Department of Education

34 CFR Parts 300 and 301
Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities; Final Rule
DEPARTMENT OF EDUCATION
34 CFR Parts 300 and 301
RIN 1820-AB57

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations governing the Assistance to States for Education of Children with Disabilities Program and the Preschool Grants for Children with Disabilities Program. These regulations are needed to implement changes made to the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (Act or IDEA).

DATES: These regulations take effect on October 13, 2006.


If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay System (FRS) at 1-800-877-8339. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above for further information contact.

SUPPLEMENTARY INFORMATION: These regulations implement changes in the regulations governing the Assistance to States for Education of Children with Disabilities Program and the Preschool Grants for Children with Disabilities Program necessitated by the reauthorization of the IDEA. With the issuance of these final regulations, part 301 has been removed and the regulations implementing the Preschool Grants for Children with Disabilities Program are included under subpart H of these final regulations.

On June 21, 2005, the Secretary published a notice of proposed rulemaking in the Federal Register (70 FR 35782) (NPRM) to amend the regulations governing the Assistance to States for Education of Children with Disabilities Program, the Preschool Grants for Children with Disabilities Program, and Service Obligations under Special Education Personnel Development to Improve Services and Results for Children with Disabilities. In the preamble to the NPRM, the Secretary discussed, on pages 35783 through 35819, the changes proposed to the regulations for these programs; specifically, the amendments to 34 CFR part 300, the removal of 34 CFR part 301 and relocation of those provisions to subpart H of 34 CFR part 300, and the amendments to 34 CFR part 304.

Final regulations for 34 CFR Part 304—Special Education-Personnel Development to Improve Services and Results for Children with Disabilities were published in the Federal Register (71 FR 32396) on June 5, 2006, and became effective July 5, 2006.

Major Changes in the Regulations

The following is a summary of the major substantive changes in these final regulations from the regulations proposed in the NPRM (the rationale for each of these changes is discussed in the Analysis of Comments and Changes section of this preamble):

Subpart A—General

Definitions

• The definition of child with a disability in §300.8 has been revised as follows:
  (1) Section 300.8(b)(Children aged three through nine experiencing developmental delays) has been changed to clarify that the use of the term “developmental delay” is subject to the conditions described in §300.311(b).
  (2) The definition of other health impairment in §300.8(c)(9) has been changed to add “Tourette Syndrome” to the list of chronic or acute health problems.
  • The definition of excess costs in §300.16 has been revised to clarify that the computation of excess costs may not include capital outlay and debt service. In addition, a new “Appendix A to Part 300—Excess Cost Calculation” has been added to provide a description (and an example) of how to calculate excess costs under the Act and these regulations.
  • The definition of highly qualified special education teacher in §300.16 has been revised as follows:
    (1) Section 300.16(b), regarding requirements for highly qualified special education teachers in general, has been modified to clarify that, when used with respect to any special education teacher teaching in a charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State’s public charter school law.
    (2) A new §300.18(e), regarding separate high objective uniform State standards of evaluation (HOUSE), has been added to provide that a State may develop a separate HOUSE for special education teachers, provided that any adaptations of the State’s HOUSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSE for regular education teachers. This provision also clarifies that a State may develop a separate HOUSE for special education teachers, which may include single HOUSE evaluations that cover multiple subjects.
    (3) Section 300.18(g) (proposed §300.18(f)) (“Applicability of definition to ESBA requirements; and clarification of new special education teacher”) has been revised as follows: (1) The heading has been revised, and (2) the language changed to clarify when a special education teacher is considered “new” for some purposes.
    (4) Section 300.18(h) (proposed §300.18(g)) has been modified to clarify that the highly qualified special education teacher requirements also do not apply to private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.133.
  • The definition of Indian and Indian tribe in §300.21 has been changed to clarify that nothing in the definition is intended to indicate that the State's interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.
  • The definition of parent in §300.30 has been revised to substitute “biological” for “natural.” Each time it appears in the definition, and to add language clarifying that to be considered a parent under this definition a "guardian" must be a person generally authorized to act as the child’s parent, or authorized to make educational decisions for the child.
  • The definition of related services in §300.34 has been revised as follows:
    (1) Section 300.34(a) (General) has been modified to (A) add the statutory term “early identification and assessment of disabilities in children,” which was inadvertently omitted from the NPRM, (B) combine “school health services” and “school nurse services,” and (C) remove the clause relating to a free appropriate public education under
"school nurse services" because it duplicates the clause in § 300.34(c)(13).

(2) Section 300.34(b) has been changed to (A) expand the title to read "Exception; services that apply to children with surgically implanted devices, including cochlear implants, and (B) clarify, in new paragraph (b)(1), that related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(3) A new § 300.34(b)(2) has been added to make clear that nothing in paragraph (b)(1) of § 300.34(A) limits the right of a child with a surgically implanted device (e.g., a cochlear implant) to receive related services, as listed in § 300.34(a), that are determined by the IEP Team to be necessary for the child to receive FAPE; (B) limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other body functions, while the child is transported to and from school or is at school; or (C) prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

(4) The definition of Interpreting services in § 300.34(c)(4) has been changed to clarify that the term includes (A) transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for children who are deaf or hard of hearing, and (B) special interpreting services for children who are deaf-blind.

(5) The definition of orientation and mobility services in § 300.34(c)(7) has been changed to require the term "travel training instruction." The term is under the definition of special education, and is defined in § 300.39(b)(4).

(6) The definition of school nurse services in § 300.34(c)(13) has been expanded and re-named school health services and school nurse services. The expanded definition clarifies that "school nurse services" are provided by a qualified school nurse, and "school health services" may be provided by a qualified school nurse or other qualified person.

A definition of scientifically based research has been added in new § 300.35 that incorporates by reference the definition of that term from the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESSA).

With the addition of the new definition in § 300.35, the definition in subpart A, beginning with the definition of secondary school, have been renumbered.

- The definition of special education in § 300.39 (proposed § 300.38) has been revised to remove the definition of vocational and technical education that was included in proposed § 300.38(b)(6).
- The definition of supplementary aids and services in § 300.42 (proposed § 300.41) has been modified to specify that aids, services, and other supports are also provided to enable children with disabilities to participate in extracurricular and nonacademic settings.

Subpart B—State Eligibility

FAPE Requirements

- Section 300.101(c) has been revised to clarify that a free appropriate public education (FAPE) must be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade.
- Section 300.102(a)(3), regarding exceptions to FAPE, has been changed to clarify that a regular young high school diploma does not include an alternative diploma that is not aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).
- Section 300.105, regarding assistive technology and proper functioning of hearing aids, has been re-titled "Assistive technology," and proposed paragraph (b), regarding the proper functioning of hearing aids, has been moved to new § 300.113(a).
- Section 300.107(a), regarding nonacademic services, has been revised to specify that each public agency must take, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- Proposed § 300.108(a), regarding physical education services, has been revised to specify that physical education must be made available to all children with disabilities receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
- A new § 300.113, describing checking of hearing aids and external components of surgically implanted medical devices, has been added, as follows:

  (1) Paragraph (a) of § 300.113 requires each public agency to ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
  (2) A new § 300.113(b)(2) has been added to make it clear that, for a child with a surgically implanted medical device who is receiving special education and related services, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or an external component of the surgically implanted medical device).

Least Restrictive Environment

- Section 300.116(b)(3) and (c) regarding placements, has been revised to remove the qualification "unless the parent agrees otherwise" from the requirements that (1) the child's placement be as close as possible to the child's home, and (2) the child is educated in the school he or she would attend if not disabled.
- Section 300.117 (Nonacademic settings) has been changed to clarify that each public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's individualized education program (IEP) Team to be appropriate and necessary for the child to participate with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child.

Children With Disabilities Enrolled By Their Parents in Private Schools

- Section 300.130 (definition of parentally-placed private school children with disabilities) has been revised to clarify that the term means children with disabilities enrolled by their parents in private, including religious, schools or facilities, that meet the definition of elementary school in § 300.13 or secondary school in § 300.58.
- A new § 300.131(f), regarding children with disabilities enrolled by their parents in private schools with disabilities, has been added to clarify that each LEA...
in which private (including religious) elementary schools and secondary schools are located must include
parentally-placed private school children who reside in a State other than the State in which the private
schools that they attend are located.
• Section 300.133, regarding expenditures for parentally-placed private school children with disabilities, has been revised, as follows:
  (1) A new §300.133(a)(2)(iii) has been added to clarify that children aged three through five are considered to be
parentally-placed private school children with disabilities enrolled by their parents in private, including
religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in
§300.13.
  (2) A new §300.133(a)(3) has been added to specify that, if an LEA has not expended for equitable services for
parentally-placed private school children with disabilities all of the applicable funds described in
§300.133(a)(1) and (a)(2) by the end of the fiscal year for which Congress appropriated the funds, the LEA must
obligate the remaining funds for special education and related services (including direct services) to parentally-
placed private school children with disabilities during a carry-over period of one additional year.
• Section 300.136, regarding compliance related to parentally-placed private school children with disabilities, has been revised to remove the requirement that private school officials must submit complaints to the SEA
using the procedures in §§300.151 through 300.153.
• Section 300.138(a), regarding the requirement that services to parentally-placed private school children with disabilities must be provided by
personnel meeting the same standards as personnel providing services in the public schools, has been modified to
clarify that private elementary school and secondary school teachers who are providing equitable services to
parentally-placed private school children with disabilities do not have to meet the highly qualified special
education teacher requirements in §300.18.
• Section 300.140, regarding due process complaints and State complaints, has been revised to make the
following changes:
  (1) Section 300.140(b)(1) (proposed §300.140(a)(2)), regarding child find complaints, has been changed to clarify that the procedures in §§300.504
through 300.518 apply to complaints that an LEA has failed to meet the child
find requirements in §300.131, including the requirements in
§§300.301 through 300.311.
  (2) A new paragraph (b)(2) has been added to provide that any due process complaint regarding the child find
requirements (as described in §300.140(b)(1)) must be filed with the LEA in which the private school is
located and a copy of the complaint must be forwarded to the SEA.
  (3) A new §300.140(c), regarding State complaints by private school officials, has been added to clarify that
(A) any complaint that an SEA or LEA has failed to meet the requirements in
§§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures
described in §§300.151 through 300.153, and (B) a complaint filed by a private school official under
§300.136(a) must be filed with the SEA in accordance with the procedures in §300.138(b).

Children With Disabilities Enrolled By Their Parents In Private Schools When FAPE Is At Issue

Section 300.148 Placement of Children by Parents if FAPE Is at Issue

• A new §300.148(b), regarding disagreements about FAPE, has been added (from current §300.403(b)) to clarify that disagreements between a parent and a public agency regarding the availability of a program appropriate for a child with a disability, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.

State Complaint Procedures

• Section 300.152(a)(3)(ii) (proposed paragraph (a)(3)(B)) has been revised to clarify that each SEA’s complaint procedures must provide to the public agency with an opportunity to respond to a complaint filed under §300.153, including, at a minimum, an
opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation
consistent with §300.506.
• Section 300.152(b)(1)(ii), regarding time extensions for filing a State complaint, has been revised to clarify that it would be permissible to extend the 60-day timeline if the parent (or individual or organization if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency agree to engage in mediation or to engage in other alternative means of dispute resolution, if available, as follows:
• Section 300.152(c), regarding complaints filed under §300.152 and
due process hearings under §§300.507 and §§300.530 through 300.532, has been revised to clarify that if a written
complaint is received that is also the subject of a due process hearing under §§300.507 or 300.530 through 300.532,
or contains multiple issues of which one or more are part of a due process hearing, the State must set aside any
part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.
However, any issue in the complaint that is not part of the due process hearing must be resolved using the time
limit and procedures described elsewhere in the State complaint procedures. A new paragraph (c)(3) also
has been added to require SEAs to resolve complaints alleging a public agency's failure to implement a due
process hearing. This is the same requirement in current §300.651(c)(3).
• Section 300.153(c), regarding the one year time limit from the date an alleged violation occurred and the date
the complaint is received in accordance with §300.151, has been revised by
removing the exception clause related to complaints covered under
§300.507(a)(2).

Methods of Ensuring Services

• Section 300.154(d), regarding children with disabilities who are covered by public benefits or insurance, has been revised to clarify that the public agency must (1) obtain parental consent each time that access to the
parent’s public benefits or insurance is sought, and (2) notify parents that refusal to allow access to their public
benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Additional Eligibility Requirements

• Section 300.156(e), regarding personal qualifications, has been revised (1) to add “or a class of
students” to clarify that a judicial action on behalf of a class of students
may be filed for failure of a
particular SEA or LEA employee to be highly qualified, and (2) to substitute the word “employee” for “staff person,”
to be more precise in the rule of
construction in new §300.18(f) (proposed §300.18(c)).
• Section 300.160 (participation in assessments) has been removed, and the section has been designated as
“Reserved.” Participation in assessments is the subject of a new
notice of proposed rulemaking issued on December 15, 2005 (70 FR 74824) to amend the regulations governing
programs under Title I of the ESEA and
Part B of the IDEA regarding additional flexibility for States to measure the achievement of children with disabilities based on modified achievement standards.

Other Provisions Required for State Eligibility

- Section 300.172, regarding access to instructional materials, has been revised: (1) To make clear that States must adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to these final regulations; (2) to establish a definition of "timely manner," for purposes of § 300.172(b)(2) and (b)(3) if the State is not coordinating with the National Instructional Materials Access Center (NIMAC), or § 300.172(b)(3) and (c)(2) if the State is coordinating with the NIMAC; (3) to require SEAs to require LEAs to ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials; and (4) to add a new § 300.172(e) to clarify that all definitions in § 300.172(c)(4) apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

- A new § 300.177 has been added to include a provision regarding "States' Sovereign Immunity." That provision, which has been added to incorporate the language in section 604 of the Act, makes clear that a State that accepts funds under Part B of the Act waives its immunity to suit in Federal court for violations of Part B of the Act.

Subpart D—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Parental Consent

- Section 300.300, regarding parental consent, has been revised, as follows:
  (1) Paragraph (a) of § 300.300, regarding consent for initial evaluation, has been changed to provide that the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with § 300.9, from the parent of the child before conducting the evaluation. A new paragraph (a)(1)(iii) has been added to require a public agency to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation.

- Section 300.303(a)(3), regarding a parent's failure to provide consent for initial evaluation, has been changed to clarify, in a new paragraph (a)(3)(ii), that the public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation.

- Section 300.307(a)(2) (proposed paragraph (a)(3)) has been changed to clarify that the criteria adopted by the State must permit the use of a process based on the child's response to scientific, research-based intervention.

- Section 300.308 (Group members) has been changed to require the eligibility group for children suspected of having SLD to include the child's parents and a team of qualified professionals, which must include either a regular teacher, or a regular school teacher. Toward this end, the child has been reassigned to a regular school. Where the child has been reassigned to a regular school, the child's regular teacher has been reassigned to the child's regular school. The regular school teacher has been reassigned to the child's regular school, and the child's regular teacher has been reassigned to the child's regular school. The child's regular teacher has been reassigned to the child's regular school.

Additional Procedures for Evaluating Children With Specific Learning Disabilities (SLD)

- Section 300.307 (Specific learning disabilities) has been revised, as follows:
  (1) Proposed paragraph (a)(1) of § 300.307, which allowed a State to prohibit the use of a severe discrepancy between intellectual ability and achievement for determining if a child has an SLD, has been removed, and proposed paragraph (a)(2) of § 300.307 has been redesignated as paragraph (a)(1).

- Section 300.307(a)(2) (proposed paragraph (a)(3)) has been changed to clarify that the criteria adopted by the State must permit the use of a process based on the child's response to scientific, research-based intervention.

- Section 300.308 (Group members) has been changed to require the eligibility group for children suspected of having SLD to include the child's parents and a team of qualified professionals, which must include either a regular teacher, or a regular school teacher. Toward this end, the child has been reassigned to a regular school. Where the child has been reassigned to a regular school, the child's regular teacher has been reassigned to the child's regular school. The regular school teacher has been reassigned to the child's regular school, and the child's regular teacher has been reassigned to the child's regular school. The child's regular teacher has been reassigned to the child's regular school.

- Section 300.309 (Determining the existence of a specific learning disability) has been revised, as follows:
  (1) Paragraph (a) of § 300.309 has been changed (A) to clarify that the group described in § 300.306 may determine that a child has a specific learning disability if the child does not achieve adequately for his or her age or to meet State-approved grade-level standards in one or more of eight areas (e.g., oral expression, basic reading skill, etc.); when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards; and (B) to add "limited English proficiency" to the other five conditions that could account for the child's learning problems, and that the group considers in determining whether the child has an SLD.

- Section 300.309(b)(1) has been changed to clarify (A) that, in order to ensure that underachievement in a child suspected of having an SLD is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.305, data that demonstrate that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel, and (B) to replace (paragraphs (b)(1)(i) and (iii)) the term "high quality research-based instruction" with "appropriate instruction."

- Section 300.309(c) has been changed to provide that the public agency must promptly request parental
disadvantage, or limited English proficiency on the child's achievement level.
(4) A new § 300.311(a)(7) has been added to provide that if the child has participated in a program that assesses the child's response to scientific, research-based intervention, the documentation must include the instructional strategies used and the student-centered data collected, and documentation that the child's parents were notified about (A) the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) strategies for increasing the child's rate of learning; and (C) the parents' right to request an evaluation.

