requested that the final regulations clarify that an assistive technology device can be taken home by a child if it is needed to complete a homework assignment; other commenters stated that devices should be used only at school. One commenter suggested that, with respect to a child's need for assistive technology devices and services, the phrase "following evaluation of such needs" be added to proposed § 300.308(a).

Discussion: The Secretary believes that the requirements for assistive technology in this part are fully authorized by law. The report of the House Committee on Education and Labor on Public Law 101-476 states:

... The Committee is aware that since the passage of the Education of the Handicapped Act, advances in the development and use of assistive technology have provided new opportunities for children with many disabilities to participate in educational programs. For many children and youth with disabilities, the provision of assistive technology devices and services will redefine "an appropriate placement in the least restrictive environment" and allow greater independence and productivity.

The Committee bill incorporates definitions for assistive technology service and assistive technology device in order ... (2) to increase the awareness of assistive

technology as an important component of meeting the special education and related service needs of many students with disabilities, and thus enable them to participate in, and benefit from, educational programs ... (House Report No. 101-544, 8-9 (1990).)

The Secretary believes that assistive technology devices and services may be essential to the provision of FAPE to certain children with disabilities. Section 300.308 provides only that these devices and services must be made available if they are required under current provisions of the regulations relating to special education, related services, and supplementary aids and services.

A determination as to whether an assistive technology device or service is required in order for a child to receive FAPE must be made on an individual basis using the evaluation procedures, the procedures for developing IEPs, and the procedures for placement described in these regulations. Similarly, a decision as to whether a child may use a device or service in settings other than the child's school (e.g., the child's home or other parts of the community) also must be made on an individual basis.

Under § 300.301, a public agency may use whatever State, local, Federal, and private sources of support are available to provide or pay for services, including assistive technology services or devices. These services and devices must be provided at no cost to the child or parent under §§ 300.8 and 300.300.

The Secretary does not believe that it is necessary to add the phrase "following evaluation of such needs" because the concept of determining needs based on evaluation is central to these regulations.

Changes: None.

Comment: Several commenters objected to proposed § 300.308(b), regarding the provision of supplementary aids and services for children who are educated in regular classes, because the proposed language implied that assistive technology devices and services under this part must be provided to children who do not receive special education and related services.

Discussion: Under § 300.550(b)(2), "supplementary aids and services" must be provided to children with disabilities who have been determined to be eligible under Part B and are able to be educated in regular classes with the use of those aids and services. Assistive technology can be a form of "supplementary aids and services."

Changes: Section 300.308 has been revised to make it clear that assistive

technology devices and services must be provided only if they are required under current regulations as part of a child's special education (§ 300.17), related services (§ 300.16), or supplementary aids and services (§ 300.550(b)(2)).

Priorities (§ 300.321(c))

Comment: A few commenters requested that the prohibition against the use of Part B funds for preservice training in § 300.321(c) of the current regulations be retained. These commenters expressed concern about duplication of effort, noting that preservice training is currently the responsibility of institutions of higher education. Another commenter expressed concern that public agencies would be required to use Part B funds for preservice education, thus diverting funds away from the provision of direct services. One commenter expressed support for deleting the provision if the change would provide LEAs more flexibility in using Federal funds for preservice training, but not if it would mean that universities would have increased availability of Part B funds for preservice training previously funded from other sources.

Discussion: The Secretary believes that the prohibition against using funds under this part for preservice training should be deleted, as proposed in the NPRM. Deleting the prohibition will give States and LEAs the flexibility to use funds under this part for preservice training if they choose to do so.

Changes: None.

Participants in Meetings; Parent Participation (§§ 300.344(c) and 300.345(b)(2))

Comment: Several commenters requested that the term "if appropriate" be deleted from the Note following § 300.344(c), and that inclusion of students in their IEP meetings be required. Other commenters requested that the Note reflect a preference for student inclusion and clarify who makes the determination of the appropriateness. These commenters stressed the importance of students having direct involvement in determining their own programs and services.

Discussion: The Secretary agrees with commenters that "if appropriate" should be deleted, and that students should be afforded the opportunity to participate and have a voice in their own transition planning. Providing for the inclusion of older students in their IEP meetings is consistent with the current provisions of this part. Section 300.344(a)(4) states that each public agency "shall ensure that the meeting includes * * * the

child, where appropriate." The Note following question 21 of Appendix C of these regulations states that "[t]he parents and the agency should encourage older children with disabilities (particularly those at the secondary level) to participate in their IEP meetings." The Secretary believes that, if a purpose of the IEP meeting is the consideration of transition services for a student, the public agency has a responsibility to (1) invite the student to attend the meeting, and (2) consistent with Executive Order 12606, entitled "The Family," inform the parents, in the notice required at § 300.345(a)(1), that the student will be invited. Also, if the student does not attend, the public agency must use other methods to ensure that the student's preferences and interests are taken into account at the meeting.

The Secretary believes that it is important to add a Note to clarify when the public agency is required to invite students to attend their IEP meetings. All students who are 16 years of age, or older, must be invited, since one of the purposes of the annual IEP meeting will always be the planning of transition services. Also, any student younger than age 16 must be invited before a decision about transition services for the student is made.

Changes: The following changes have been made: (1) the title of § 300.344(c) has been changed to "Transition services participants"; (2) that paragraph has been revised to specify that if a purpose of the meeting is the consideration of transition services for a student, the public agency must invite the student, and, if the student does not attend, take steps to ensure that the student's preferences and interests are considered; (3) proposed Note 2 following § 300.344 in the NPRM has been revised to clarify when public agencies must invite students to their IEP meetings; and (4) § 300.345 (Parent participation) has been revised at paragraph (b)(2) to provide that, if a purpose of the IEP meeting is the consideration of transition services, the notice of the meeting must indicate this purpose, and indicate that the student will be invited.

Comment: Several commenters expressed concern about the requirement in § 300.344(c)(2) of the NPRM that public agencies must ensure that IEP meetings include, "if appropriate, a representative of each other participating agency providing the transition services * * *." The commenters stated that public agencies do not have the authority to require the attendance of personnel from other agencies, and requested that the

requirement be deleted, or modified to provide guidance on alternatives for the public agency to follow if other agencies fail to participate (e.g., to require documentation of efforts to involve agencies, or to use other methods to ensure participation).

A commenter requested clarification of the term "a representative of the public agency," as used in § 300.344(a)(1) of the current regulations and proposed § 300.344(c)(1) of the NPRM, noting that the terms appear to be duplicative. Another commenter requested the inclusion of agency representatives who are needed to assist in planning (e.g., case managers or advocates), but whose agencies are not necessarily providing or paying for transition services. One commenter requested that the regulation address the need for providing information on accommodations in postsecondary education and employment that are required under section 504 of the Rehabilitation Act and the Americans With Disabilities Act.

Discussion: The Secretary believes that LEAs need the involvement of, and commitment from, the various agencies that will participate in the provision of transition services to students with disabilities, but agrees with the commenters that LEAs cannot compel the attendance of representatives of transition agencies at IEP meetings. Therefore, the Secretary believes that LEAs need to adopt other methods to ensure the involvement of those agencies (e.g., through individual or conference telephone calls, or correspondence).

The Secretary agrees with the commenter that the provision at proposed § 300.344(c)(1) of the NPRM that requires each IEP meeting to include "a representative of the public agency responsible for providing or supervising the provision of transition services" duplicates the statutory requirement in the current regulations at § 300.344(a)(1) (i.e., "a representative of the public agency * * * who is qualified to provide or supervise the provision of special education").

Under § 300.344(a)(5), participants at IEP meetings are not limited to representatives of agencies that provide or pay for the provision of transition services, but may include, at the discretion of the agency or parents, other individuals who can be helpful in planning transition services. Because § 300.344(a)(5) already provides for the kind of participation requested by the commenter, no further clarification is needed in these regulations. Considering an individual student's need for

reasonable accommodation in post-school environments is an inherent part of transition planning, and is implicit in these regulations. Therefore, it is not necessary to add a requirement on this point.

Changes: Section 300.344(c)(1) of the NPRM has been deleted. The requirement at § 300.344(c)(2) of the NPRM (designated as § 300.344(c)(1)(ii) in these final regulations) has been modified to specify that the public agency must invite "a representative of any other agency that is likely to be responsible for providing or paying for transition services." A provision has been added to specify that if a transition agency fails to send a representative to the IEP meeting, the public agency must take other steps to obtain the participation of that agency.

Content of IEP (§ 300.346).

Comment: A few commenters requested that a note be added to clarify that the statement of needed transition services must be based on current academic, vocational, and functional assessment and evaluation information. Some commenters requested that the regulations specify that the "statement of needed transition services" include (a) goals and objectives, including short-term transitional objectives, and (b) the specific special education services to be provided to the student.