Individualized Education Programs
- Section 300.320 (Definition of IEP) has been revised in paragraph (c)(5) to replace "regular educational environment" with "regular class," in order to be consistent with the language in the Act.
- Section 300.321(e), regarding attendance at IEP Team meetings, has been revised to clarify that the expulsion of IEP Team members from attending an IEP Team meeting under certain circumstances, refers to the IEP Team members in § 300.321(a)(3) through (a)(5).
- Section 300.322, regarding parent participation, has been revised to include (C). (1) Include, in § 300.322(d), examples of the records a public agency must keep of its attempts to involve the parents of IEP meetings; (2) add a new § 300.322(e), which requires the public agency to take whatever action is necessary to ensure that the parent understands the proceedings of the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English; and (3) redesignate paragraphs (e) as paragraphs (f) accordingly.
- Section 300.323(3) has been revised to require public agencies to ensure that each regular teacher, special education teacher, related service provider, and any other service provider who is responsible for the implementation of a child's IEP, is informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the child's IEP. These are the same requirements in current § 300.342(b)(3)(i) and (b)(3)(ii).
- Section 300.323(e), regarding IEPs for children who transfer public agencies, has been revised to: (1) Divide the provision into three separate paragraphs (§ 300.323(e), (f), and (g)) for purposes of clarity and improved readability (e.g., transfers within the same State, transfers from one State, and transmission of records); (2) adopt "school year" in lieu of "academic year" as the term commonly used by parents and public agencies; and (3) adopt other modifiers (e.g., "new" and "previous") to distinguish between States and public agencies that are involved in transfers by children with disabilities.

Subpart E—Procedural Safeguards
- Section 300.502, regarding independent educational evaluations, has been revised, as follows:
  (1) A new § 300.502(a)(5) has been added to make clear that a parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.
- (2) Section 300.502(c) has been changed to clarify that if a parent obtains an independent educational evaluation at public expense or shares the public agency an evaluation obtained at private expense, the public agency must consider the evaluation, if it meets agency criteria, in any decision made with respect to the provision of PAPE to the child.
- Section 300.504 (Procedural safeguards notice) has been revised, as follows:
  (1) Paragraph (a)(2) of § 300.504 has been changed to add that a copy of the procedural safeguards notice must be given upon receipt of the first due process complaint under § 300.503 in a school year, as well as upon receipt of the first State complaint under § 300.151 through 300.153.
  (2) A new § 300.504(a)(3) has been added to provide that the notice must be given to the parents of a child with a disability in accordance with the discipline procedures in § 300.30(h).
- Section 300.506(b), regarding the requirements for mediation, has been revised by (1) removing the provision about the "confidentiality pledge," in proposed paragraph (b)(9), because it is no longer required under the Act, and (2) changing paragraph (b)(6), regarding the problem against using discussions that occur in the mediation process, to clarify that "civil proceedings" includes any Federal court or State court of a State receiving assistance under this part.

- Section 300.509, regarding model forms to assist parents and public agencies in filing due process complaints and parents and other parties in filing State complaints, has been revised to add, with respect to due process complaints, "public agencies," and with respect to State complaints, "other parties," as well as parents, and to clarify that (1) while each SEA must develop model forms, the SEA or LEA may not require the use of the forms, and (2) parents, public agencies, and other parties may either use the appropriate model form, or another form or document, so long as the form or document meets, as appropriate, the requirements for filing a due process complaint or a State complaint.

- Section 300.510 (Resolution process) has been revised, as follows:
  (1) Section 300.510(b)(1), regarding the resolution period, has been changed to state that a due process hearing "may occur" (in lieu of "must occur") by the end of the resolution period, if the parties have not resolved the dispute that formed the basis for the due process complaint.
  (2) A new §300.510(b)(2) has been added to provide that, except where the parties have jointly agreed to waive the resolution process or to use mediation (notwithstanding §300.510(b)(1) and (2)), the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
  (3) A new §300.510(b)(3) has been added to provide that if an LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, and documented using the procedures in §300.322(d), the LEA may, at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's due process complaint.
  (4) A new paragraph (b)(5) of §300.510 has been added to provide that if the LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timelines.

(5) A new §300.510(c) (Adjustments to the 30-day resolution period) has been added that specifies exceptions to the 30-day resolution period (e.g., if both parties agree in writing to waive the resolution meeting; if, after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process). Subsequent paragraphs have been renumbered accordingly.

(6) Paragraph (d)(2) of §300.510 (proposed paragraph (c)(2)), regarding the enforceability of a written settlement agreement in any State court of competent jurisdiction or in a district court of the United States, has been expanded to add the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to a new §300.557.

- Section 300.513(a) (Decision of hearing officer) has been revised by (1) changing the paragraph title to read "Decision of hearing officer on the provision of FAPE," and (2) clarifying the hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

- Section 300.515(a) (Regarding timelines and convenience of hearings and reviews) has been revised to include a specific reference to the adjusted time periods described in §300.510(c).

- Section 300.516 (90-day time limitation from the date of the decision) has been revised to provide that the 90-day period begins from the date of the decision of the hearing officer or the decision of the State review official.

- Section 300.516 (Child's status during proceedings) has been revised by adding new paragraph (c), which provides that if a complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned 3, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

- Section 300.516(b), regarding a special rule about the transfer of parental rights at the age of majority, has been revised to more clearly state that a State must establish procedures for appointing a parent of a child with a disability, or if the parent is not available, another appropriate individual, to represent the educational interest of the child throughout the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

**Discipline Procedures**

- Section 300.530(d)(1), regarding services, has been revised to be consistent with section 615(k)(1)(D)(i) of the Act, by adding a reference to the FAPF requirements in §300.131(k).

- Section 300.530(d)(4), regarding the removal of a child with a disability from the child's current placement for 10 school days in the same school year, has been revised to remove the reference to school personnel, in consultation with at least one of the child's teachers, determining the location in which services will be provided.

- Section 300.530(d)(5), regarding removals that constitute a change of placement under §300.535, has been revised to remove the reference to the IEP Team determining the location in which services will be provided.

- A new §300.530(e)(3), has been added to provide that, if the LEA, the parent, and members of the child's IEP Team determine that the child's behavior was the direct result of the LEA's failure to implement the child's IEP, the LEA must take immediate steps to remedy those deficiencies.

- Section 300.530(h), regarding notification, has been changed to specify that, on the date on which a decision is made to take a removal that constitutes a change in the placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.540.

- Section 300.532 (Appeal) has been revised, as follows:
  (1) Paragraph (e) of §300.532, regarding the conditions in which the parent of a child with a disability or an LEA may request a hearing, has been
modified to clarify that the hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.506(a) and (b).

(2) Section 300.532(b)(2) has been changed to more definitively provide that if the LEA believes that returning the child to his or her original placement is substantially likely to result in injury to the child or others.

(3) Section 300.532(c)(2), regarding an expedited due process hearing, has been added to provide that unless the parents and an LEA agree in writing to waive a resolution meeting, or agree to use the mediation process described in § 300.506, the resolution meeting must occur within seven days of receiving notice of the due process complaint, and the hearing may proceed within 15 days of receipt of the due process complaint unless the matter has been resolved to satisfaction of both parties.

(4) Proposed § 300.532(c)(4), regarding the two-day timeframe for disclosing information to the opposing party prior to an expedited due process hearing, has been removed.

- Section 300.536(a)(2)(i) (proposed § 300.536(b)(2)) has been revised to remove the requirement that a child's behavior must have been a manifestation of the child's disability before determining that a series of removals constitutes a change in placement under § 300.536. Paragraph (a)(2)(ii) has also been added to reference the child's behavior as "previous" incidents that resulted in the series of removals.

- A new § 300.536(b) has been added to clarify that public agency (subject to review through the due process and judicial proceedings) makes the determination, on a case-by-case basis, whether a pattern of removals constitutes a change in placement and that the determination is subject to review through due process and judicial determinations.

- A new § 300.537 (State enforcement mechanisms) has been added to clarify that notwithstanding §§ 300.506(b)(2) and 300.510(c)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or resolution meeting, nothing in this part would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

Subpart F—Monitoring, Enforcement, Confidentiality, and Program Information

Monitoring, Technical Assistance, and Enforcement

- Section 300.600 (State monitoring and enforcement) has been revised, as follows:

1. Section 300.600(a) has been amended to require the State to conduct Part B in accordance with § 300.304(a)(1) and (a)(3), (a)(2)(i) and (a)(2)(ii), and (c)(2).

2. A new paragraph (d) has been added, which provides that the State must monitor the LEAs located in the State, using a multiple indicators in each of the following priority areas, and establish qualitative indicators as are necessary to adequately measure performance in those areas, including:

(A) Provision of FAPE in the least restrictive environment; (B) State exercise of general supervision, including child find, effective monitoring, the use of resolution mechanisms, and a system of transition services as defined in §300.43 and in 20 U.S.C. 1437(a)(9); and (C) disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

- A new § 300.601(b)(2), regarding State use of targets and reporting, has been added to specify that, if permitted by the Secretary, if a State collects data on an indicator through State monitoring or sampling, the State must collect data on the indicator at least once during the period of the State performance plan.

- A new § 300.608(b), regarding State enforcement, has been added to specify that States are not restricted from utilizing any other authority available to them to monitor and enforce the requirements of Part B of the Act.

Confidentiality of Information

- Section 300.622 (Consent) has been restructured and revised to more accurately reflect the Department's policy regarding when parental consent is required for disclosures of personally identifiable information, as follows:

1. Paragraph (a) of § 300.622 has been changed to provide that parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies, unless the information is contained in education records, and the disclosure is authorized without parental consent under the regulations for the Family Educational Rights and Privacy Act (FERPA, 34 CFR part 99).

(2) A new § 300.622(b)(1) has been added to clarify that parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the Act or these regulations.

(3) A new § 300.622(b)(2) has been added to provide that parental consent must be obtained before personally identifiable information is released to officials of participating agencies that provide or pay for transition services.

(4) A new paragraph (b)(3) has been added to require that, with respect to privately-placed pupils, has been removed because it is covered elsewhere in these regulations.

Subpart G—Authorization, Allotment, Use of Funds, and Authorization of Appropriations

Allotments, Grants, and Use of Funds

- Section 300.701(a)(1)(ii)(A), regarding the applicable requirements of Part B of the Act that apply to the States, has been removed because those requirements did not include all requirements that apply to the States.

- A new § 300.704(c)(3)(I), regarding the requirement to develop, annually review, and revise (if necessary) a State plan for the high cost fund, has been revised to add a new paragraph (F) that requires that if the State elects to reserve funds for supporting innovative and effective ways of sharing the high cost fund, it must describe in its State plan how these funds will be used.

- A new § 300.706 (Allocation for States in which by-pass is implemented for parentally-placed private school children with disabilities) has been removed because it is no longer applicable. The section has been redesignated as "Reserved."

Secretary of the Interior

- Section 300.707 (Use of amounts by Secretary of the Interior) has been changed, as follows:
(1) The definition of **Tribal governing body of a school** has been replaced with the definition of **tribal governing body** from 25 U.S.C. 202(19).

(2) Section 300.707(c), regarding an additional requirement under "Use of amounts by Secretary of the Interior," has been revised to clarify that, with respect to all other children aged 3 to 21, inclusive, on reservations, the **SEA** of the State in which the reservation is located must ensure that all the requirements of Part B of the Act are met.

- Section 300.713 (Plan for coordination of services) has been revised to require (1) in §300.713(a), the Secretary of the Interior to develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior, and (2) in §300.713(b), the plan to include the coordination of services benefiting these children from whatever source covered by the plan, including SEAs, State, local, and tribal juvenile and adult correctional facilities.

**Analysis of Comments and Changes**

**Introduction**

In response to the invitation in the NPRM, more than 5,500 parties submitted comments on the proposed regulations. An analysis of the comments and changes in the regulations since publication of the NPRM immediately follows this introduction.

The perspectives of parents, individuals with disabilities, teachers, related services providers, State and local officials, members of Congress, and others were very important in helping us to identify where changes to the proposed regulations were necessary, and in formulating many of the changes. In light of the comments received, a number of significant changes are reflected in these final regulations.

We discuss substantive issues under the subpart and section to which they pertain. References to subparts in this analysis are to those contained in the final regulations. The analysis generally does not address—

(a) Minor changes, including technical changes made to the language published in the NPRM;
(b) Suggested changes the Secretary is not legally authorized to make under applicable statutory authority; and
(c) Comments that express concerns of a general nature about the Department or other matters that are not directly relevant to these regulations, such as requests for information about innovative instructional methods or matters that are within the purview of State and local decision-makers.

**Comment:** One commenter requested that the regulations clarify that an assistive technology device is not synonymous with an augmentative communication device. A few commenters recommended including provisions for the blind and dyslexic playback devices in the definition of assistive technology devices. Some commenters recommended including language in the regulations clarifying that medical devices used for breathing, nutrition, and other bodily functions are assistive technology devices.

**Discussion:** The definition of assistive technology device does not list specific devices, nor would it be practical or possible to include an exhaustive list of assistive technology devices. Whether an augmentative communication device, playback devices, or other devices could be considered an assistive technology device for a child depends on whether the device is used to increase, maintain, or improve the functional capabilities of a child, or a disability, and whether the child's individualized education program (IEP) team determines that the child needs the device in order to receive a free appropriate public education (FAPE). However, medical devices that are surgically implanted, including those used for breathing, nutrition, and other bodily functions, are excluded from the definition of an assistive technology device in section 602(1)(B) of the Act. The exclusion applies to a medical device that is surgically implanted in the body and includes the implanted component of the device, as well as its external components.

**Changes:** None.

**Comment:** A few commenters asked whether the definition of assistive technology device includes an Internet-based instructional program, and what the relationship is between Internet-based instructional programs and specially-designed instruction.

**Discussion:** An instructional program is not a device, and therefore, would not meet the definition of an assistive technology device. Whether an Internet-based instructional program is appropriate for a particular child is determined by the child's IEP Team, which would determine whether the program is needed in order for the child to receive FAPE.

**Changes:** None.

**Comment:** A few commenters recommended including the proper functioning of hearing aids in the definition of assistive technology device.

**Discussion:** We believe that the provision requiring public agencies to ensure that hearing aids worn in school are functioning properly is more appropriately included in new §300.131.
(proposed §300.105(b)). As noted in the Analysis of Comments and Changes section discussing subpart B, we have added a new §300.113 to address the routine checking (i.e., making sure they are turned on and working) of hearing aids and external components of surgically implanted devices.

Changes: None.

Assistive Technology Service (§300.6)

Comment: One commenter requested clarifying "any service" in the definition of assistive technology service.

Discussion: We believe the definition is clear that an assistive technology service is any service that helps a child with a disability select an appropriate assistive technology device, obtain the device, or train the child to use the device.

Changes: None.

Comment: One commenter stated that services necessary to support the use of playback devices for recordings for the blind and dyslexic should be added to the definition of assistive technology service.

Discussion: A service to support the use of recordings for the blind and dyslexic on playback devices could be considered an assistive technology service if it assists a child with a disability in the selection, acquisition, or use of the device. If so, and if the child's IEP team determines it is needed for the child to receive FAPE, the service would be provided. The definition of assistive technology service does not list specific services. We do not believe it is practical or possible to include an exhaustive list of assistive technology services, and therefore, decline to add the specific assistive technology service recommended by the commenter to the definition.

Changes: None.

Comment: One commenter recommended evaluating all children with speech or hearing disabilities to determine if they can benefit from the Federal Communications Commission's specialized telephone assistive services for people with disabilities.

Discussion: Evaluations under section 614 of the Act are for the purpose of determining whether a child has a disability and because of that disability needs special education and related services, and for determining the child's special education and related services needs. It would be inappropriate under the Act to require evaluations for other purposes or to require an evaluation for telephone assistive services for all children with speech and hearing disabilities. However, if it was determined that learning to use telephone assistive services was an important skill for a particular child (e.g., as part of a transition plan), it would be appropriate to conduct an evaluation of that particular child to determine if the child needed specialized instruction in order to use such services.

Changes: None.

Charter School (§300.7)

Comment: Several commenters suggested that we include in the regulations the definitions of terms that are defined in other statutes. For example, one commenter requested including the definition of charter school in the regulations.

Discussion: Including the actual definitions of terms that are defined in statutes other than the Act is problematic because these definitions may change over time (i.e., through changes to statutes that establish the definitions). In order for these regulations to retain their accuracy over time, the U.S. Department of Education (Department) would need to amend the regulations each time an included definition that is defined in another statute changes. The Department believes that this could result in significant confusion.

However, we are including the current definition of charter school in section 5210(1) of the ESEA here for reference.

The term ″charter school″ means a public school that:

1. In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph (the paragraph that sets forth the Federal definition);
2. Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
3. Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;
4. Provides a program of elementary or secondary education, or both;
5. Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
6. Does not charge tuition;
8. Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;
9. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program (the Public Charter School Program);
10. Meets all applicable Federal, State, and local health and safety requirements;
11. Operates in accordance with State law; and
12. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Changes: None.

Child With a Disability (§300.8)

Comment: Several commenters stated that many children with fetal alcohol syndrome (FAS) do not receive special education and related services and recommended adding a disability category for children with FAS to help solve this problem.

Discussion: We believe that the existing disability categories in section
602(3) of the Act and in these regulations are sufficient to include children with FAS who need special education and related services. Special education and related services are based on the identified needs of the child and not on the disability category in which the child is classified. We, therefore, do not believe that adding a separate disability category for children with FAS is necessary to ensure that children with FAS receive the special education and related services designed to meet their unique needs resulting from FAS.

Changes: None.

Comment: Some commentators suggested that the definition of child with a disability be changed to “student with a disability” and that the word “student,” rather than “child,” be used throughout the regulations because students over the age of 18 are not children.

Discussion: Section 602(3) of the Act defines child with a disability, not student with a disability. Therefore, we do not believe it is appropriate to change the definition as requested by the commentators. The words “child” and “student” are used throughout the Act and we generally have used the word “child” or “students,” except when referring to services and activities for older students (e.g., transition services, postsecondary goals).

Changes: None.