A few commenters requested that the regulations refer to a "plan" rather than a "statement" because this would provide a fully developed schemata for implementation of services. One commenter requested that an exit planning meeting be held prior to graduation to determine if transition goals have been met and if appropriate services are being provided.

Several commenters expressed concern that other agencies would abandon their commitment to provide transition services, and suggested that the regulations require that participating agencies must provide the transition services agreed to in the IEP. Many of these commenters, citing the legislative history of the 1990 Amendments, requested that the Note following § 300.346 be amended to clarify that the statement of agency responsibilities is intended to address shared financial and programmatic responsibility. One commenter suggested deleting the language regarding participating agencies' responsibilities, since that concept is already covered in other areas of the Part B regulations.

Discussion: The Secretary agrees with commenters that it is important to base transition services on current evaluation and assessment information about a student that is derived from a current

evaluation that meets the requirements of §§ 300.532 and 300.533.

Nothing in Part B excludes goals and objectives for transition services. However, given that the IEP content requirements in § 300.346(a) do not appear to be appropriate for all types of transition services, the Secretary has determined not to regulate further on this point at this time.

With respect to the request to use the term "plan" in lieu of "statement," the regulation uses the terminology of section 602(a)(20) of the Act. The Secretary believes that it is not necessary to require that an exit planning meeting be held because exit planning should be discussed as a matter of course in IEP meetings on transition services.

The Secretary believes that it is important to ensure that other agencies continue to provide or pay for those transition services for which they are financially and legally responsible. This position is stated in § 300.347(b) of these final regulations (§ 300.347(c) in the NPRM). The Secretary agrees with commenters that the Note following § 300.346 should reflect the legislative history of the Act regarding shared financial responsibilities for transition services.

Changes: A new heading for paragraph (a) ("General") has been added, and the five components of the IEP, as contained in § 300.346 of the current regulations, have been included under that heading. A new paragraph (b) ("Transition services") has been added. The transition services requirements under paragraph (b) have been revised to specify that the IEP for a student must include the three areas listed in § 300.18(b)(2)(i) through § 300.18(b)(2)(iii), unless (1) the IEP team determines that services are not needed in one of those areas, and (2) the IEP includes information to that effect, including the basis for the determination. (The comments and discussion related to these changes are included under § 300.18.)

The Note following § 300.346 in the NPRM (designated as Note 1 in these final regulations) has been revised consistent with the above discussion. A new Note 2 has been added to clarify the requirement in paragraph (b) related to including in a student's IEP the three transition services areas specified in § 300.18(b)(2)(i) through § 300.18(b)(2)(iii).

Comment: Some commenters recommended decreasing the age criterion to "no later than age 14," and requiring a statement of explanation for any 14 or 15-year old student not receiving such services. Another

commenter recommended that the required age for providing transition services be lowered to age 15.

Discussion: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but adds qualifying language related to students below 16 (i.e., " * * * and, when determined appropriate for the individual, beginning at age 14 or younger."). The Secretary believes that it would be inconsistent with the Act to mandate services for all students beginning at age 14 or 15, or to require public agencies to include a statement in a student's IEP explaining why the IEP team determined that transition services were not appropriate.

Although there is no statutory base to mandate transition services for all students beginning at age 14 or younger, the Secretary believes that the provision of these services could have a significantly positive effect on the employment and independent living outcomes of these students in the future, especially for students who are likely to drop out before age 16. As indicated in the Report of the House Committee on Education and Labor on Public Law 101-476:

Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 16, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101-544, 10 (1990).)

Therefore, the Secretary encourages public agencies to provide transition services to students below age 16 when there is a need for those services.

Changes: A new Note 3 has been added to reflect the above discussion.

Agency responsibilities for transition services (§ 300.347).

Comment: Several commenters expressed concerns about the costs of transition services to educational agencies and requested clarification about the financial responsibilities of other agencies for these services. Two commenters suggested that the regulations require interagency agreements concerning transition

services. One commenter suggested that the requirement to reconvene the IEP team in proposed § 300.347(a) be deleted. One commenter requested that the regulations include a time limit for reconvening the IEP team when a participating agency fails to provide agreed upon services. Another commenter requested that the requirement to reconvene be revised to specify that only the agencies necessary to the particular issue attend the meeting. One commenter requested that the phrase "to be implemented" be deleted from the description of the "alternative strategies" that the reconvened team would identify.

Discussion: Comments regarding the costs of providing transition services are discussed under § 300.346. It is not necessary to add a provision requiring interagency agreements on transition services because the requirements of § 300.152 ("Interagency agreements") apply to transition services.

The Secretary agrees that, in order to ensure that there will not be any undue delay in providing needed transition services to a student, the regulation should include some time-limited standard for reconvening a meeting to identify alternative strategies. The Secretary also agrees that the phrase "to be implemented" is unnecessary. However, the Secretary believes that the statute, which requires that the IEP team be reconvened, requires the public agency to reconvene all members of the team.

When an IEP team is reconvened, an alternative strategy may be able to be identified without changing the student's IEP. In other cases, the IEP team may find it necessary to revise the IEP to include alternative ways to meet the goals that were identified.

Changes: Section 300.347(a) has been revised by (1) requiring that the meeting of the IEP team be initiated "as soon as possible," after a participating agency fails to provide agreed-upon services, (2) deleting the phrase "to be implemented," and (3) adding at the end of the paragraph "and, if necessary, revising the student's IEP."

In addition to changes made based on the comments received, the following other changes have been made: (1) the definition of IEP in § 300.340 of the current regulations is now designated § 300.340(a); (2) the definition of "participating agency" in proposed § 300.347(b) has been moved from § 300.347 and added as a definition under new § 300.340(b); and (3) proposed § 300.347(c) in the NPRM has been redesignated as § 300.347(b).

Comment: Several commenters requested that the regulations clarify

that transition services can continue to be provided to students after graduation. One commenter asked for clarification of the responsibility to reconvene the IEP team after graduation.

Discussion: Part B of the Act neither requires nor prohibits the provision of services to a student after the student has completed the State's graduation requirements. Thus, if a student is still within the eligible age range for FAPE within the State, the State, at its discretion, could continue to provide needed transition services to the student and use funds under this part to pay for the transition services, or contribute to the cost of those services through a shared cost arrangement with another agency—provided that all applicable requirements of this part are met.

Changes: None.

General (§ 300.380).

Comment: A few commenters requested that the proposal to require the highest requirements in the State applicable to a specific profession or discipline be eliminated. Another commenter requested that the "highest standards" be defined, and one commenter asked if these standards applied to related services and support personnel.

Discussion: The Secretary believes that a State's CSPD should be consistent with the personnel standards requirements in § 300.153. Those standards apply to all personnel who provide special education or related services to children with disabilities. "Highest requirements in the State applicable to a specific profession or discipline" is defined in § 300.153 to be State-specific.

Changes: No change has been made in response to the comments. However, a technical change has been made by Public Law 102-119 to require that States ensure that the CSPD under Part B is consistent with the purposes of the IDEA and the CSPD for the Part H program.

Adequate supply of qualified personnel (§ 300.381).

Comments: Several commenters requested that proposed § 300.381(c) be deleted or clarified to indicate that it is not mandatory for all teacher aides to acquire credentials for teaching special education from institutions of higher education. One commenter requested that the requirement in the current § 300.381(a) that other agencies have the opportunity to participate in the development, review, and annual update of the CSPD be retained. Another commenter requested the addition of consumer and parent involvement in the plan development. One commenter requested reorganization of the section

for consistency with the statute. A few commenters requested clarification of the term "leadership personnel." Some commenters requested clarification concerning whether the provisions of this section apply to personnel who are seeking advanced degrees or degrees in new areas of specialization. One commenter requested that proposed § 300.381 include a specific reference to § 300.153(a).

Discussion: The Secretary agrees that § 300.381(c) should be deleted from the regulations. While States may choose to take steps to enable teacher aides and other paraprofessionals to acquire the necessary credentials for teaching special education as one method to ensure an adequate supply of qualified personnel, it is not appropriate to require that all States use this option.

Section 300.383(b)(3) specifies the kinds of personnel that are included under "leadership personnel." With respect to whether the provisions of this section apply to personnel who are seeking advanced degrees or degrees in new areas of specialization, a State is not prohibited from using funds under this part for those purposes so long as this use is not inconsistent with the priorities in §§ 300.320-300.324.

The Secretary believes that it is not necessary to add a requirement related to the participation of parents and consumers on a State's CSPD because States are required to obtain their involvement through the State advisory panel required under § 300.650. This panel has among its functions, responsibility for advising the SEA of unmet needs within the State and commenting publicly on the State's Part B plan and regulations (see § 300.652). The membership of this panel must include "persons involved in or concerned with the education of children with disabilities," such as parents as well as representatives from a wide variety of groups. State educational agencies also have the discretion to expand the membership of this panel as needed (see § 300.651). In addition, there is nothing in the Act or this part that would preclude States from consulting with parents and consumers on their CSPDs.