Comment: Some commentators supported § 300.8(a)(2), which states that if a child needs only a related service and not special education, the child is not a child with a disability under the Act. Another commentator recommended a single standard for the provision of a related service as special education, rather than allowing States to determine whether a related service is special education.

Discussion: Section 300.8(a)(2)(i) states that if a child has one of the disabilities listed in § 300.8(a)(1), but only needs a related service, the child is not a child with a disability under the Act. However, § 300.8(a)(2)(ii) provides that, if a State considers a particular service that could be encompassed by the definition of related services to be special education, then the child would be determined to be a child with a disability under the Act. We believe it is important that States have the flexibility to determine whether, consistent with the definition of the term special education in section 602(29) of the Act and new § 300.39 (proposed § 300.38), such a service should be regarded as special education and to identify a child who needs that service as a child with a disability. States are in the best position to determine whether a service that is included in the definition of related services should also be considered special education in that State.

Changes: None.

Comment: § 300.6(a)(2)(ii) contains an incorrect reference to § 300.38(a)(2). The correct reference should be to § 300.39(a)(2).

Changes: We have removed the reference to § 300.38(a)(2) and replaced it with a reference to § 300.39(a)(2).

Children Aged Three Through Nine Experiencing Developmental Delays (§ 300.8(b))

Comment: Several commentators expressed support for allowing LEAs to select a subset of the age range from three through nine for their definition of developmental delay. A few commentators recommended clarifying that States, not the LEAs, define the age range of children eligible under this category of developmental delay.

Discussion: Section 300.8(b) states that the use of developmental delay as a category for a child with a disability aged three through nine, or any subset of that age range, must be made in accordance with § 300.111(b). Section 300.111(b) gives States the option of adopting a definition of developmental delay, but does not require an LEA to adopt and use the term. However, if an LEA uses the category of developmental delay, the IEP must conform to both the State's definition of the term and the age range that has been adopted by the State. If a State does not adopt the category of developmental delay, an LEA may not use that category as the basis for establishing a child's eligibility for special education and related services.

Based on the comments, it appears that § 300.8(b) has been misinterpreted as stating that LEAs are allowed to establish the age range for defining developmental delay independent of the State. We believe it is important to avoid such confusion and, therefore, will modify § 300.8(b) to clarify the provision.

Changes: For clarity, we have removed the phrase, “at the discretion of the State and LEA in accordance with § 300.111(b)” and replaced it with “subject to the conditions in § 300.111(b).”

Deafness (§ 300.8(c)(3))

Comment: One commentator stated that children who are hard of hearing are often denied special education and related services because the definition of deafness includes the phrase, “adversely affects a child's educational performance,” which school district personnel interpret to mean that the child must be failing in school to receive special education and related services. Discussion: As noted in the Analysis of Comments and Changes section discussing subpart B, we clarified in § 300.101(c) that a child does not have to fail or be retained in a course or grade in order to be considered for special education and related services. However, in order to be a child with a disability under the Act, a child must have one or more of the impairments identified in section 602(3) of the Act and need special education and related services because of that impairment. Given the change in § 300.101(c), we do not believe clarification is needed in § 300.8(c)(3).

Changes: None.

Emotional Disturbance (§ 300.8(c)(4))

Comment: Numerous commentators requested defining or eliminating the term “socially maladjusted” in the definition of emotional disturbance stating that there is no accepted definition of the term, and no valid or reliable instruments or methods to identify children who are, or are not, “socially maladjusted.” Some commentators stated that children who need special education and related services have been denied these services, or have been inappropriately identified under other disability categories and received inappropriate services because the definition of emotional disturbance excludes children who are socially maladjusted.

One commentator stated that using the term “socially maladjusted” contributes to the negative image of children with mental illness and does a disservice to children with mental illness and those who seek to understand mental illness.

Another commentator stated that emotional disturbance is one of the most misused and misunderstood disability categories and is often improperly used to protect dangerous and aggressive children who violate the rights of others. The commentator stated that the definition of emotional disturbance is vague and offers few objective criteria to differentiate an emotional disability from ordinary development, and requires the exclusion of conditions in which the child has the ability to control his or her behavior, but chooses to violate social norms.

One commentator recommended adding autism to the list of factors in § 300.8(c)(4)(i)(A) that must be ruled out before making an eligibility determination based on emotional disturbance. The commentator stated that
many children with autism are inappropriately placed in alternative educational programs designed for children with serious emotional and behavioral problems.

Discussion: Historically, it has been very difficult for the field to come to consensus on the definition of emotional disturbance, which has remained unchanged since 1977. On February 10, 1993, the Department published a Notice of Inquiry in the Federal Register (58 FR 7928) soliciting comments on the existing definition of serious emotional disturbance. The comments received in response to the notice of inquiry expressed a wide range of opinions and no consensus on the definition was reached. Given the lack of consensus and the fact that Congress did not make any changes that required changing the definition, the Department recommended that the definition of emotional disturbance remain unchanged. We reviewed the Act and the comments received in response to the NPRM and have come to the same conclusion. Therefore, we decline to make any changes to the definition of emotional disturbance.

Changes: None.

Comment: One commenter suggested that the regulations include a process to identify children who are at risk for having an emotional disturbance.

Discussion: We decline to include a process to identify children who are at risk for having an emotional disturbance. A child who is at risk for having any disability under the Act is not considered a child with a disability under § 300.8 and section 602(3) of the Act and, therefore, is not eligible for services under the Act.

Changes: None.

Mental Retardation (§ 300.8(c)(6))

Comment: One commenter suggested using the term “intellectual disability” in place of “mental retardation” because “intellectual disability” is a more acceptable term. The commenter also stated that the definition of mental retardation is outdated, and should, instead, address a child’s functional limitations in specific life areas.

Discussion: Section 602(3)(A) of the Act refers to a “child with mental retardation” not a “child with intellectual disabilities.” and we do not see a compelling reason to change the term. However, States are free to use a different term to refer to a child with mental retardation, as long as all children who would be eligible for special education and related services under the Federal definition of mental retardation receive FAPE.

We do not believe the definition of mental retardation needs to be changed because it is defined broadly enough in § 300.8(c)(6) to include a child’s functional limitations in specific life areas, as requested by the commenter. There is nothing in the Act or these regulations that would prevent a State from including “functional limitations in specific life areas” in a State definition of mental retardation, as long as the State’s definition is consistent with these regulations.

Changes: None.

Multiple Disabilities (§ 300.8(c)(7))

Comment: One commenter asked why the category of multiple disabilities is included in the regulations when it is not in the Act.

Discussion: The definition of multiple disabilities has been in the regulations since 1977 and does not expand eligibility beyond what is provided for in the Act. The definition helps ensure that children with more than one disability are not counted more than once for the annual report of children served because States do not have to decide among two or more disability categories in which to count a child with multiple disabilities.

Changes: None.

Orthopedic Impairment (§ 300.8(c)(8))

Comment: One commenter requested that the examples of congenital anomalies in the definition of orthopedic impairment in current § 300.7(c)(6) be retained.

Discussion: The examples of congenital anomalies in current § 300.7(c)(6) are outdated and unnecessary to understand the meaning of orthopedic impairment. We, therefore, decline to include the examples in § 300.8(c)(8).

Changes: None.

Other Health Impairment (§ 300.8(c)(9))

Comment: We received a significant number of comments requesting that we include other examples of specific acute or chronic health conditions in the definition of other health impairment. A few commenters recommended including children with dysphagia, those children who have a swallowing and feeding disorder that affects a child’s vitality and alertness due to limitations in nutritional intake. Other commenters recommended including FAS, bipolar disorders, and organic neurological disorders.

Numerous commenters requested including Tourette syndrome disorders in the definition of other health impairment because children with Tourette syndrome are frequently misclassified as emotionally disturbed. A number of commenters stated that Tourette syndrome is a neurological disorder and not an emotional disorder, yet children with Tourette syndrome continue to be viewed as having a behavioral or conduct disorder and, therefore, do not receive appropriate special education and related services.

Discussion: The list of acute or chronic health conditions in the definition of other health impairment is not exhaustive, but rather provides examples of problems that children have that could make them eligible for special education and related services under the category of other health impairment. We decline to include dysphagia, FAS, bipolar disorders, and other organic neurological disorders in the definition of other health impairment because these conditions are commonly understood to be health impairments. However, we do believe that Tourette syndrome is commonly misunderstood to be a behavioral or emotional condition, rather than a neurological condition. Therefore, including Tourette syndrome in the definition of other health impairment may help correct the misperception of Tourette syndrome as a behavioral or conduct disorder and prevent the misdiagnosis of their needs.

Changes: We have added Tourette syndrome as an example of an acute or chronic health problem in § 300.8(c)(9).

Comment: A few commenters expressed concern about determining a child’s eligibility for special education services under the category of other health impairment based on conditions that are not medically determined health problems, such as “central auditory processing disorders” or “sensory integration disorders.” One commenter recommended that the regulations clarify that “chronic or acute health problems” refer to health problems that are universally recognized by the medical profession.

Discussion: We cannot make the change requested by the commenters. The determination of whether a child is eligible to receive special education and related services is made by a team of qualified professionals and the parents of the child, consistent with § 300.306(a)(1) and section 614(b)(4) of the Act. The team of qualified professionals and the parent of the child must base their decision on careful consideration of information from a variety of sources, consistent with § 300.306(c). There is nothing in the Act that requires the team of qualified professionals and the parent to consider only health problems that are
universally recognized by the medical profession, as requested by the
commenters. Likewise, there is nothing in the Act that would prevent a State from requiring a medical evaluation for eligibility under other health
impairment, provided the medical evaluation is conducted at no cost to the
parent.

Changes: None.

Comment: One commenter stated that the category of other health
impairment is one of the most rapidly expanding eligibility categories because the
definition is vague, confusing, and redundant. The commenter noted that the
definition of other health impairment includes terms such as
“alertness” and “vitality,” which are difficult to measure objectively.

Discussion: We believe that the definition of other health impairment is
generally understood and that the group of qualified professionals and the parent
responsible for determining whether a child is a child with a disability are able to
use the criteria in the definition and appropriately identify children who
need special education and related services. Therefore, we decline to change the
definition.

Changes: None.

Specific Learning Disability
§ 300.8(o)(10)

Comment: One commenter recommended changing the definition of
specific learning disability to refer to a child’s response to scientific, research-

based intervention as part of the procedures for evaluating children with
disabilities, consistent with § 300.307(c). A few commenters
recommended aligning the definition of specific learning disability with the
requirements for determining eligibility in § 300.309.

One commenter recommended using the word “disability,” instead of
“disorder,” and referring to specific learning disabilities as a “disability in
one or more of the basic psychological processes.” A few commenters stated that the terms “developmental aphasia” and “minimal brain dysfunction” are
antiquated and should be removed from the definition. A few commenters
questioned using “imperfect ability” in the definition because it implies that a
child with minor problems in listening, thinking, speaking, reading, writing,
spelling, or calculating math could be determined to have a specific learning
disability.

Discussion: The definition of specific learning disability is consistent with the
procedures for evaluating and determining the eligibility of children suspected of having a specific learning
disability in §§ 300.307 through 300.311. We do not believe it is
necessary to repeat these procedures in the definition of specific learning
disability.

Section 502(30) of the Act refers to a
“disorder” in one or more of the basic
psychological processes and not to a
“disability” in one or more of the basic
psychological processes. We believe it
would be inconsistent with the Act to
to change “disorder” to “disability,” as
recommended by one commenter. We do
not believe that the terms
“developmental aphasia” and “minimal
brain dysfunction” should be removed from the definition. Although the terms
may not be as commonly used as
“specific learning disability,” the terms
continue to be used and we see no harm in
retaining them in the definition. We
do not agree that the phrase “imperfect
ability” implies that a child has a minor
problem and, therefore, decline to change this phrase in the definition of
specific learning disability.

Changes: None.

Comment: We received several
requests to revise the definition of
specific learning disability to include
specific disabilities or disorders that are
often associated with specific learning
disabilities, including Asperger’s
syndrome, FAS, auditory processing
disorders, and nonverbal learning
disabilities.

Discussion: Children with many types
of disabilities or disorders may also
have a specific learning disability. It is
not practical or feasible to include all the
different disabilities that are often
associated with a specific learning
disability. Therefore, we decline to add
these specific disorders or disabilities to
the definition of specific learning
disability.

Changes: None.

Comment: A few commenters
suggested clarifying the word “cultural” in
§ 300.8(o)(10)(ii) to clarify that cultural
disadvantage or language cannot be the basis for determining that
a child has a disability.

Discussion: We believe the term
“cultural” is generally understood and
do not see a need for further
clarification. We also do not believe that
it is necessary to clarify that language
cannot be the basis for determining
whether a child has a specific learning
disability. Section 300.306(b)(1)(iii),
consistent with section 614(b)(6)(C) of
the Act, clearly states that limited
English proficiency cannot be the basis for
determining a child to be a child with a
consentability under any of the
disability categories in § 300.8.

Changes: None.

Consent (§ 300.9)

Comment: Numerous commenters noted that the regulations include the
terms “consent,” “informed consent,” “agree,” and “agree in writing” and
asked whether all the terms have the same
meaning.

Discussion: These terms are used
throughout the regulations and are
consistent with their use in the Act. The
definition of consent requires a parent
to be fully informed of all information
relevant to the activity for which
consent is sought. The definition also
requires a parent to agree in writing to
an activity for which consent is sought.
Therefore, whenever consent is used in
these regulations, it means that the
consent is both informed and in writing.

The meaning of the terms “agree” or
“agreement” is not the same as consent.
Agree” or “agreement” refers to an
understanding between the parent and
the public agency about a particular
question or issue, which may be
in writing, depending on the context.

Changes: None.

Comment: A few commenters
recommended adding a requirement to
the definition of consent that a parent be
fully informed of the reasons why a
government agency selected one activity over
another.

Discussion: We do not believe it is
necessary to include the additional
requirement recommended by the
commenter. The definition of consent
already requires that the parent be fully
informed of all the information relevant
to the activity for which consent is
sought.

Changes: None.

Comment: A few commenters
requested that the Department address
situations in which a child is receiving
special education services and the
child’s parent wants to discontinue
services because they believe the child
no longer needs special education
services. A few commenters stated that
public agencies should not be allowed to
use the procedures safeguards to
close to provide special education
and related services to a child whose
parent withdraws consent for the
continued provision of special
education and related services.

Discussion: The Department intends
to propose regulations to permit parents
who previously consented to the
initiation of special education services,
to withdraw their consent for their child
to receive, or continue to receive,
special education services. Because this
is a change from the Department’s
long-standing policies and was not
proposed in the NPRM, we will provide
the public the opportunity to comment.
on this proposed change in a separate notice of proposed rulemaking.

Changes: None.

Core Academic Subjects (§ 300.10)

Comment: A few commenters suggested adding the definition of core academic subjects from the ESEA to the regulations and including any additional subjects that are considered core academic subjects for children in the State in which the child resides.

Discussion: The definition of core academic subjects in § 300.10, consistent with section 602(a) of the Act, is the same as the definition in section 9101 of the ESEA. We believe it is unnecessary to change the definition to include additional subjects that particular States consider to be core academic subjects. However, there is nothing in the Act or these regulations that would prevent a State from including additional subjects in its definition of “core academic subjects.”

Changes: None.

Comment: A few commenters requested clarifying the definition of core academic subjects for a secondary school student when the student is functioning significantly below the secondary level.

Discussion: The definition of core academic subjects does not vary for secondary students who are functioning significantly below grade level. The Act focuses on high academic standards and clear performance goals for children with disabilities that are consistent with the standards and expectations for all children. As required in § 300.300(a), each child’s IEP must include annual goals to enable the child to be involved in and make progress in the general education curriculum, and a statement of the special education and related services and supplementary aids and services to enable the child to be involved and make progress in the general education curriculum. It would, therefore, be inconsistent and contrary to the purposes of the Act for the definition of core academic subjects to be different for students who are functioning below grade level.

Changes: None.

Comment: One commenter asked that the core content area of “science” apply to social sciences, as well as natural sciences.

Discussion: We cannot change the regulations in the manner recommended by the commenter because the ESEA does not identify “social sciences” as a core academic subject. Neither does it identify “social studies” as a core academic subject. Instead, it identifies specific core academic areas: History, geography, economics, and civics and government. The Department’s nonregulatory guidance on “Highly Qualified Teachers, Improving Teacher Quality State Grants” (August 3, 2005) explains that if a State issues a composite social studies license, the State must determine in which of the four areas (history, geography, economics, and civics and government), if any, a teacher is qualified. (See question A-20 in the Department’s nonregulatory guidance available at http://www.ed.gov/programs/teacherqual/legislation.html#guidance).

Changes: None.

Day; Business Day; School Day (§ 300.11)

Comment: A few commenters stated that a partial day should be considered a school day only if there is a safety reason for a shortened day, such as a two hour delay due to snow, and that regularly scheduled half days should not be considered a school day for funding purposes. One commenter stated that many schools count the time on the bus, recess, lunch period, and passing periods as part of a school day for children with disabilities, and recommended that the regulations clarify that non-instructional time does not count against a child’s instructional day unless such times are counted against the instructional day of all children. One commenter recommended the definition of school day include days on which extended school year (ESY) services are provided to children with disabilities.

Discussion: The length of the school day and school days do not affect the formula used to allocate Part B funds to States. School day, as defined in § 300.11(c)(1), is any day or partial day that children are in attendance at school for instructional purposes. If children attend school for only part of a school day and are released early (e.g., on the last day before summer vacation), that day would be considered to be a school day.

Section 300.11(c)(2) already defines school day as having the same meaning for all children, including children with and without disabilities. Therefore, it is unnecessary for the regulations to clarify that non-instructional time (e.g., recess, lunch) is not counted as instructional time for a child with a disability unless such times are counted as instructional time for all children. Consistent with this requirement, days on which ESY services are provided cannot be counted as a school day because ESY services are provided only to children with disabilities.