The Secretary does not believe that further changes to the proposed regulations in this section are necessary. The regulations proposed in the NPRM reflect the Secretary's intention to increase States' flexibility in ensuring comprehensive personnel development.

Changes: Section 300.381(c) has been deleted.

Personnel preparation and continuing education (§ 300.382).

Comments: Commenters requested the deletion of proposed § 300.382(b) because it defined regular education personnel too narrowly and conflicted with the LRE requirements at § 300.550. Two commenters requested that § 300.382 of the current regulations, which addresses inservice training, be retained; one of the commenters also requested that the section be revised to provide for the training of hearing officers, administrative law judges, and parents. Another commenter suggested that the procedures and activities required by proposed § 300.382(a) should be explicitly tied to a specific needs assessment process.

Discussion: The Secretary agrees with commenters that proposed § 300.382(b) should be deleted from the final regulations because it implies that public agencies must provide such preparation only to certain categories of regular education personnel. Section 300.550 of the regulation requires that, to the maximum extent appropriate, children with disabilities are to be educated with children without disabilities. Through the implementation of this requirement, all regular education personnel, including administrators, teachers, counseling staff, and paraprofessionals, are potentially involved in the provision of education or services to children with disabilities.

With respect to the training of hearing officers, administrative law judges, and parents, § 300.370(b)(2) already permits a State to use funds under this part for that purpose.

The Secretary does not agree that the other requested changes should be made. The requirements proposed in the NPRM reflect the Secretary's intention to increase States' flexibility in this area. The Secretary believes that sufficient guidance is provided.

Changes: Section 300.382(b) has been deleted. A statement has been added to clarify that a purpose of the system of continuing education is to enable regular and special education and related services personnel to meet the needs of children with disabilities under Part B.

Data system on personnel and personnel development (§ 300.383).

Comment: Some commenters requested the inclusion of data on vision specialists, and several commenters requested the inclusion of data on personnel providing assistive technology. One commenter requested clarification of what types of special education personnel, in addition to the list of related service personnel provided in the NPRM, are covered by § 300.383(b)(2). Clarification on data collection regarding contract providers

as opposed to personnel who are employees was requested.

One commenter suggested use of the phrase "profession and discipline" instead of "area of specialization" in § 300.383(c). Another commenter requested the deletion of the data requirements in § 300.383(b)(1)(ii) concerning personnel who do not hold appropriate State certification, licensure or other credentials comparable to certification or licensure for that profession or discipline. This commenter proposed the addition of data requirements in two categories: Personnel who meet and those who do not meet the highest requirements in the State. Other commenters stated that the data collection requirements constituted an unreasonable burden on the States and that the data were not relevant to providing special education and related services. Another commenter stated that the States do not have the necessary authority to collect the data regarding higher education.

Several commenters objected to the deletion of §§ 300.384–300.387. One commenter requested that the regulations require inclusion of the data specified in § 300.383 in the State plan.

Discussion: Section 300.383(b)(2) of the NPRM requires the collection of data regarding all personnel who provide or are needed to provide special education and related services, including vision specialists and personnel providing assistive technology. The Secretary believes that sufficient guidance is provided in this section and that no other clarification is needed. In response to requests for changes in the language in the section, as well as questions regarding the authority to require data, the language referred to and the authority to require data were added by Public Law 101-476, and the Secretary regards those provisions as sufficient. Finally, the CSPD provisions in the NPRM simplify and distill the fundamental requirements contained in §§ 300.384–300.387 of the current regulations and fully implement requirements added by Public Law 101-476. The new provisions give States greater flexibility in implementing the CSPD requirements than was possible under the current regulations. Therefore, the Secretary believes that the language in the NPRM should be retained in the final regulations.

Changes: None.

Prior notice; parent consent (§ 300.504(d)).

Comment: The proposed § 300.504(d) provides that States establishing additional State consent requirements must ensure that public agencies have informal and formal procedures for

dealing with parental withholding of consent to those requirements. Some commenters suggested deleting all or part of § 300.504(d), stating that current procedures are adequate to ensure the provision of services to children; one of those commenters recommended that no requirements be added unless they are expressly found in the statute.

Some commenters indicated that in order to increase the States' flexibility when a parent withholds consent under additional State consent requirements, informal procedures for resolving disagreements between the parent and the public agency should be encouraged but not required. One commenter requested standards for informal procedures. Commenters also expressed concern about the potential for confusion if States are permitted to adopt additional consent requirements. A commenter indicated that proposed Note 3 should be revised to make it permissive to use formal procedures if informal procedures fail. One commenter requested modification of § 300.504(d) to provide for an expedited resolution in the form of an intermediate ruling so that a change in placement could occur before final resolution of an administrative proceeding.