Changes: None.

Educational Service Agency (§ 300.12)

Comment: One commenter questioned the accuracy of the citation, 20 U.S.C. 1401(5), as the basis for including “intermediate educational unit” in the definition of educational service agency.

Discussion: The definition of educational service agency is based on the provisions in section 602(5) of the Act. The definition was added by the Amendments to the Individuals with Disabilities Education Act in 1997, Pub. L. 105-17, to replace the definition of “intermediate educational unit” (IEU) in section 602(23) of the Act, as in effect prior to June 4, 1997. Educational service agency does not exclude entities that were considered IEUs under prior law. To avoid any confusion about the use of this term, the definition clarifies that educational service agency includes entities that meet the definition of IEU in section 602(23) of the Act as in effect prior to June 4, 1997. We believe the citation for IEU is consistent with the Act.

Changes: None.

Comment: One commenter requested that the regulations clarify that the reference to the definition of educational service agency in the definition of local educational agency or LEA in § 300.28 means that educational service agencies (ESAs) and Bureau of Indian Affairs (BIA) schools have full responsibility and rights as LEAs under all provisions of the Act, including § 300.226 (early intervening services).

Discussion: With respect to ESAs, we believe that the provisions in § 300.12 and § 300.28 clarify that ESAs have full responsibility and rights as LEAs, including the provisions in § 300.226 related to early intervening services. However, the commenter’s request regarding BIA schools is inconsistent with the Act. The definition of local educational agency in § 300.28 and section 602(5) of the Act clarify that BIA funded schools in section 602(19)(c) of the Act and in § 300.28(c), states that the term “LEA” includes an elementary school or secondary school funded by the BIA, “but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.” Therefore, BIA schools do not have full responsibility and rights as LEAs under all provisions of the Act.

Changes: None.
List of Subjects

34 CFR Part 300

Administrative practice and procedure. Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs (education, Privacy, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 301

Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

Dated: July 31, 2006.

Margaret Spellings,
Secretary of Education.

For the reasons discussed in this preamble and under the authority of 20 U.S.C. 1221e(f)(6) and 1400, the Secretary amends title 34 of the Code of Federal Regulations 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

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Authority: 20 U.S.C. 1411–1419, unless otherwise noted.

Subpart A—General Purposes and Applicability
§300.1 Purposes.
The purposes of this part are—
(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
(b) To ensure that the rights of children with disabilities and their parents are protected;
(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

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

§300.2 Applicability of this part to State and local agencies.

(a) States. This part applies to each State that receives payments under Part B of the Act, as defined in §300.4.
(b) Public agencies within the State.
The provisions of this part—
(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:
(i) The State educational agency (SEA);
(ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs
and are not a school of an LEA or ESA.
(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness);
(iv) State and local juvenile and adult correctional facilities; and
(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.
(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities—
(1) Referred to or placed in private schools and facilities by that public agency; or
(2) Placed in private schools by their parents under the provisions of §300.148.

Authority: 20 U.S.C. 1412

Definitions Used in This Part
§300.4 Acts.
Act means the Individuals with Disabilities Education Act, as amended.

Authority: 20 U.S.C. 1400(a)
§300.5 Assistive technology device.
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 a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
(Authority: 20 U.S.C. 1401(1))

§300.6 Assistive technology service.
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, maintaining, 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 that child.
(Authority: 20 U.S.C. 1401(2))

§300.7 Charter school.
Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6801 et seq. (ESEA).
(Authority: 20 U.S.C. 7221(1))

§300.8 Child with a disability.
(a) General.
(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
(2) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.
(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.
(b) Children aged three through nine experiencing developmental delays.
Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child—
(1) Who is 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, communicative development, social or emotional development, or adaptive development.
(2) Who, by reason thereof, needs special education and related services.
(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:
(1) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, 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.
(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs 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) Emotional disturbance means a condition exhibiting one or more of the following characteristics during 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.
(E) A tendency to develop physical symptoms or fears associated with personal or school problems.
(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.
(5) 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.
(6) 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.
(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.
(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance.
(9) Traumatic brain injury means Concomitant brain injury resulting from external physical force resulting in either: (i) A period of loss or impairment of consciousness; (ii) Impairment of cognitive functioning; (iii) Impairment of behavior; (iv) Other abnormalities that may be present in a child who has suffered a traumatic brain injury.
performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

(10) Specific learning disability—

(i) General. 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 the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include 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. Traumatic brain injury 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. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to 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(3); 1401(30))

§ 300.9 Consent.

Consent means that—

(a) 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;

(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 the activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

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

§ 300.10 Core academic subjects.

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4))

§ 300.11 Day; business day; school day.

(a) Day means calendar day unless otherwise indicated as business day or school day.

(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.146(d)(1)(ii)).

(c)(1) School days means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) School day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e–3)

§ 300.12 Educational service agency.

Educational service agency means—

(a) A regional public multiservice agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs;

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5))

§ 300.13 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(Authority: 20 U.S.C. 1401(6))

§ 300.14 Equipment.

Equipment means—

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7))

§ 300.15 Evaluation.

Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

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

§ 300.16 Excess costs.

Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

(a) Amounts received—

(1) Under Part B of the Act;

(2) Under Part A of title I of the ESEA; and

(b) Under Parts A and B of title III of the ESEA and;
(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)

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

§300.17 Free appropriate public education.

Free appropriate public education or FAPE 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 an appropriate preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

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

§ 300.18 Highly qualified special education teachers.

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given in the term in section 9101 of the ESBA and 34 CFR 200.56, except that the requirement for highly qualified also—

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESBA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers in general. (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified means that—

(i) The teacher has obtained the State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State’s public charter school law;

(ii) The teacher has not had special education certification or license requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor’s degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1) of this section if the teacher is participating in an alternative route to special education certification program under which—

(i) The teacher—

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentorship program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching any core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or (b)(2) of this section.

(c) Requirements for special education teachers teaching alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means that the teacher, whether new or not new to the profession, may either—

(1) Meet the applicable requirements of section 9101 of the ESBA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of paragraph (b) or of section 9101(23) of the ESBA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or of section 9101(23) of the ESBA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

(d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either—

(1) Meet the applicable requirements of section 9101 of the ESBA and 34 CFR 200.56(d) or (e);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State’s HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—

(1) A State may develop a separate HOUSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

(g) Applicability of definition to ESEA; and clarification of new special
education teacher. (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of §300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(b) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138.

(Authority: 20 U.S.C. 1401(10))

§300.19 Homeless children.

Homeless children has the meaning given the term homeless children and youths in section 755 (42 U.S.C. 11443a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. (Authority: 20 U.S.C. 1401(11))

§300.20 Include.

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. 1221e–5)

§300.21 Indian and Indian tribe.

(a) Indian means an individual who is a member of an Indian tribe.

(b) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional corporation recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a–1.

(Misspelling: 20 U.S.C. 1401(12) and (13))

§300.22 Individualized education program.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324.

(Authority: 20 U.S.C. 1401(14))

§300.23 Individualized education program team.

Individualized education program or IEP team means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

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

§300.24 Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in section 619 of the Act.

(Authority: 20 U.S.C. 1401(15))

§300.25 Infant or toddler with a disability.

Infant or toddler with a disability—

(a) Means an individual under three years of age who needs early intervention services because the individual—

(1) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures; in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(2) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delays; and

(b) May also include, at a State’s discretion—

(1) At-risk infants and toddlers; and

(2) Children with disabilities who are eligible for services under section 619 who have previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include—

(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.

(Authority: 20 U.S.C. 1401(18) and 1432(5))

§300.26 Institution of higher education.

Institution of higher education—

(a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and

(b) Also includes any community college receiving funds from

Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

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

§300.27 Limited English proficient.

Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

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

§300.28 Local educational agency.

(a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Educational service agencies and other public institutions or agencies. The term includes—

(1) An educational service agency, as defined in §300.12; and

(2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

(c) BIA funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

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

§300.29 Native language.

(a) Native language, when used with respect to an individual who is Limited English proficient, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the
§ 300.30 Parent.
(a) Parent means—
(1) A biological or adoptive parent of a child;
(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare, or
(5) A surrogate parent who has been appointed in accordance with § 300.519 or section 617(e) of the Act.
(b) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
(c) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

(Authority: 20 U.S.C. 1410(23))

§ 300.31 Parent training and information center.
Parent training and information center means a center assisted under sections 671 or 672 of the Act.

(Authority: 20 U.S.C. 1410(25))

§ 300.32 Personally identifiable.
Personally identifiable means information that contains—
(a) The name of the child, the child's parent, or other family member;
(b) The address of the child;
(c) A personal identifier, such as the child's social security number or student number;
(d) 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. 1412(a)(1)(I))

§ 300.33 Related services.
(a) General. 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-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.
(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—
(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.
(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school, or
(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

(Authority: 20 U.S.C. 1412(a)(11))

(c) Individual related services terms defined. 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) Provisions of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;
(iv) Creation and administration of programs for prevention of hearing loss;
(v) Counseling and guidance of children, parents, and teachers regarding hearing loss, and
(vi) Determination of children's needs 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, 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.

(b) Interpreting services includes—
(i) The following, when used with respect to children who are deaf or hard of hearing; Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
(ii) Special interpreting services for children who are deaf-blind.

(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—
(i) Means services provided by a qualified occupational therapist; and
(ii) Includes—
(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
(C) Preventing, through early intervention, initial or further impairment or loss of function.
(7) Orientation and mobility services—
(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
(ii) Includes teaching the following, as appropriate:
(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with non available travel vision;
(C) Underst and use remaining vision and distance low vision aids; and
(D) Other concepts, techniques, and tools.
(b)(i) Parent counseling and training means assisting parents in understanding the special needs of their child;
(ii) Providing parents with information about child development; and
(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
(v) Physical therapy means services provided by a qualified physical therapist.
(10) 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 educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
(vi) Assisting in developing positive behavioral intervention strategies.
(11) Recreation includes—
(i) Assessment of leisure function;
(ii) Therapeutic recreation services;
(iii) Recreation programs in schools and community agencies; and
(iv) Leisure education.
(12) 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 a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified personnel.
(14) 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 in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
(iv) Mobilizing school and community resources to enable the child to learn and effectively as possible in his or her educational program; and
(v) Assisting in developing positive behavioral intervention strategies.
(15) Speech-language pathology services 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;
(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
(16) 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.

§300.35 Scientifically based research.
Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.
(Authority: 20 U.S.C. 1411(e)(2)(C)(i))

§300.36 Secondary school.
Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.
(Authority: 20 U.S.C. 1401(27))

§300.37 Services plan.
Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with §300.132, and is developed and implemented in accordance with §§300.137 through 300.139.
(Authority: 20 U.S.C. 1412(a)(19)(A))

§300.38 Secretary.
Secretary means the Secretary of Education.
(Authority: 20 U.S.C. 1401(28))

§300.39 Special education.
(a) General. (1) 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) Special education includes each of the following, if the services otherwise meet the requirements of paragraphs (a)(1) of this section—
(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
(ii) Travel training; and
(iii) Vocational education.
(b) Individual special education terms defined. 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 means—
(i) 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); and
(ii) Includes special physical
education, adapted physical education,
movement education, and motor
development.
(3) Specially designed instruction
means adapting, as appropriate to the
needs of an eligible child under this
part, the content, methodology, or
delivery of instruction—
(i) To address the unique needs of the
child that result from the child's
disability; and
(ii) To ensure access of the child to
the general curriculum, so that the child
can meet the educational standards
within the jurisdiction of the public
agency that apply to all children.
(4) Travel training means providing
instruction, as appropriate, to children
with significant cognitive disabilities,
and any other children with disabilities
who require this instruction, to enable
them to—
(i) Develop an awareness of the
environment in which they live; and
(ii) Learn the skills necessary to move
effectively and safely from place to
place within that environment (e.g., in
school, in the home, at work, and in
the community).
(5) Vocational education means
organized educational programs that are
directly related to the preparation of
individuals for paid or unpaid
employment, or for additional
preparation for a career not requiring a
baccalaureate or advanced degree.
(Authority: 20 U.S.C. 1401(29))

§ 300.40 State.
State means each of the 50 States, the
District of Columbia, the
Commonwealth of Puerto Rico, and
each of the outlying areas.
(Authority: 20 U.S.C. 1401(31))

§ 300.41 State educational agency.
State educational agency or SEA
means the State board of education or
other agency or officer primarily
responsible for the State supervision of
public elementary schools and
secondary schools, or, if there is no such
officer or agency, an officer or agency
designated by the Governor or by State
law.
(Authority: 20 U.S.C. 1401(32))

§ 300.42 Supplementary aids and services.
Supplementary aids and services
means aids, services, and other supports
that are provided in regular education
classes, other education-related settings,
and in extracurricular and nonacademic
settings, to enable children with
disabilities to be educated with
non-disabled children to the maximum
extent appropriate in accordance with
§§ 300.114 through 300.116.
(Authority: 20 U.S.C. 1401(33))

§ 300.43 Transition services.
(a) Transition services means a
cooordinated set of activities for a child
with a disability that—
(1) Is designed to be within a results-
oriented process, that is focused on
improving the academic and functional
achievement of the child, and
facilitating the child's movement from
school to post-school activities, including
postsecondary education, vocational
education, integrated employment
(including supported employment),
continuing and adult education, adult
services, independent living, or
community participation;
(2) Is based on the individual child's
educational needs, taking into account the
child's strengths, preferences, and
interests; and
includes—
(i) Instruction;
(ii) Related services;
(iii) Community experiences;
(iv) The development of employment
and other post-school adult living
objectives; and
(v) A functional vocational evaluation.
(b) Transition services for children
with disabilities may be special
education, if provided as specially
designed instruction, or a related
service, if required to assist a child with
a disability to benefit from special
education.
(Authority: 20 U.S.C. 1401(84))

§ 300.44 Universal design.
Universal design has the meaning
given in the term in section 3 of the
Assistive Technology Act of 1998, as
(Authority: 20 U.S.C. 1401(33))

§ 300.45 Ward of the State.
(a) General. Subject to paragraph (b)
of this section, Ward of the State means
a child who, as determined by the State
where the child resides, is—
(1) A foster child;
(2) A ward of the State; or
(3) In the custody of a public child
welfare agency.
(b) Exception. Ward of the State does
not include a foster child who has a
foster parent who meets the definition of
a parent in § 300.30.
(Authority: 20 U.S.C. 1401(36))

Subpart B—State Eligibility
General

§ 300.100 Eligibility for assistance.
A State is eligible for assistance under
Part B of the Act for a fiscal year if the
State submits a plan that provides
assurances to the Secretary that the
State has in effect policies and
procedures to ensure that the State
meets the conditions in §§ 300.101
through 300.176.
(Approved by the Office of Management
and Budget under control number 1820-
0030)
(Authority: 20 U.S.C. 1412(a))

FAPE Requirements

§ 300.101 Free appropriate public
education (FAPE).
(a) General. A free appropriate public
education must be available to all
children residing in the State between
the ages of 3 and 21, inclusive,
including children with disabilities who
have been suspended or expelled from
school, as provided for in § 300.530(d).
(b) Free appropriater education beginning at
age 3. (1) Each State must ensure that—
(i) The obligation to make FAPE
available to each eligible child residing
in the State begins no later than the
child's third birthday; and
(ii) An IFSP or an IFSP is in effect for
the child by that date, in accordance
with §300.323(b).
(2) If a child's third birthday occurs
during the summer, the child's ISP
Team shall determine the date when
services under the IFSP or IFSP will
begin.
(c) Children advancing from grade to
grade. (1) Each State must ensure that
FAPE is available to any individual
child with a disability who needs
special education and related services,
even though the child has not failed or
been retained in a course or grade, and
is advancing from grade to grade.
(2) The determination that a child
described in paragraph (a) of this
section is eligible under this part, must
be made on an individual basis by the
group responsible within the child's
LEA for making eligibility
determinations.
(Approved by the Office of Management
and Budget under control number 1820-
0030)
(Authority: 20 U.S.C. 1412(b)(1)(A))

§ 300.102 Limitation—exception to FAPE
for certain ages.
(a) General. The obligation to make
FAPE available to all children with
disabilities does not apply with respect to
the following:

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—
(A) Were not actually identified as being a child with a disability under §300.8; and
(B) Did not have an IEP under Part B of the Act.
(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—
(A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or
(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.
(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.
(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.
(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—
(A) Were not actually identified as being a child with a disability under §300.8; and
(B) Did not have an IEP under Part B of the Act.
(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—
(A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or
(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.
(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.
(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.
(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.
§ 300.108 Physical education.

The State must ensure that public agencies in the State comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability attending public schools, including children with disabilities who are home-schooled, or are wards of the State, and who are in need of specialized education and related services, identified, located, and evaluated; and

(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

(i) The child is enrolled full time in a separate facility; or

(ii) A practical method is developed and implemented to determine whether the child is currently receiving needed special education and related services.

(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 must 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 is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

§ 300.110 Full educational opportunity goal (FEOG).

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged from birth to the age of 21, and a detailed timetable for accomplishing that goal.

§ 300.111 Child find.

(a) General. (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are home-schooled, are wards of the State, or attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of developmental delay under § 300.8(b) determines whether the term applies to children aged three through five years of age.

(2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.

(c) Other children in child find. Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

§ 300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 631(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.320 through 300.324, as each child enters school.

§ 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) External components of surgically implanted medical devices. (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

§ 300.114 Least Restrictive Environment (LRE).

§ 300.320 Program options.

The State must ensure that each public agency takes 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.