Discussion: The Secretary believes that States should have the discretion to adopt additional parental consent requirements. Nothing in the Part B statute prohibits a State from implementing additional consent requirements that give parents additional procedural protections and do not otherwise conflict with the procedural protections guaranteed under Part B. The provisions that have been added to § 300.504 are for the purpose of ensuring that additional State consent requirements will be implemented in a manner that is consistent with the procedural protections guaranteed under Part B.

The Secretary agrees that proposed paragraph (d)(2), which requires informal and formal procedures for overriding parental withholding of consent, and proposed paragraph (d)(3), which permits States to designate the due process procedures in §§ 300.506–300.513 as the formal procedures for overriding parental withholding of consent, should be deleted to avoid imposing an additional and unnecessary burden on States, and to give States flexibility in implementing consent override procedures. However, with regard to additional State consent requirements, consent override procedures must be implemented, if necessary, to ensure that children with disabilities continue to receive FAPE. In

addition, the Secretary believes that it is important for the prohibition of the current § 300.504(b)(2) that "[e]xcept for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child" to apply to any other areas in which the State requires consent.

Changes: Sections 300.504(d)(2) and 300.504(d)(3) of the NPRM have been deleted. The consent requirements in the current regulations have been reorganized and revised (1) to provide that if a State requires additional consent requirements, the State must ensure that each public agency in the State establishes and implements effective procedures to ensure that individual children continue to receive FAPE, and (2) to ensure that a public agency does not require parental consent as a condition of any benefit except for services or activities covered by the Federal consent requirements and the additional State consent requirements. Note 3 has been revised to indicate that if parental consent is refused, and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, the agency must implement its procedures to override the refusal.

Hearing rights (§ 300.508(a)(5)).

Comment: Commenters wondered whether the Secretary had the authority under the statute to require that hearing decisions be made public and expressed concern about the cost of implementing this requirement without the addition of new funds. One commenter requested the addition of "within a reasonable time" as a time frame for availability of the decisions. Commenters also requested clarification concerning which hearing decisions are covered and what format is required for dissemination of decisions. One commenter requested that administrative complaint decisions also be included within this requirement. One commenter suggested that summaries be permitted.

Discussion: The Secretary believes that no change is necessary for this section. The requirement that the public agency make hearing findings and decisions available to the State advisory panel and the general public after deleting any personally identifiable information is set forth at 20 U.S.C. 1415(d)(4). It is not necessary to add language requiring that the decisions be made available "within a reasonable period of time" because that concept is implicit.

The types of hearing decisions that must be made available to the public and transmitted to the State advisory council include due process hearing

decisions under § 300.508(a) and review decisions under § 300.510 (see comment and discussion under § 300.510, following). The provisions of 20 U.S.C. 1415(d) do not apply to administrative complaint decisions under §§ 300.660-300.662. However, those decisions may be made available to the public at the discretion of the SEA. The format for disseminating decisions is also an individual SEA decision.

Changes: None.

Administrative appeal; impartial review (§ 300.510(c), (d), and Note 1).

Comments: The NPRM proposed to add a new paragraph (c) to § 300.510, and to revise Note 1 following the section, to clarify which officials may not conduct State-level reviews under this program. A number of commenters requested that the proposed paragraph and note be deleted from the final regulations. The comments included objections that the regulation goes beyond the scope of IDEA, and that it is contrary to some judicial opinion. One commenter stated that the regulation does not recognize that there is a distinction between the statutory requirements applicable to hearings and to State-level reviews. Another commenter stated that the proposed regulation conflicts with the SEA's obligation to conduct a review. One commenter felt that the need for the individual conducting the review to have special knowledge and training virtually required that the person be employed by the SEA. A commenter requested that the regulation be revised to permit the SEA to hire individuals whose primary role would be to conduct reviews, with some conditions established to ensure impartiality. Other commenters requested (1) further definition of "employee" of the SEA or any other public agency that may not conduct a review, (2) that language be added to indicate that the review may not be conducted by a person having a personal or professional interest that would conflict with the person's objectivity, and (3) that the regulation require knowledge of special education by the reviewing official.

A commenter requested that the requirement at proposed § 300.508(a)(5) concerning transmitting written findings of fact and decisions to the State advisory panel be applied to State-level review decisions.