(b) The child's placement—
(1) Is determined at least annually;
(2) Is based on the child's IEP; and
(3) Is as close as possible to the child's home;
(c) Unless the IEP of a child with a disability requires other arrangements, 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; and
(e) A child with a disability is not removed from education in an appropriate regular classroom solely because of needed modifications in the general education curriculum.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(5))

§ 300.117 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 § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child.

The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child’s IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(5))

§ 300.118 Children in public or private institutions.
Except as provided in § 300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that § 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(5))

§ 300.119 Technical assistance and training activities.
Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.114; and
(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(5))

§ 300.123 Monitoring activities.
(a) The SEA must carry out activities to ensure that § 300.114 is implemented by each public agency.
(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.114, the SEA must—
(1) Review the public agency’s justification for its actions; and
(2) Assist in planning and implementing any necessary corrective action.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(5))

Additional Eligibility Requirements

§ 300.121 Procedural safeguards.
(a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§ 300.500 through 300.536.
(b) Procedural safeguards identified. Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(6)(A))

§ 300.122 Evaluation.
Children with disabilities must be evaluated in accordance with §§ 300.300 through 300.311 of subpart D of this part.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(7))

§ 300.123 Confidentiality of personally identifiable information.
The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§ 300.610 through 300.625 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
§ 300.124 Transition of children from the Part C program to preschool programs.

The State must have in effect policies and procedures to ensure that—

1. Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

2. By the third birthday of a child described in paragraph (a) of this section, an IEP, or, if consistent with §§ 300.323(b) and section 638(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and

3. Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 645(a)(10) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0039)

(Shall: 20 U.S.C. 1412(a)(10))

§§ 300.125–300.128 [Reserved]

Children in Private Schools

§ 300.129 State responsibility regarding children in private schools.

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirement in §§ 300.130 through 300.148.

(Approved by the Office of Management and Budget under control number 1820–0030)

(Shall: 20 U.S.C. 1412(a)(10))

Children With Disabilities Enrolled by Their Parents in Private Schools

§ 300.130 Definition of parentally-placed private school children with disabilities.

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.35, other than children with disabilities covered under §§ 300.13 through 300.147.

(Approved by the Office of Management and Budget under control number 1820–0039)

(Shall: 20 U.S.C. 1412(a)(10)(A))

§ 300.131 Child find for parentally-placed private school children with disabilities.

(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.210.

(b) Child find design. The child find process must be designed to ensure—

1. The equitable participation of parentally-placed private school children; and


(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to those activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.

(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301.

(f) Out-of-State children. Each LEA in which, private, including religious, elementary schools and secondary schools are located, must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

(Approved by the Office of Management and Budget under control number 1820–0030)


§ 300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, the LEA must make a provision for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with § 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§ 300.190 through 300.198.

(b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§ 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

1. Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§ 300.130 through 300.145:

2. The number of children evaluated;

3. The number of children determined to be children with disabilities; and

4. The number of children served.

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0040)


§ 300.133 Expenditures.

(a) Formula. To meet the requirement of § 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(i) For children aged 3 through 21, an amount that is the same proportion of the LEA's total budget under section 611(b) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(ii) For children aged three through five, an amount that is the same proportion of the LEA's total budget under section 611(b) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(iii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in § 300.13.

(iv) If an LEA has not expended for equitable services all of the funds described in paragraph (a)(2) of this section by the end of the fiscal...
year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount.

In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated)

(c) Annual count of the number of parentally-placed private school children with disabilities. (1) Each LEA must—

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and
(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) Supplement, not supplant. State and local funds may supplement in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)


§ 300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including—

(b) Written affirmation.

(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)


§ 300.136 Compliance.

(a) General. A private school official has the right to submit a complaint to the SEA that the LEA—

(1) Did not engage in consultation that was meaningful and timely; or
(2) Did not give due consideration to the views of the private school official.

(b) Procedure. (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
(2) The LEA must forward the appropriate documentation to the SEA.

(2) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
(2) If the SEA's decision is affirmed, the private school official may file a complaint with the Secretary within 60 days of receipt of the SEA's decision.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)


§ 300.137 Equitable services determined.

(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).
(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.
(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
(2) Ensure that a representative of the religious or other private school attends
§ 300.138 Equitable services provided.

(a) General. (1) The services provided to parents or the private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services to children with disabilities. Services to children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parents or the private school children with disabilities do not have to meet the highly qualified special education teacher requirements of § 300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under § 300.132 must have a services plan that describes the specific special education and related services that the students will receive from the LEA in light of the services that the LEA has determined, through the process in § 300.132, to be appropriate for the child in light of the services that the LEA has determined, through the process in § 300.132 and 300.137, to make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate—

(i) Meet the requirements of § 300.320, or for a child ages three or five years, meet the requirements of § 300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.

(c) Provision of equitable services. (1) The provision of services pursuant to this section and §§ 300.139 through 300.143 must be provided:

(i) By employee of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

§ 300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation—(1) General. (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—

(A) From the child’s home to a site other than the private school; and

(B) From the service site to the private school, or to the child’s home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child’s home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirements of § 300.133.2

(3) Place of instruction. The LEA must provide instruction in the location that provides the child with the least restrictive environment.

§ 300.140 Due process complaints and State complaints.

(a) Due process not applicable, except for child find. (1) Except as provided in paragraph (b) of this section, the procedures in §§ 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.132 through 300.139, including the provision of services indicated on the child’s services plan.

(b) Child find complaints—to be filed with the LEA in which the private school is located. (1) The procedures in §§ 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§ 300.132 through 300.319, including the requirements in §§ 300.30 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints. (1) Any complaint that the LEA or the SEA has failed to meet the requirements in §§ 300.132 through 300.139 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§ 300.151 through 300.153.

(2) A complaint filed by a private school official under § 300.136(a) must be filed with the SEA in accordance with the procedures in § 300.136(b).

§ 300.141 Requirement that funds not benefit a private school.

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

§ 300.142 Use of personnel.

(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—

(1) To the extent necessary to provide services under §§ 300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§ 300.130 through 300.144 if—

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

§ 300.143 Separate classes prohibited.

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

(a) The classes are at the same site; and

(b) The classes include children enrolled in public schools and children enrolled in private schools.
§300.144 Property, equipment, and supplies.

(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) The public agency will not use the equipment and supplies for Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

§300.147 Implementation by SEA.

In implementing §§300.146, the SEA must—

(a) Monitor compliance through such procedures 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.

Children With Disabilities Enrolled Through Their Parents in Private Schools When FAPE Is at Issue

§300.148 Placement of children by parents when FAPE is at issue.

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement was appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) 

(2) If, at the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(3) At least ten (10) business days prior to the removal of the child from the public school, the parents did not take written notice to the public agency of the information described in paragraph (d)(1)(i) of this section.

(3) If, prior to the parents’ removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(4) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—

(i) Must not be reduced or denied for failure to provide the notice if—

(ii) The school prevented the parents from providing the notice;

(iii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1)(i) of this section; or

(iv) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

May, in the discretion of the court or hearing officer, not be reduced or denied for failure to provide this notice if—

(i) The parents are not literate or cannot write in English; or
(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child. (Approved by the Office of Management and Budget under control number 1820–0030) (Authority: 20 U.S.C. 1412(a)(10)(C))

SEA Responsibility for General Supervision and Implementation of Procedural Safeguards

§ 300.149 SEA responsibility for general supervision.

(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 State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—

(i) is under the general supervision of the persons responsible for educational programs for children with disabilities in the State; and

(ii) meets the educational standards of the SEA (including the requirements of this part).

(b) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(c) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

(d) Part B of the Act does not 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 or, in the case of homeless children, for providing educational services in such additional cases as the State determines.

(e) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. (Approved by the Office of Management and Budget under control number 1820–0030) (Authority: 20 U.S.C. 1412(a)(11); 1416)

§ 300.150 SEA implementation of procedural safeguards.

The SEA (and any agency assigned responsibility pursuant to § 300.149(d)) must have in effect procedures 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. (Approved by the Office of Management and Budget under control number 1820–0030) (Authority: 20 U.S.C. 1412(a)(11); 1415(a))

State Complaint Procedures

§ 300.151 Adoption of State complaint procedures.

(a) General. Each SEA must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) 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; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities. (Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600) (Authority: 20 U.S.C. 1221e–3)

§ 300.152 Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary; and

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506; (c) 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

(iii) 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) Time extension; final decision; implementation. The SEA’s procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA’s final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearing under § 300.507 and §§ 300.530 through 300.532. If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously
been decided in a due process hearing involving the same parties—
(i) The due process hearing decision is binding on that issue; and
(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0060.

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

§ 300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.

(b) The complaint must include—
(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
(2) The facts on which the statement is based;
(3) The signature and contact information for the complainant; and
(4) If alleging violations with respect to a specific child—
(i) The name and address of the residence of the child;
(ii) The name of the school the child is attending;
(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
(iv) A description of the nature of the problem of the child, including facts relating to the problem; and
(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

[Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0060.]

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

Methods of Ensuring Services

§ 300.154 Methods of ensuring services.

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

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

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

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

(b) Obligation of noneducational public agencies. (1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.6 relating to assistive technology devices, § 300.8 relating to assistive technology services, § 300.34 relating to related services, § 300.41 relating to supplementary aids and services, and § 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangements pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

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

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

(c) Special rule. The requirements of paragraph (a) of this section may be met through—

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

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

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

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

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

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

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child’s benefits under a public benefits or insurance program if that use would—
(A) Decrease available lifetime coverage or any other insured benefit;
(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
(C) Increase premiums or lead to the discontinuation of benefits or insurance;
(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(vi) Must obtain parental consent, consistent with § 300.6, each time that access to public benefits or insurance is sought; and
(B) Notify parents that the parents’ refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) Children with disabilities who are covered by private insurance. (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents’ private insurance proceeds only if the parents provide consent consistent with § 300.9.
(2) Each time the public agency proposes to access the parents’ private insurance proceeds, the agency must—
(a) Obtain parental consent in accordance with paragraph (e)(1) of this section; and
(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(1) Use of Part B funds. (1) If a public agency is unable to obtain parental consent to use the parents’ private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.
(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents’ benefits or insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public benefits or insurance. (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 60.23.
(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered “State or local” funds for purposes of the maintenance of effort provisions in §§ 300.163 and 300.203.
(b) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title X, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397a through 1397j, or any other public benefits or insurance program.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412a(12) and (e))

§ 300.155 Additional Eligibility Requirements

§ 300.155 hearings relating to LEA eligibility.
The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412a(13))

§ 300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and personnel. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and personnel that—
(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession—
(a) Meet the requirements of paragraph (b)(1) of this section; and
(b) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

e) Rule of construction.
Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412a(14))

§ 300.157 Performance Goals and Indicators.
The SEA must—
(a) Have procedures for evaluating the performance of children with disabilities in the State that—
(1) Promote the purposes of this part, as stated in § 300.1;
(2) Are the same as the State’s objectives for progress by children in its definition of adequate yearly progress, including the State’s objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA.
(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
§ 300.163 Maintenance of State financial support.
(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise make available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.
(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirements of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.
(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirements of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—
(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or
(2) The State meets the standard in § 300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.
(d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

§ 300.162 Supplementation of State, local, and other Federal funds.
(a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part.
(b) Prohibition against commingling. Funds paid to a State under this part must not be commingled with State funds.
(c) State-level nonsupplanting. (1) Except as provided in § 300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, 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 Part B of the Act, and in no case to supplant those Federal, State, and local funds.
(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under § 300.164.

§ 300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.
(a) Except as provided under §§ 300.202 through 300.205, funds paid to a State under Part B of the Act must be 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 Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under § 300.704(a) and (b) without regard to the prohibition on supplanting other funds.
(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under § 300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.
(c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes—
(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;
(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail—
(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and
(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include—
(A) The State's procedures under § 300.111 for ensuring that all eligible children are identified, located and evaluated;
(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;
(C) The State's complaint procedures under §§ 300.151 through 300.153; and
(D) The State's hearing procedures under §§ 300.511 through 300.516 and §§ 300.530 through 300.535;
(3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§ 300.131 through 300.135) and hearing decisions (see §§ 300.511 through 300.516 and §§ 300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and
(d) Evidence that the State, in determining that FAPE is currently

(continued)
available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.

(d) The Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:

(1) Whether FAPE is currently available to all eligible children with disabilities in the State;

(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(e) Following the hearing, the Secretary, based on the submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(f) A State may receive a waiver of the requirement of section 612(a)(3)(A) of the Act and §300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have, throughout the one-year period of the waiver, FAPE available to them.

(Approval by the Office of Management and Budget under control number 1820-0030)

(18)(C)(ii)

§ 300.156 Public participation.

(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).

(Approved by the Office of Management and Budget under control number 1820-0030)

(18)(C)(ii)

§ 300.165 Rule of construction.

In complying with §§300.162 and 300.163, States may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

(Approved by the Office of Management and Budget under control number 1820-0030)

(18)(C)(ii)

State Advisory Panel

§ 300.167 State advisory panel.

The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(Approved by the Office of Management and Budget under control number 1820-0030)

(18)(C)(ii)

§ 300.168 Membership.

(a) General. The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved, or concerned with the education of children with disabilities, including:

(1) Parents of children with disabilities (ages birth through 26);

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

(5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 et seq.);

(6) Administrators of programs for children with disabilities;

(7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(10) A representative from the State child welfare agency responsible for foster care; and

(11) Representatives from the State juvenile and adult correctional agencies.

(b) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(Approved by the Office of Management and Budget under control number 1820-0030)

(18)(C)(ii)

§ 300.169 Duties.

The advisory panel must:

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;

(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and

(e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

(Approved by the Office of Management and Budget under control number 1820-0030)

(18)(C)(ii)

Other Provisions for State Eligibility

§ 300.170 Suspension and expulsion rates.

(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

(1) Among LEAs in the State; or

(2) Compared to the rates for nondisabled children within those agencies.

(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.
§ 300.171 Annual description of use of Part B funds.
(a) In order to receive a grant in any fiscal year a State must annually describe—
(1) How amounts retained for State administration and State-level activities under § 300.704 will be used to meet the requirements of this part; and
(2) How those amounts will be allocated among the activities described in § 300.704 to meet State priorities based on input from LEAs.
(b) If a State’s plans for use of its funds under § 300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirements in paragraph (a) of this section.
(c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(23), 1417(a)(6))

§ 300.172 Access to instructional materials.
(a) General. The State must—
(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2005 (71 FR 41084); and
(2) Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.
(b) Rights and responsibilities of SEA.
(1) Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC.
(2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in § 300.172(e)(1)(ii) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
(c) In order to meet its responsibilities under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.
(d) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must—
(1) As part of any print instructional materials acquisition process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to—
(I) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials produced using the NIMAS; or
(ii) Purchase Instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(24))

§ 300.174 Prohibition on mandatory medication.
(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, III, IV, or V in section 205(c) of the Controlled Substances Act (21 U.S.C. 812(g)) for a child as a condition of attending school, receiving an evaluation under §§ 300.300 through 300.311, or receiving services under this part.
(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under § 300.111 (related to child find).

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(25))

§ 300.175 SEA as provider of FAPE or direct services.
If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency—
(a) Must comply with any additional requirements of §§ 300.201 and 300.202 and §§ 300.206 through 300.226 as if the agency were an LEA; and
(b) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to §300.202(b) (relating to excess costs).

(Authority: 20 U.S.C. 1412(1)(b))

§300.176 Exception for prior State plans.
(a) General. If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of §300.100, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act.

(b) Modifications made by a State. (1) Subject to paragraph (b)(2) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary.

(2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan.

(c) Modifications required by the Secretary. The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if—

(1) After December 3, 2004, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of this Act by a Federal court or a State's highest court;

(3) There is an official finding of noncompliance with Federal law or regulations.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(1)(c) and (3))

§300.177 States' sovereign immunity. 
(a) General. A State that accepts funds under this part waives its immunity under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this part.

(b) Remedies. In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against a public entity other than a State.

(c) Effective date. Paragraphs (a) and (b) of this section apply with respect to violations that occur in whole or in part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(Authority: 20 U.S.C. 1404)

§300.178 Determination by the Secretary that a State is eligible to receive a grant.
If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.

(Authority: 20 U.S.C. 1412(d)(1))

§300.179 Notice and hearing before determining that a State is not eligible to receive a grant.

(a) General. (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State—

(i) With reasonable notice; and

(ii) With an opportunity for a hearing.

(2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the SEA by certified mail with return receipt requested.

(b) Content of notice. In the written notice described in paragraph (a)(2) of this section, the Secretary—

(1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;

(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 days after it receives the notice of the proposed final determination that the State is not eligible;

(4) Provides the SEA with information about the hearing procedures that will be followed.

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

§300.180 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. 1412(d)(2))

§300.181 Hearing procedures.
(a) As used in §§300.179 through 300.184 the term party or parties means the following:

(1) An SEA that requests a hearing regarding the proposed disapproval of the State's eligibility under this part.

(2) The Department 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 Hearing Panel.

(b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.

(c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Hearing 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 Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.

(3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing conference or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as—

(i) Narrowing or 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 Hearing 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 final decision of the Hearing Official or Hearing 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 must 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 Hearing 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 Hearing Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Hearing Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Hearing 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 Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Hearing Panel may examine witnesses.

(j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Hearing 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 Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(a) The Hearing Official or Hearing Panel may conduct a prehearing conference to prepare the parties for the hearing and ensure that all necessary evidence is gathered.

(b) The Hearing Official or Hearing Panel shall determine whether an oral argument or evidentiary hearing is needed to clarify the positions of the parties.

(c) The Hearing Official or Hearing Panel may schedule a hearing date and provide reasonable notice to the parties.

(d) Each party may file comments and recommendations on the initial decision of the Hearing Official or Hearing Panel.

(e) The Hearing Official or Hearing Panel shall review and consider all comments and recommendations submitted by the parties.

(f) The Hearing Official or Hearing Panel shall issue a final decision, which shall be in writing and shall include a statement of the reasons for the decision.

(g) The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments and recommendations, the Secretary informs the Hearing Official or Hearing Panel and the parties of a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary shall issue a final decision, which shall be in writing and shall include a statement of the reasons for the decision.

(i) The Secretary shall consider all comments and recommendations submitted by the parties.

(j) The Secretary shall issue a final decision, which shall be in writing and shall include a statement of the reasons for the decision.

(k) The Secretary shall issue a final decision, which shall be in writing and shall include a statement of the reasons for the decision.

(l) The Secretary shall issue a final decision, which shall be in writing and shall include a statement of the reasons for the decision.
§ 300.184 Judicial review.

If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under section 612 of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary's decision was based, as provided in 28 U.S.C. 2112.

[Authority: 20 U.S.C. 1415(e)(6)]

§ 300.185 Assistance under other Federal programs.

Part B of the Act may not be construed to permit a State to reduce medical and other assistance available, or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of FAPE for children with disabilities in the State.

[Authority: 20 U.S.C. 1412(a)(6)]

§ 300.190 By-pass for Children in Private Schools.

(a) If, on December 2, 1983, the date of enactment of the Education of the Handicapped Act Amendments of 1983, an SEA was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by section 612(a)(10)(A) of the Act, or if the Secretary determines that an SEA, LEA, or other public agency has substantially failed or is unwilling to provide for such equitable participation then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to these children through arrangements which shall be subject to the requirements of section 612(a)(10)(A) of the Act.

(b) The Secretary waives the requirement of section 612(a)(10)(A) of the Act and of §§ 300.131 through 300.144 if the Secretary implements a by-pass.

[Authority: 20 U.S.C. 1412(f)(1)]

§ 300.191 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, and as appropriate, LEA or other public agency officials to consider matters such as—

(1) Any prohibition imposed by State law that results in the need for a by-pass; and

(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.

(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, LEA or other public agency in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and §§ 300.131 through 300.144 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 determined by dividing the total amount received by the State under Part B of the Act for the fiscal year by the number of children with disabilities served in the prior year as reported to the Secretary under section 618 of the Act; and

(2) The number of private school children with disabilities (as defined in §§ 300.8(a) and 300.130) in the State, LEA or other public agency, 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 Part B of the Act 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. 1412(f)(2)]

§ 300.192 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the SEA and, as appropriate, LEA or other public agency 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 and, as appropriate, LEA or other public agency to respond; and

(2) Advises the SEA and, as appropriate, LEA or other public agency 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 and, as appropriate, LEA or other public agency by certified mail with return receipt requested.


§ 300.193 Request to show cause.

An SEA, LEA or other public agency in receipt of a notice under § 300.192 that seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time period in the written notice in § 300.192(b)(2).

[Authority: 20 U.S.C. 1412(f)(3)]

§ 300.194 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing;

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought before a hearing; and

(3) Notifies the SEA, LEA or other public agency, and representatives of private schools that they may be represented by legal counsel and submit oral or written evidence and arguments at the 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 has no authority to require or conduct discovery.

(e) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(f) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.
§ 300.195 Decision.

(a) The designee who conducts the show cause hearing—
(1) Within 120 days after the record of a show cause hearing is closed, 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 30 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies all parties to the show cause hearing of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

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

§ 300.196 Filing requirements.

(a) Any written submission under § 300.194 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—
(1) Hand-delivered;
(2) Mailed for; or
(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(f) A party must show a proof of mailing to establish the filing date under paragraph (b)(2) of this section as provided in 34 CFR 76.102(d).

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

§ 300.197 Judicial review.

A party aggrieved by a final decision of the Secretary may, within 60 days after notice of that decision, 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 612(f)(3)B) through (D) of the Act.


§ 300.199 State administration.

(a) Rulemaking. Each State that receives funds under Part B of the Act must—
(1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part;
(2) Identify in writing to LEAs located in the State and the Secretary such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations; and
(3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act.

(b) Support and facilitation. State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1407)

Subpart C—Local Educational Agency Eligibility

§ 300.200 Condition of assistance.

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the Secretary that the LEA meets each of the conditions in §§ 300.201 through 300.213.

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

§ 300.201 Consistency with State policies.

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.165, and §§ 300.165 through 300.174.

(Approved by the Office of Management and Budget under control number 1820-0060)

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

§ 300.202 Use of amounts.

(a) General. Amounts provided to the LEA under Part B of the Act—
(1) Must be expended in accordance with the applicable provisions of this part;
(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) Excess cost requirement.

(i) General. 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)(1)(ii) of this section.

(ii) 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 ages 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, or 16, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonenrollment of other requirements of this part in providing the education and services for these children.

(iii) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(iv) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess cost in § 300.16. That amount may not include capital outlay or debt service.

(iii) If two or more LEAs jointly establish eligibility in accordance with § 300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in § 300.16 in those agencies for elementary or secondary school students, as the case may be.

(Approved by the Office of Management and Budget under control number 1820-0060)

§ 300.203  Maintenance of effort.

(a) General. Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) Standard. (1) Except as provided in paragraph (d) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA’s eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(ii) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA’s compliance with the requirement in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0600)


§ 300.204  Exception to maintenance of effort.

Notwithstanding the restriction in § 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPs to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by high cost fund operated by the SEA under § 300.704(c).

(Approved by the Office of Management and Budget under control number 1820-0600)

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

§ 300.205  Adjustment to local fiscal efforts in certain fiscal years.

(a) Amounts in excess.

Notwithstanding § 300.202(a)(2) and (b) and § 300.203(a), and except as provided in paragraph (d) of this section and § 300.230(e)(3), for any fiscal year for which the amount received by an LEA under § 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by § 300.203(a) by not more than 50 percent of the amount of that excess.

(b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPs that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) Special rule. The amount of funds expended by an LEA for early intervention services under § 300.225 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

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

§ 300.206  Schoolwide programs under title I of the ESEA.

(a) General. Notwithstanding the provisions of §§ 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed—

(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by

(ii) The number of children with disabilities in the jurisdiction of the LEA, and multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered Federal Part B funds for purposes of the calculations required by § 300.202(a)(2) and (a)(3).

(2) The funds may be used without regard to the requirements of § 300.202(a)(1).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools—

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

(Approved by the Office of Management and Budget under control number 1820-0600)

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

§ 300.207  Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2122 of the ESEA.

(Approved by the Office of Management and Budget under control number 1820-0600)

Authority: 20 U.S.C. 1413(a)(3)
§ 300.208 Permissive use of funds.

(a) Uses. Notwithstanding §§ 300.202, 300.205(5), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:

(1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

(2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with § 300.226.

(3) High cost special education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

(Approved by the Office of Management and Budget under control number 1220-0600)

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

§ 300.209 Treatment of charter schools and their students.

(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) Charter schools that are public schools of the LEA. (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must—

(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(ii) Provide funds under Part B of the Act to those charter schools—

(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.

(2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools—

(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.

(c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with § 300.28, that receives funding under § 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(d) Public charter schools that are not an LEA or a school that is part of an LEA. (1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (b)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149.

(Approved by the Office of Management and Budget under control number 1220-0600)

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

§ 300.210 Purchase of instructional materials.

(a) General. Not later than December 3, 2005, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under § 300.172.

(b) Rights of LEA. (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.

(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(Approved by the Office of Management and Budget under control number 1220-0600)

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

§ 300.213 Records regarding migratory children with disabilities.

The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Approved by the Office of Management and Budget under control number 1220-0600)

(Authority: 20 U.S.C. 1412(a)(9))

§§ 300.214–300.219 [Reserved]

§ 300.220 Exception for prior local plans.

(a) General. If an LEA or a State agency described in § 300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.220, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act.
§ 300.221 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must—
(a) Notify the LEA or State agency of that determination; and
(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

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

§ 300.222 LEA and State agency compliance.

(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this part is failing to comply with any requirement described in §§ 300.201 through 300.213, the SEA must—
(1) Adopt policies and procedures that are consistent with the State’s policies and procedures under §§ 300.101 through 300.163, and §§ 300.165 through 300.174; and
(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.
(b) Requirements for educational service agencies in general. If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—
(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and
(2) Must be carried out only by that educational service agency.
(c) Additional requirement. Notwithstanding any provision of §§ 300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by § 300.112.

(Privyed by the Office of Management and Budget under control number 1825-0600)

(Authority: 20 U.S.C. 1413(e)(3) and (4))
to supplement, and not supplant, funds made available under the ESRA for the activities and services assisted under this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

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

§ 300.227 Direct services by the SEA.

(a) General. (1) An SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency—

(i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act;

(ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

(iv) Has one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children.

(2) SEA administrative procedures. (i) In meeting the requirements in paragraph (a)(1) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(ii) The excess cost requirements of § 300.202(b) do not apply to the SEA.

(b) Manner and location of education and services. The SEA may provide special education and related services under paragraph (a) of this section in the manner and at the location (including regional or State centers) as the SEA considers appropriate.

The education and services must be provided in accordance with this part.

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

§ 300.228 State agency eligibility.

Any State agency that desires to receive a subgrant for any fiscal year under § 300.705 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

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

§ 300.229 Disciplinary information.

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child’s records must include both the child’s current IEP and any statement of current or previous disciplinary action that has been taken against the child.

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

§ 300.230 SEA flexibility.

(a) Adjustment to State fiscal effort in certain fiscal years. For any fiscal year for which the allotment received by a State under § 300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding §§ 300.162 through 300.183 (related to State-level nonsupplanting and maintenance of effort), and § 300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

(b) Prohibition, Notwithstanding paragraph (a) of this section, if the Secretary determines that an SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under § 300.603, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section.

(c) Education activities. If an SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESRA, or to support need-based student teacher higher education programs.

(d) Report. For each fiscal year for which an SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary—

(1) The amount of expenditures reduced pursuant to that paragraph; and

(2) The activities that were funded pursuant to paragraph (c) of this section.

(e) Limitation. (1) Notwithstanding paragraph (a) of this section, an SEA may not reduce the level of expenditures described in paragraph (a) of this section if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under Part B of the Act and State funds received from the SEA.

(2) If an SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under § 300.205 by more than the reduction in the State funds they receive.

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

Subpart D—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Parental Consent

§ 300.300 Parental consent.

(a) Parental consent for initial evaluation. (1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with § 300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child’s parent, the public agency is not required to obtain informed consent from the parent for an
available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and
(ii) is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.

(c) Parental consent for reevaluations.

(1) Subject to paragraph (c)(2) of this section, each public agency—
(i) Must obtain informed parental consent, in accordance with § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.
(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(b) Request for initial evaluation.

(1) Parental consent is not required before—
(i) Reviewing existing data as part of an evaluation or a reevaluation; or
(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
(2) In addition to the parental consent requirements described in paragraph (a) 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.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (b)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described in paragraphs (a)(3) and (c)(1) of this section; and
(ii) The public agency is not required to consider the child as eligible for services under §§ 300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), and (c)(1)(ii) of this section, the public agency must document its attempts to obtain parental consent using the procedures in § 300.322(d).

(E) Request for initial evaluation.

Consistent with the consent requirements in § 300.300, a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation.

The initial evaluation—

(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or
(ii) if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures—
(i) To determine if the child is a child with a disability under § 300.8, and
(ii) To determine the educational needs of the child.

(c) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
(2) A child enrolls in a school of another public agency during the relevant timeframe in paragraph (c)(1) of this section; or

(E) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the
parent and subsequent public agency agree to a specific time when the evaluation will be completed.
(Authority: 20 U.S.C. 1414(a))

§ 300.302 Screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.
(Authority: 20 U.S.C. 1414(a)(1)(E))

§ 300.303 Reevaluations.

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—
(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section—
(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.
(Authority: 20 U.S.C. 1414(a)(2))

§ 300.304 Evaluation procedures.

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—
(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
(i) Whether the child is a child with a disability under § 300.8; and
(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each public agency must ensure that—
(1) Assessments and other evaluation materials used to assess a child under this part—
(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
(iii) Are used for the purposes for which the assessments or measures are valid and reliable;
(iv) Are administered by trained and knowledgeable personnel; and
(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments 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.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment 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 (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, auditory, speech, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(b) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—
(1) Review existing evaluation data on the child, including—
(i) Evaluations and information provided by the parents of the child;
(ii) Current classroom-based, local, or State assessments, or classroom-based observations; and
(iii) Observations by teachers and related services providers; and
(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
(ii) The present levels of academic achievement and related developmental needs of the child;
(iii)(A) Whether the child needs special education and related services; or
(B) In case of a reevaluation of a child, whether the child continues to need special education and related services; and
(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and
other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child’s educational needs, the public agency must notify the child’s parents of—

(i) That determination and the reasons for the determination;

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child’s educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(i)(ii) of this section unless requested to do so by the child’s parents.

(e) Evaluations before change in eligibility. (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child’s eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.

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

§ 300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures, and a group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in section 1203(3) of the ESEA;

(ii) Lack of appropriate instruction in mathematics; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) Procedures for determining eligibility and educational need. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) 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 §§300.320 through 300.324.

(Authority: 20 U.S.C. 1414(b) and (c))

§ 300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10); and

(2) Must permit the use of a process based on the child’s response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1422a–3; 1400(30); 1414(b)(6))

§ 300.308 Additional group members.

The determination of whether a child is suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child’s parents and a team of qualified professionals, which must include—

(a)(1) The child’s regular teacher; or

(a)(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age;

(b) 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. 1411–3; 1400(30); 1414(b))

§ 300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—

(1) The child does not achieve adequately for the child’s age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-level standards:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading fluency skills.

(vi) Reading comprehension.

(vii) Mathematics calculation.

(viii) Mathematics problem solving.

(2) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child’s response to scientific, research-based intervention; or

(3) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and

(4) The group determines that its findings under paragraphs (a)(1) and (2)
of this section are not primarily the result of—
(i) A visual, hearing, or motor disability;
(ii) Mental retardation;
(iii) Emotional disturbance;
(iv) Cultural factors;
(v) Environmental or economic disadvantage; or
(vi) Limited English proficiency.
(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—
(1) Data that demonstrate that the child, prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
(2) Data-based documentation of progress and completion of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(b)(1)—
(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
(2) Whenever a child is referred for an evaluation.
(Authority: 20 U.S.C. 1411(a); 1412(a)(1)(A); 1414(a)(14); 1414(b)(6))
§300.310 Observation.
(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
(b) The group described in §300.306(a)(1) in determining whether a child has a specific learning disability, must decide to—
(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
(2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.
(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.
(Authority: 20 U.S.C. 1412(a)(1); 1412(a)(21); 1414(b)(6))
§300.311 Specific documentation for the eligibility determination.
(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.300(a), must contain a statement of—
(1) Whether the child has a specific learning disability;
(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c); and
(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
(b) The educationally relevant medical findings, if any;
(c) Whether—
(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.306(a)(1); and
(ii) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.306(a)(2) or
(iii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii); and
(d) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level, or
(e) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—
(i) The instructional strategies used and the student-centered data collected; and
(ii) The documentation that the child's parents were notified about—
(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
(B) Strategies for increasing the child's rate of learning; and
(C) The parents' right to request an evaluation.
(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.
(Authority: 20 U.S.C. 1412(a)(1); 1412(a)(21); 1414(b)(6))
§300.320 Definition of Individualized education program.
(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—
(1) A statement of the child's present levels of academic achievement and functional performance, including—
(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
(2) A statement of measurable annual goals, including academic and functional goals designed to—
(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
(B) Meet each of the child's other educational needs that result from the child's disability;
(iii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
(3) A description of—
(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
(4) A statement of the special education and related services and
supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

(i) To advance appropriately toward attaining the annual goals; 
(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and 
(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and 
(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child’s rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.

(d) Construction. Nothing in this section shall be construed to require—

(1) That additional information be included in a child’s IEP beyond what is explicitly required in section 614 of the Act; or 

(2) The IEP Team to include information under one component of a child’s IEP that is already contained under another component of the child’s IEP.

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

§300.321 IEP Team.

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes—

(1) The parents of the child; 

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); 

(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; 

(4) A representative of the public agency who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; 

(ii) Is knowledgeable about the general education curriculum; and 

(iii) Is knowledgeable about the availability of resources of the public agency. 

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(5) of this section;

(b) Initial IEP team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.


§300.322 Parent participation.

(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team 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) Information provided to parents.
(1) The notice required under paragraph
(a)(1) of this section must—
(i) Indicate the purpose, time, and location of the meeting and who will be
in attendance; and
(ii) Inform the parents of the
provisions in §300.321(a)(6) and (c)
relating to the participation of other
individuals on the IEP Team who have
knowledge or special expertise about
the child, and §300.321(f) relating to
the participation of the Part C
service coordinator or other
representatives of the
Part C System at the initial IEP Team
meeting for a child previously served
under Part C of the Act.
(2) For a child with a disability
beginning not later than the first IEP to
be in effect when the child turns 16, or
younger if determined appropriate by
the IEP Team, the notice also must—
(i) Indicate—
(A) That a purpose of the meeting
will be the consideration of the
postsecondary goals and transition
services for the child, in accordance
with §300.320(b); and
(B) That the agency will invite the
student; and
(ii) Identify any other agency that
will be invited to send a representative.
(c) Other methods to ensure parent participation. If neither parent can
attend an IEP Team meeting, the public
agency must use other methods to
ensure parent participation, including
individual or conference telephone
calls, consistent with §300.328 (related
to alternative means of meeting
participation).
(d) Conducting an IEP Team meeting
without a parent in attendance. 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 keep 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) Use of interpreters or other action,
as appropriate. The public agency must
take whatever action is necessary to
ensure that the parent understands the
proceedings of the IEP Team meeting,
including arranging for an interpreter
for parents with deafness or whose
native language is other than English.