Discussion: Based on the lack of consensus about the proposed change on State-level review officials and the wide variety of alternative suggestions offered, the Secretary has determined that the current regulation remains the best guidance at this time.

The Secretary interprets the requirement set forth at 20 U.S.C. 1415(d)(4) to require that both hearing and review decisions must be available to the public and transmitted to the State advisory panel.

Changes: Proposed § 300.510(c) and the change in Note 1 have been deleted. Paragraph (c) of the current regulations (regarding the finality of decisions) has been redesignated as paragraph (d), and a new paragraph (c) has been added to require that review findings and decisions be made available to the State advisory panel and to the public, after deleting any personally identifiable information.

Adoption of State complaint procedures (§ 300.660).

Comment: One commenter requested that the requirements on State complaint procedures in proposed §§ 300.660 through 300.662 be deleted because they exceed statutory authority. Two commenters requested that the requirement to review an appeal from a decision of a public agency with respect to a complaint be deleted or revised. Another commenter requested that the complaint procedures be retained in 34 CFR 76.780-76.783 until the proposed §§ 300.660-300.662 have been in effect for a period of time.

Commenters also requested clarification about whether the complainant can by-pass filing a complaint with an LEA and file the complaint directly with the SEA.

Discussion: The Secretary believes that proposed §§ 300.660-300.662, with certain modifications, should be retained and that they are generally consistent with the requirements previously in the EDGAR regulations at 34 CFR 76.780-76.782. The Secretary agrees that clarification is needed regarding the circumstances under which a complainant can file a complaint with an LEA and those when a complainant can file directly with the SEA. Proposed § 300.662 provides for complaints to be filed with the State. However, a revision is needed to allow an SEA, at its discretion, to have procedures that allow complainants to elect to file a complaint with an LEA or other public agency and to request the SEA to review that agency's decision on the complaint. The SEA must review the public agency's decision to ensure that the complaint was resolved.

Changes: Proposed § 300.660 (a) and (b) (redesignated as § 300.660 (a)(1) and (a)(2) in these final regulations) have been revised to specify that the SEA's procedures must provide for filing a complaint directly with the SEA, and may, at the SEA's discretion, permit the

filing of a complaint with the public agency, including the right to have the SEA review the public agency's decision on the complaint. The provision in proposed paragraph (c), regarding the SEA's procedures for conducting an independent on-site investigation of a complaint, has been deleted, because it is already required in the section on "Minimum State complaint procedures" (§ 300.661). Proposed § 300.660(d) has been redesignated as § 300.660(b).

Comment: One commenter requested the deletion of the proposed requirement that parents be informed about complaint procedures because it is too burdensome for public agencies. Another commenter suggested that the requirement to adopt procedures for informing parents about the State complaint procedures be changed to informing complainants.

One commenter requested that the proposed regulation be revised to clarify the scope of complaints that States must investigate and to provide that States are not required to investigate matters that are the subject of a due process hearing under § 300.506. Another commenter requested that mediation be required as a step prior to filing a complaint.

Several commenters requested guidelines and clarification for determining the responsibility of the State to conduct an independent review. Another commenter requested that the regulation be revised to provide that the SEA need not resolve a complaint if it has been resolved voluntarily.

One commenter requested that States be required to make complaint decisions available to the public. One commenter requested that the States be required to submit complaint management procedures as part of the State plan.

A commenter requested that a note be added to indicate that a State may use these procedures to resolve a complaint that an agency is violating the requirements of section 504 of the Rehabilitation Act of 1973.

Discussion: The Secretary believes that it is essential for parents and other interested individuals to be informed about their right to file a complaint and that this requirement is not unreasonably burdensome. Public agencies may choose to provide this information as part of the explanation of procedural safeguards in the notice requirements under § 300.504(a) and § 300.505(a)(1) or § 300.505(a)(2), or may use other means.

The Secretary believes that no further guidance is needed regarding the parent's right to file a complaint and request a due process hearing regarding the same issues. A parent has the right

to file a complaint under proposed §§ 300.660-300.662 and to initiate a hearing under § 300.506 regarding the same issue. However, in order to avoid the possibility of inconsistent decisions on the same subject matter and waste of government resources, a State may delay resolution of identical issues raised in a complaint while those same issues are pending in a due process hearing. This does not relieve the SEA of its responsibility to resolve other issues in the complaint that are not identical to those raised under § 300.506.

It is not necessary to include a provision regarding mediation in the regulations. A State may include procedures that permit, but do not require, complainants to participate in mediation prior to filing a complaint. However, those procedures may not be used to deny or delay the right of an individual or organization to file a complaint or use the due process procedures in § 300.506.

The Secretary believes that no further guidance is needed related to conducting an independent review by the SEA, or regarding a State's responsibility to resolve a complaint that has been voluntarily resolved. It is implicit in proposed §§ 300.660 and 300.661 that a State need not resolve a complaint that has been otherwise resolved to the satisfaction of the complainant.

The Secretary believes that it would be unnecessarily burdensome to require SEAs to make complaint decisions available to the public or to include their complaint resolution procedures in their part B State plan.

Changes: None.

Minimum State complaint procedures (§ 300.661).

Comment: Several commenters requested that proposed § 300.661(a)(2), regarding the opportunity for the complainant to submit additional information, be deleted or revised. One commenter suggested that the regulations specify that the respondent should be given the opportunity to submit additional information in response to the allegations of the complainant.

Several commenters stated that the required complaint procedures are too specific. Another commenter requested that proposed § 300.661 be revised to permit a State to determine its own procedures. Other commenters stated that the requirement that written decisions include findings of fact and conclusions and the reasons for the SEA's final decision is burdensome, too formal, and makes the complaint less amenable to resolution.

Discussion: The Secretary believes that proposed § 300.661(a)(2) should be retained. As noted in the preamble to the NPRM, "many complainants have not been consulted in connection with complaint resolutions under this program in instances in which their input could have been helpful in facilitating the complaint resolution. Thus, proposed § 300.661(a)(2) requires each SEA to have procedures for soliciting input from the complainant as part of its minimum complaint procedures." The Secretary believes that as a matter of course the SEA would consider additional information submitted by the public agency that is the subject of a complaint.

The Secretary believes that the provisions in proposed § 300.661(a)(4)(i) and § 300.661(a)(4)(ii), regarding the content of the SEA's written decision to the complainant, should be retained. These provisions do not prescribe the format or level of formality in which this information must be provided. Moreover, the Secretary believes that the information required is the minimum necessary to enable the Secretary to review the final decision of the State where such review has been requested.

Changes: None.

Comment: One commenter requested that the regulations be revised to clarify that either party to a complaint may request review by the Secretary. Another commenter requested that language be added to encourage local resolution of complaints. Another commenter requested a revision to indicate that the 60-day time limit for issuing a written decision does not begin until after all documents have been received by the SEA.

Discussion: The Secretary agrees that proposed § 300.661(d) should be revised to clarify that the public agency that is the subject of the complaint also has the right to request secretarial review.

The proposed regulations neither preclude nor discourage the use of informal or local complaint procedures as an alternative to the formal complaint procedures set forth in these regulations. Some States have pointed to the success of informal conflict resolution procedures as an alternative to the formal procedures set forth in §§ 300.660-300.662. Public agencies may wish to suggest that parents and other complainants use these alternative procedures. However, these alternative procedures may not be used to deny or delay the right of an individual or organization to file a complaint with the State.

The Secretary believes that the 60 day time limit begins on the date that the

complaint is received by the SEA. This requirement is consistent with § 300.671(a) (previously, 34 CFR 76.781(a)) and long-standing Department policy.

Changes: The requirement in proposed § 300.661(a)(1) (regarding the SEA's procedures to carry out an on-site investigation) has been revised to add the statement "if the SEA determines that such an investigation is necessary." (This statement was included in proposed § 300.660(c).) Section 300.661(d) now indicates that a public agency has the right to request secretarial review.

Filing a complaint (§ 300.662).

Comment: Several commenters requested that the regulations be revised to require greater specificity in the

content of complaints that are filed under this part. In particular, one commenter suggested that the name and address of the complainant and involved student and the specific requirements of part B that have been violated be required. Commenters further suggested that a note be added to indicate that this requirement may be met by a "factual statement." One commenter requested that submission of anonymous complaints be permitted, and another requested that oral complaints be permitted.

Discussion: The Secretary does not believe that proposed § 300.662 should be revised to set forth additional content requirements for filing complaints under this part. Sufficient guidance is provided in these regulations, and some of the

requested changes would be unduly burdensome upon parents and other complainants. The Secretary also does not believe that proposed § 300.662 should be revised to require that States resolve anonymous and non-written complaints. The Secretary believes that it is reasonable for States to require that complaints be written and signed as a part of an orderly complaint resolution process, and that States, at their option, may include these requirements. These provisions are not intended to preclude a State from also accepting and resolving oral complaints if the State chooses to do so.

Changes: None.

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