(f) Parent copy of child’s IEP. The
public agency must give the parent a
copy of the child’s IEP at no cost to the
parent.


§300.323 When IEPs must be in effect.
(a) General. At the beginning of each
school year, each public agency must
have in effect, for each child with a
disability within its jurisdiction, an IEP,
as defined in §300.320.
(b) IEP or IFSP for children aged three
through five. (1) In the case of a child
with a disability aged three through five
(or, at the discretion of the SEA, a
two-year-old child with a disability who will
turn age three during the school year),
the IEP Team must consider an IFSP
that contains the IFSP content
(including the natural environments
statement) described in section 636(d)
of the Act and its implementing
regulations (including an educational
component that promotes school
readiness and incorporates pre-literate
language, and numeracy skills for
children with IFSPs under this section
who are at least three years of age), and
that is developed in accordance with
the IEP procedures under this part. The
IFSP may serve as the IEP of the child,
if using the IFSP as the IEP is—
(i) Consistent with State policy; and
(ii) Agreed to by the agency and the
child’s parents.
(2) In implementing the requirements of
paragraph (b)(1) of this section, the
public agency must—
(i) Provide to the child’s parents a
detailed explanation of the differences
between an IFSP and an IEP; and
(ii) If the parents choose an IFSP,
obtain written informed consent from
the parents.
(c) Initial IEPs; provision of services.
Each public agency must ensure that—
(1) A meeting to develop an IEP for
a child is conducted within 30 days of
a determination that the child needs
special education and related services;
and
(2) As soon as possible following
development of the IEP, special
education and related services are made
available to the child in accordance
with the child’s IEP.
(d) Accessibility of child’s IEP to
teachers and others. Each public agency
must ensure that—
(1) The child’s IEP is accessible to
each regular education teacher, special
education teacher, related services
provider, and any other service provider
who is responsible for its
implementation; and
(2) Each teacher and provider
described in paragraph (d)(1) of this
section is informed of—
(i) His or her specific responsibilities
related to implementing the child’s IEP; and
(ii) The specific accommodations,
modifications, and supports that must
be provided for the child in accordance
with the IEP.
(e) IEPs for children who transfer
public agencies in the same State. If a
child with a disability (who had an IEP
that was in effect in a previous public
agency in the same State) transfers to
a new public agency in the same State,
and enrolls in a new school within the
same school year, the public
agency (in consultation with the
parents) must provide FAPE to the child
(including services comparable to those
described in the child’s IEP from the
previous public agency), until the new
public agency either—
(1) Adopts the child’s IEP from the
previous public agency; or
(2) Develops, adopts, and implements
a new IEP that meets the applicable
requirements in §§300.320 through
300.324.
(f) IEPs for children who transfer from
another State. If a child with a disability
(who had an IEP that was in effect in a
previous public agency in another State)
transfers to a public agency in a new
State, and enrolls in a new school
within the same school year, the
public agency (in consultation with the
parents) must provide FAPE to the child
(including services comparable to those
described in the child’s IEP from the
previous public agency), until the new
public agency either—
(1) Conducts an evaluation pursuant
to §§300.304 through 300.306 (if
determined to be necessary by the new
public agency); and
(2) Develops, adopts, and implements
a new IEP, if appropriate, that meets the
applicable requirements in §§300.320
through 300.324.
(g) Transmittal of records. To
facilitate the transition for a child
described in paragraphs (e) and (f) of
this section—
(1) The new public agency in which
the child enrolls must take reasonable
steps to promptly obtain the child’s
records, including the IEP and
supporting documents and any other
records relating to the provision of
special education or related services to
the child, from the previous public
agency in which the child was enrolled,
pursuant to 34 CFR 99.31(a)(2); and
Development of IEP

§ 300.324 Development, review, and revision of IEP.

(a) Development of IEP—(1) General. In developing each child’s IEP, the IEP Team must consider—
   (i) The strengths of the child;
   (ii) The concerns of the parents for enhancing the education of their child;
   (iii) The results of the initial or most recent evaluation of the child; and
   (iv) The academic, developmental, and functional needs of the child.

(2) Consideration of special factors. The IEP Team must—
   (i) In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; and
   (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child’s IEP;
   (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
   (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode; and
   (v) Consider whether the child needs assistive technology devices and services.

(b) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—
   (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
   (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with § 300.324(a)(3).

(c) Agreement. (1) In making changes to a child’s IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child’s current IEP.
   (2) If changes are made to the child’s IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child’s IEP Team is informed of those changes.

(d) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(e) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4)(i) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(f) Review and revision of IEPs—(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—
   (i) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
   (ii) Revises the IEP, as appropriate, to address—
      (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;
      (B) The results of any reevaluation conducted under § 300.303;
      (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
   (D) The child’s anticipated needs; or
   (E) Other matters.

(f) Consideration of special factors. In conducting a review of the child’s IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(g) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(h) Failure to meet transition objectives—(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(i) Construction. 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 children with disabilities who meet the eligibility criteria of that agency.

(j) Children with disabilities in adult prisons—(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:
   (i) The requirements contained in section 612(a)(18) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments);
   (ii) The requirements in § 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(k) Modifications of IEP or placement. (1) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child’s IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(l) The requirements of §§ 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(8) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the development of the IEP of the child.

§ 300.325 Private school placements by public agencies.

(a) Developing IEPs. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 and 300.324.
§300.501 Opportunity to examine records; parent participation in meetings.
(a) Opportunity to examine records.
The parents of a child with a disability must be afforded an opportunity to examine all records directly related to the child’s education, regardless of where they are maintained, and must be allowed to obtain copies of records at a cost not to exceed the cost of reproduction.
(b) Reviewing and revising IEPs. (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 must 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 IEP 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. 1412(a)(10)(B))

§300.502 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 must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
(b) Parent right to evaluation of public expense.
(1) 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, subject to the conditions in paragraphs (b)(2) through (4) of this section.
(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without undue delay, either—
(i) File a due process complaint notice to request a hearing to show that its evaluation is appropriate; or
(ii) Review the evaluation conducted by the public agency to determine if it is appropriate and notify the parent of its findings or conduct a new evaluation.
(3) If the public agency fails to file a due process complaint notice to request a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has the right to an independent educational evaluation at public expense.
(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent’s reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation or may not unreasonably delay either providing the independent educational evaluation at
public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent-Initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under part E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria. (1) If an independent educational 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 that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A)

§ 300.503 Prior notice by the public agency; content of notice.

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section 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) Content of notice. The notice required under paragraph (a) of this section must include—

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency’s proposal or refusal.

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) 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.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

Authority: 20 U.S.C. 1415(b)(3) and 4, 1415(c)(3), 1415(b)(1)

§ 300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards notice available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;

(3) In accordance with the discipline procedures in § 300.550(b); and

(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, §§ 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, §§ 300.520, §§ 300.530 through 300.556 and §§ 300.519 through 300.525 relating to—

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child’s placement during the pendency of any due process complaint;

(8) Procedures for students who are subject to placement in an interim alternative educational setting;

(9) Requirements for unilateral placement by parents of children in private schools at public expense;

(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in the State);

(12) Civil actions, including the time period in which to file those actions; and

(13) Attorneys’ fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c).

(Approved by the Office of Management and Budget: under control number 1820-0600)

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

§ 300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§ 300.503, 300.504, and 300.506 by an electronic mail communication, if the public agency makes that option available.

Authority: 20 U.S.C. 1415(n)
§ 300.506 Mediation.

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and

(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(4) The SEA must select mediators on a random, rotational, or other impartial basis.

(5) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(6) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(b) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(c) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(d) Impartiality of mediator. (1) An individual who serves as a mediator under this part—

(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under § 300.228 solely because he or she is paid by the agency to serve as a mediator.

(Approved by the Office of Management and Budget under control number 1820-0600)

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

§ 300.507 Filing a due process complaint.

(a) General. (1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area.

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

Authority: 20 U.S.C. 1415(b)(1)(i)

§ 300.503 Due process complaint.

(a) General. (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) A description of the nature of the problem of the child relating to the proposed or refused placement or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process
document, so long as the form or document that is used does, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint.

(Authority: 20 U.S.C. 1415(b)(8))

§300.510 Resolution process.

(a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(b) The meeting described in paragraph (a)(1) of this section need not be held if—

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in §300.506.

(c) The LEA shall not be considered to have failed to provide a due process complaint if the parent receives notice of the due process complaint at least 30 days prior to the date of the due process hearing.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to resolve the dispute process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(b) Agency responsible for conducting the due process hearing.

(a) General. Whenever a due process complaint is received under §300.507 or §300.508, the parties to the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute,
§ 300.512 Hearing rights.
(a) General. Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, 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 business days before the hearing;
(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
(5) Obtain written, or, at the option of the parents, electronic findings of fact and decision.
(b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing.
(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
(c) Parental rights at hearings. Parents involved in hearings must be given the right to—
(1) Have the child who is the subject of the hearing present;
(2) Open the hearing to the public; and
(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

§ 300.513 Hearing decisions.
(a) Decision of hearing officer on the provision of FAPE. (1) Subject to paragraph (a)(2) of this section, a hearing officer’s determination of whether a child received FAPE must be based on substantive grounds.
(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—
(1) Impeded the child’s right to a FAPE;
(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or
(iii) Caused a deprivation of educational benefit.

(b) Construction clause. Nothing in §§ 300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under § 300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§ 300.507 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must—
(1) Transmit the findings and decisions referred to in § 300.512(a)(5) to the State advisory panel established under § 300.167; and
(2) Make those findings and decisions available to the public.

§ 300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 300.516.

(b) Appeal of decisions; impartial review. (1) If the hearing required by § 300.511 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.
(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—
(i) Examine the entire hearing record;
(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.512 apply;
(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.107; and

(2) Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(1)(2))

§300.515 Timelines and convenience of hearings and reviews.

(a) The public agency must ensure that not later than 45 days after the expiration of the 30-day period under §300.510(b), or the adjusted time periods described in §300.510(c)—

(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 must 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(f)(1)(B)(ii), 1415(g), 1415(i)(1))

§300.516 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a

due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

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

(1) Receives the records of the administrative proceeding;

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

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

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

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

(Authority: 20 U.S.C. 1415(i)(1)(2) and (3)(A), 1415(i)(1))

§300.517 attorneys' fees.

(a) In general. (1) In any action or proceeding brought under section 615 of the Act, in its discretion, may award reasonable attorneys' fees as part of the costs to—

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) To a prevailing SEA or LEA against the attorney of a parent, or

against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Prohibition on use of funds. (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(b)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(b)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.

(iii) A meeting conducted pursuant to §300.510 shall not be considered—

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.
of paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(3) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.


§300.519 Surrogate parents.

(a) General. Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in §300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include 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) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents. (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(a) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) 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.

(i) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent 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.

(b) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(Authority: 20 U.S.C. 1415(b)(2))

§300.520 Transfer of parental rights at age of majority.

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and

(ii) All rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (c)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has
reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child’s educational program.
(Authority: 20 U.S.C. 1415(m))

§ 300.521–300.529 [Reserved]

Discipline Procedures

§ 300.530 Authority of school personnel.

(a) Case-by-case determination.
School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.
(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct.

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the child is continued to be in a public agency, the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services. (1) A child with a disability who is removed from the child’s current placement pursuant to paragraphs (c), or (e) of this section must—

(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting.

(2) The conduct must be determined to be a manifestation of the child’s disability if the LEA, the parent, and relevant members of the child’s IEP Team determine that the condition described in paragraph (e)(1)(i) of this section was met.

(e) Manifestation determination.
(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or

(ii) If the conduct in question was the direct result of the LEA’s failure to implement the IEP.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the child’s IEP Team determine that the condition described in paragraph (e)(1)(i) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, or school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section...
be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

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

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

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

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

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

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

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

§ 300.534 Protections for children not determined eligible for special education and related services.

(a) General. A child who has not been determined eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to the supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§ 300.300 through 300.311 and determined not to be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge. (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subject to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under
§ 300.530, the evaluation must be conducted in an expedited manner.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.539 and section 612(a)(10) of the Act.

(Authority: 20 U.S.C. 1415(k)(5))

§ 300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from referring a child removed from an educational placement by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.539 and section 612(a)(10) of the Act.

(Authority: 20 U.S.C. 1415(k)(5))

§ 300.537 State enforcement mechanisms.

Notwithstanding §§ 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

(Authority: 20 U.S.C. 1415(k)(5)(6))

§ 300.538 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.539, a change of placement occurs if—

1. The removal is for more than 10 consecutive school days; or

2. The child has been subjected to a series of removals that constitute a pattern—

   (i) Because the series of removals total more than 10 school days in a school year; and
   
   (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(b) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

§ 300.532(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

(Authority: 20 U.S.C. 1415(k)(5))

§ 300.536 State performance plans and data collection.

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

§ 300.600 State monitoring and enforcement.

(a) The State must monitor the implementation of this part, as defined in paragraph (a) of this section, on a regular basis. The State must submit the monitoring report under Part B of the Act with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(b) The primary focus of the State's monitoring activities must be on—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must conduct an on-site review of the implementation of this part in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following areas, and using such qualitative indicators as are necessary to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1417(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(Authority: 20 U.S.C. 1415(k)(5))

§ 300.611 State performance plans and data collection.

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in § 300.500(d).

(b) Data collection. Each State must collect and provide reliable information about the indicators established by the Secretary for the State performance plans.
§ 300.602 State use of targets and reporting.

(a) General. Each State must use the targets established in the State's performance plan under § 300.601 and the priority areas described in § 300.600(d) to analyze the performance of each LEA.

(b) Public reporting and privacy—(1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must—

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan; and

(B) Make the State's performance plan available through public means, including by posting on the Web site of the SEA, distribution to the media, and distribution through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.

(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

§ 300.603 Secretary's review and determination regarding State performance.

(a) Review. The Secretary annually reviews the State's performance report submitted pursuant to § 300.602(b)(2).

(b) Determination—(1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—

(i) Meets the requirements and purposes of Part B of the Act;

(ii) Needs assistance in implementing the requirements of Part B of the Act;

(iii) Needs intervention in implementing the requirements of Part B of the Act; or

(iv) Needs substantial intervention in implementing the requirements of Part B of the Act.

(2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(ii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

(ii) The hearing described in paragraph (b)(2)(i) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

(3) Appeals. The Secretary’s determination is final, and there is no appeal from that determination.

§ 300.604 Enforcement.

(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under § 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

(1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities.

(2) Seeks to recover funds under section 452 of GEPA.

(b) Withholds. In whole or in part, any further payments to the State under Part B of the Act.

(c) Needs substantial intervention. If the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

(1) Recovers funds under section 452 of GEPA.

(2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(3) If the Secretary determines that a SEA or LEA needs substantial intervention under Part B of the Act, the Secretary may take any of the actions described in paragraph (b) of this section.

(4) The Secretary takes one or more of the following actions:

(i) Requires the State to prepare a corrective action plan or improvement plan.

(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.

(iii) Requires the State to recover funds.

(iv) Seeks to recover funds under section 452 of GEPA.

(v) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(vi) Refers the matter to the Department of Education.

(c) Other actions. The Secretary also may take any other actions to address the areas in which the State needs assistance, including, but not limited to:

(1) Notifying the SEA or LEA of their need for substantial intervention, assistance, or both.

(2) Providing technical assistance to the SEA or LEA.

(3) Providing additional support to the SEA or LEA.

(4) Requiring the SEA or LEA to submit a corrective action plan or improvement plan.

(5) Referring the matter to the Department of Justice.

(6) Referring the matter to the Department of Health and Human Services.

(7) Referring the matter to the Department of Treasury.

(8) Referring the matter to the Inspector General of the Department of Education.
§ 300.605 Withholding funds.

(a) Opportunity for hearing. Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§ 300.180 through 300.183.

(b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

(c) Nature of withholding. (1) If the Secretary determines that it is appropriate to withhold further payments under § 300.604(b)(2) or (c)(2), the Secretary may determine—

(i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under § 300.603(b)(1); or

(ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under § 300.603(b)(1).

(2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) Payments to the State under Part B of the Act must be withheld in whole or in part; and

(ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under § 300.603(b)(1), as the case may be. (Authority: 20 U.S.C. 1416(e)(4), (e)(6))

§ 300.606 Public attention.

Any State that has received notice under §§ 300.605(b)(1)(i) through (iv) must, by means of a public notice, take such measures as may be necessary to notify the public within the State of the pendency of an action taken pursuant to § 300.604. (Authority: 20 U.S.C. 1416(a)(7))

§ 300.607 Divided State agency responsibility.

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to § 300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—

(a) Any reduction or withholding of payments to the State under § 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and

(b) Any withholding of funds under § 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act. (Authority: 20 U.S.C. 1416(b))

§ 300.608 State enforcement.

(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under § 300.203 for any fiscal year.

(b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act. (Authority: 20 U.S.C. 1416(f); 20 U.S.C. 1412(e)(11))

§ 300.609 Rule of construction.

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under IDEA, including the provisions in 34 CFR parts 76, 77, 80, and 81 to monitor and enforce the requirements of the Act, including the imposition of special conditions under 34 CFR 80.12. (Authority: 20 U.S.C. 1416(g))

§ 300.610 Confidentiality of information.

The Secretary takes appropriate action, in accordance with section 444 of the Education for All Handicapped Children Act (20 U.S.C. 1412(a)), to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, consistent with §§ 300.611 through 300.627. (Authority: 20 U.S.C. 1417(c))

§ 300.611 Definitions.

As used in §§ 300.611 through 300.627—

(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act. (Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

§ 300.612 Notice to parents.

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of § 300.123, 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 FERPA and implementing regulations in 34 CFR part 99.

(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(a)(8); 1417(c))

§ 300.616 List of types and locations of information.
Each participating agency must 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(a)(8); 1417(c))

§ 300.617 Fees.
(a) Each participating agency may charge a fee for copies of records that are made for parents in a reasonable amount in connection with the records. The fee must not exceed the agency’s cost of providing the copies.

(b) A participating agency may charge a fee for copies of records that are made for parents in a reasonable amount in connection with the records. The fee must not exceed the agency’s cost of providing the copies.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.618 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 of or other right of the child may request the participating agency that maintains the information to amend the information.

(b) The agency may consider the request to amend the information and may decide to refuse the request if it is not accurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.619 Opportunity for a hearing.
The agency must, upon 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(a)(8); 1417(c))

§ 300.620 Result of hearing.
(a) If, as a result of the hearing, the agency decides that the information is accurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and inform the parent of the amendment.

(b) If, as a result of the hearing, the agency decides that the information is not accurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the record the correction to which the parent objects.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.621 Safeguards.
(a) Each participating agency must ensure that its policies and procedures protect the confidentiality of personally identifiable information that is collected, maintained, and used by the agency.

(b) If a participating agency or an agency’s contractor violates any provisions of this part or the privacy rights of a child under this part, the agency must remedy the violation.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
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 §300.123 and 34 CFR part 99.

(d) Each participating agency must 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(a)(8); 1417(c))

§ 300.624 Destruction of information.

(a) The public agency must 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(a)(8), 1417(c))

§ 300.625 Children's rights.

(a) The SEA must have in effect policies and procedures 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.

(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with §300.520, the rights regarding educational records in §§300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 915 of the Act to the student and the parents.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.626 Enforcement.

The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§300.613 through 300.624 are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.627 Department use of personally identifiable information.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11), 552a(c) through (c)(5), 552a(e)(3)(D), 552a(e)(5) through (e)(9), and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.640 Annual report of children served—report requirement.

(a) The SEA must annually report to the Secretary on the information required by section 915 of the Act at the times specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1412(a)(8))

§ 300.641 Annual report of children served—information required in the report.

(a) For purposes of the annual report required by section 915 of the Act and §300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

(b) For the purpose of this reporting provision, a child's age is the child's actual age as of the date of the child count.

(c) The SEA may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

(1) If a child has only two disabilities and these disabilities are deafness and blindness, and the child is not reported as having a developmental delay, the child must be reported under the category “deaf-blindness.”

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category “multiple disabilities.”

(Authority: 20 U.S.C. 1418(a))

§ 300.642 Data reporting.

(a) Protection of personally identifiable data. The data described in section 918(a) of the Act and in §300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.

(b) Sampling. The Secretary may permit States and the Secretary of the Interior to obtain data in section 918(a) of the Act through sampling.

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

§ 300.643 Annual report of children served—certification.

The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under §300.640 is accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

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

§ 300.644 Annual report of children served—criteria for counting children.

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—

(a) Provides them with both special education and related services that meet State standards;

(b) Provides them only with special education, if a related service is not required that meets State standards; or

(c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under §§300.132 through 300.144.

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

§ 300.645 Annual report of children served—other responsibilities of the SEA.

In addition to meeting the other requirements of §§300.640 through 300.644, the SEA must—

(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 §300.640(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 §§ 300.640 through 300.644; 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. 1416(a))

§300.646 Disproportionality. 
(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to—
(i) The identification of children as children with disabilities, including children with disabilities in accordance with a particular impairment described in section 602(2) of the Act; 
(ii) The number of children with disabilities in the State who are receiving special education and related services—
(A) Aged three through five, if the State is eligible for a grant under section 619 of the Act; and 
(B) Aged 6 through 21, multiplied by—
(i) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in §300.717); and 
(ii) For fiscal years 2007 and subsequent fiscal years—
(i) The number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—
(A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and 
(B) Aged 6 through 21, multiplied by—
(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in §300.717); and 
(iii) Adjusted by the rate of annual change in the sum of—
(A) Eighty-five (85) percent of the State’s population of children aged 21 are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and 
(B) Fifteen (15) percent of the State’s population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty. 
(Authority: 20 U.S.C. 1411(a) and (d))

§300.701 Outlying areas, freely associated States, and the Secretary of the Interior. 
(a) Outlying areas and freely associated States. (1) Funds reserved. 
From the amount appropriated for any fiscal year under section 611(f) of the Act, the Secretary reserves not more than one percent, which must be used—
(i) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and 
(ii) To provide each freely associated State a grant in the amount that the freely associated State received for fiscal year 2003 under Part B of the Act, but only if the freely associated State—
(A) Meets the applicable requirements of Part 3 of the Act that apply to States. 
(B) Meets the requirements in paragraph (a)(2) of this section. 
(2) Application. Any freely associated State that wishes to receive funds under Part B of the Act must include, in its application for assistance—
(i) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act; and 
(ii) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities; 
(iii) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and 
(iv) Such other information and assurances as the Secretary may require. 
(3) Special rule. The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to the outlying areas or to the freely associated States under Part B of the Act. 
(b) Secretary of the Interior. From the amount appropriated for any fiscal year under section 611(f) of the Act, the Secretaty reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with §§306.707 through 300.716. 
(Authority: 20 U.S.C. 1411(b))

§300.702 Technical assistance. 
(a) in general. The Secretary may reserve not more than one-half of one percent of the amounts appropriated.
under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(b) of the Act.

(b) Maximum amount. The maximum amount the Secretary may reserve under paragraph (a) of this section for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

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

§ 300.703 Allocations to States.

(a) General. After reserving funds for technical assistance under § 300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under § 300.701 (a) and (b) for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section.

(b) Special rule for use of fiscal year 1999 amount. If a State received any funds under section 611 of the Act for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(c) Increase in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(1) Allocation of Increase—(i) General. Except as provided in paragraph (c)(2) of this section, the Secretary allocates for the fiscal year—

(A) Each State the amount the State received under this section for fiscal year 1999;

(B) Eighty-five (85) percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(C) Fifteen (15) percent of those remaining funds to States on the basis of the States' relative populations of children described in paragraph (c)(1)(B) of this section who are living in poverty.

(ii) Data. For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(2) Limitations. Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following:

(i) Preceding year allocation. No State's allocation may be less than its allocation under section 611 of the Act for the preceding fiscal year.

(ii) Minimum. No State's allocation may be less than the greatest of—

(A) The sum of—

(1) The amount the State received under section 611 of the Act for fiscal year 1999; and

(2) One third of one percent of the amount by which the amount appropriated under section 611 of the Act for the fiscal year exceeds the amount appropriated for section 611 of the Act for fiscal year 1999;

(B) The sum of—

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the Act from the preceding fiscal year exceeds 1.5 percent; or

(C) The sum of—

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by 90 percent of the percentage increase in the amount appropriated for section 611 of the Act from the preceding fiscal year.

(iii) Maximum. Notwithstanding paragraph (c)(2)(i) of this section, no State's allocation under paragraph (a) of this section may exceed the sum of—

(A) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(B) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 611 of the Act from the preceding fiscal year.

(3) Ratable reduction. If the amount available for allocations to States under paragraph (c) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (c)(2)(i) of this section.

(d) Decrease in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(i) Amounts greater than fiscal year 1999 allocations. If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of—

(A) 1999 amount. The amount the State received under section 611 of the Act for fiscal year 1999; and

(B) Remaining funds. An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the Act for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(ii) Amounts equal to or less than fiscal year 1999 allocations.—(i) General. If the amount available for allocations under paragraph (a) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999.

(ii) Ratable reduction. If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section, those allocations are ratably reduced.

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

§ 300.704 State-level activities.

(a) State administration. (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities—

(i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or $800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and

(ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under § 300.701(a) for the fiscal year or $35,000, whichever is greater.

(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts—

(I) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004; and
(ii) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements established responsibility for services pursuant to section 612(a)(12)(A) of the Act are current.

(4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part.

(b) Other State-level activities. (1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:

(i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section—

(A) For fiscal years 2005 and 2006, nine percent of the State's allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.

(ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section—

(A) For fiscal years 2005 and 2006, 10 percent of the State's allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.

(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000, and the State opts to finance a high cost fund under paragraph (c) of this section—

(A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.

(iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.

(2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation;

(ii) To establish and implement the mediation process required by section 615(a) of the Act, including providing for the costs of mediators and support personnel;

(iii) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities:

(A) For fiscal years 2005 and 2006, 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section—

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section—

(i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section—

(B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(4)(ii) of this section.

(ii) For purposes of paragraph (c)(4)(ii) of this section, local educational agency includes a charter school that is an LEA, or a consortium of LEAs.

(2)(i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(c) of this section, which
are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs.

(ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(I) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

(iii) The SEA must not use more than 90 days after the State reserves funds under paragraph (c)(1)(I) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must—

(A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum—

(i) Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and

(ii) Ensures that the cost of the high need child with a disability is greater than 5 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State;

(B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children served by an LEA;

(C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§ 300.114 through 300.118;

(D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph (c)(1)(I)(B) of this section;

(E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and

(F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(I)(B) of this section, describe how these funds will be used.

(ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.

[4][I] Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(I) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section.

[iii] The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(I)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined and consistent with § 300.114, to implement a child's IEP.

(iv) The funds in the high cost fund remain under the control of the State and must be used to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section.

(v) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.

(vi) Nothing in paragraph (c) of this section—

(i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or

(ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability.

(vii) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(I) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(I)(A) of this section.

(viii) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.

(ix) Funds reserved under paragraph (c)(1)(I) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of the last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under § 300.705 during their final year of availability.

(d) Irrevocability of certain prohibitions. A State may use funds the State reserves under paragraphs (a) and (b) of this section with respect to paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph (b)(4)(I), (ii), (vii), or (viii) of this section.

(f) Flexibility in using funds for Part C. Any State eligible to receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, § 300.705(c), or § 300.814(d) to develop and implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(4) [Authority: 20 U.S.C. 1411(e)]

§ 300.725 Subgrants to LEAs.

(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under § 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act.

(b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under § 300.703, each State shall allocate funds as follows:

(1) [Authority: 20 U.S.C. 1411(a)]

(i) Base payments. The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(c) of the Act, as that section was then in effect.

(ii) [Authority: 20 U.S.C. 1411(a)]

(i) If a new LEA is created, the State must divide the base allocation...
determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and

(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each affected LEA.

(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must—

(i) Allocate 85 percent of any remaining funds to only those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA’s jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(c) Reallocation of funds. If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by the LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs.

(Approved by the Office of Management and Budget under control number 1820-0030)

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

§ 300.705 [Reserved]

§ 300.707 Use of amounts by Secretary of the Interior.

(a) Definitions. For purposes of §§ 300.707 through 300.716, the following definitions apply:

(1) Reservation means Indian Country as defined in 18 U.S.C. 1151.

(2) Tribal governing body has the meaning given to that term in 25 U.S.C. 2021 (19).

(b) Provision of amounts for assistance. The Secretary provides amounts to the Secretary of the Interior to help meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under section 611(b)(2) of the Act for that fiscal year. Of the amount described in the preceding sentence, after the Secretary of the Interior reserves funds for administration under § 300.710, 80 percent must be allocated to such schools by July 1 of that fiscal year. The remaining 20 percent must be allocated to such schools by September 30 of that fiscal year.

(c) Additional requirement. With respect to all other children aged 5 to 21, inclusive, on reservations, the Secretary of the Interior, in the State in which the reservation is located must ensure that all of the requirements of Part B of the Act are implemented.

(Authority: 20 U.S.C. 1411(b)(1))

§ 300.708 Submission of information.

The Secretary may provide the Secretary of the Interior amounts under § 300.707 for a fiscal year only if the Secretary of the Interior submits to the Secretary information that—

(a) Meets the requirements of section 612(b)(1), (3) through (9), (10)(B) through (C), (11) through (12), (14) through (16), (19), and (21) through (25) of the Act (including monitoring and evaluation activities);

(b) Meets the requirements of section 612(b) and (e) of the Act;

(c) Meets the requirements of section 613(a)(1), (2)(A)(i), (7) through (9) and section 613(i) of the Act (references to LEAs in these sections must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior);

(d) Meets the requirements of section 616 of the Act that apply to States (references to LEAs in section 616 of the Act must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior).

(e) Meets the requirements of this part that implement the requirements of the Act listed in paragraphs (a) through (d) of this section;

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

(g) Includes an assurance that there are public hearings, adequate notice of the 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 related to the requirements described in paragraphs (a) through (d) of this section;

(h) Includes an assurance that the Secretary of the Interior provides the information that the Secretary may require to comply with section 618 of the Act;

(i)(1) Includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered 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 the SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations.

(2) The agreement must provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies, as needed for a child with a disability to remain in a school or program; and

(j) Includes an assurance that the Department of the Interior will cooperate with the Department in its exercise of monitoring and oversight of the requirements in this section and §§ 300.709 through 300.711 and §§ 300.713 through 300.716, and any agreements entered into between the Secretary of the Interior and other entities under Part B of the Act, and will fulfill its duties under Part B of the Act. The Secretary withholds payments under § 300.707 with respect to the requirements described in this section in the same manner as the Secretary withholds payments under section 616(e)(6) of the Act.
§ 300.700 Public participation.

In fulfilling the requirements of § 300.708 the Secretary of the Interior must provide for public participation consistent with § 300.165.

(Authority: 20 U.S.C. 1411(b)(2) and (3))

§ 300.710 Use of funds under Part B of the Act.

(a) The Secretary of the Interior may reserve five percent of its payment under § 300.707(b) in any fiscal year, or $500,000, whichever is greater, for administrative costs in carrying out the provisions of §§ 300.707 through 300.709, 300.711, and 300.713 through 300.716.

(b) Payments to the Secretary of the Interior under § 300.712 must be used in accordance with that section.

(Authority: 20 U.S.C. 1411(b)(4))

§ 300.711 Early intervening services.

(a) The Secretary of the Interior may allow each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior to use not more than 10 percent of the amount the school receives under § 300.707(b) for any fiscal year, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade 8) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment, in accordance with section 613(f) of the Act.

(b) Each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior that develops and maintains coordinated early intervening services in accordance with section 613(f) of the Act and § 300.226 must annually report to the Secretary of the Interior in accordance with section 613(f) of the Act.

(Authority: 20 U.S.C. 1411(b) and 1413(b))

§ 300.712 Payments for education and services for Indian children with disabilities aged three through five.

(a) General. With funds appropriated under section 611(f) of the Act, the Secretary 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 consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under § 300.701(b).

(b) Distribution of funds. The Secretary of the Interior must distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged three through five residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(Authority: 20 U.S.C. 1411(b)(1)(A))

§ 300.713 Plan for coordination of services.

(a) The Secretary of the Interior must develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior.

(b) The plan must provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, other Federal agencies, State educational agencies, and State, local, and tribal juvenile and adult correctional facilities.

(c) In developing the plan, the Secretary of the Interior must consult with all interested and involved parties.

(d) The plan must be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities.

(e) The plan also must be distributed upon request to States; to SEA's, LEAs, and other agencies providing services to infants, toddlers, and children with disabilities; to tribes; and to other interested parties.

(Authority: 20 U.S.C. 1411(b)(5))

§ 300.714 Establishment of an advisory board.

(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary of the Interior must establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 651 of the Act in
States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson must be selected by the Secretary of the Interior. 

(b) The advisory board must—

(1) Assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities; and

(2) Advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior’s responsibilities described in section 611(b) of the Act; and

(3) Develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(4) Provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

(5) Provide assistance in the preparation of information required under §300.706.

(Authority: 20 U.S.C. 1411(b)(6))

§300.715 Annual reports.

(a) In general. The advisory board established under §300.714 must prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(b) Availability. The Secretary of the Interior must make available to the Secretary the report described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(b)(7))

§300.719 Applicable regulations.

The Secretary of the Interior must comply with the requirements of §§300.103 through 300.106, 300.110 through 300.124, 300.145 through 300.154, 300.156 through 300.160, 300.157 through 300.186, 300.226, 300.300 through 300.606, 300.610 through 300.646, and 300.707 through 300.716.

(Authority: 20 U.S.C. 1411(b)(2)(A))

Definitions that Apply to this Subpart

§300.717 Definitions applicable to allotments, grants, and use of funds.

As used in this subpart—

(a) Freely associated States means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau;

(b) Outlying areas means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(c) States means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(d) Average per-pupil expenditure in public elementary and secondary schools in the United States means—

(1) Without regard to the source of funds—

(i) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia; plus

(ii) Any direct expenditures by the State for the operation of the agencies; divided by (2) 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. 1401(22), 1411(b)(1)(C) and (g))

§300.718 Acquisition of equipment and construction or alteration of facilities.

(a) General. If the Secretary determines that a program authorized under Part B of the Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of—

(1) Appendix A of part 3 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Standards for Buildings and Facilities”); or


(Authority: 20 U.S.C. 1404)
fiscal year, those allocations are calculated as follows:
(a) Except as provided in §300.809, the Secretary:
(1) Allocates to each State the amount the State received under section 619 of the Act for fiscal year 1997;
(2) Allocates 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged three through five; and
(3) Allocates 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged three through five who are living in poverty.
(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.
(Authority: 20 U.S.C. 1419(c)(2)(C))
§300.809 Limitations.
(a) Notwithstanding §300.808, allocations under that section are subject to the following:
(1) No State's allocation may be less than its allocation under section 619 of the Act for the preceding fiscal year;
(2) No State's allocation may be less than the greatest of—
(i) The sum of—
(A) The amount the State received under section 619 of the Act for fiscal year 1997; and
(B) One-third of one percent of the amount by which the amount appropriated under section 619 of the Act for the preceding fiscal year exceeds the amount appropriated for section 619 of the Act for fiscal year 1997;
(ii) The sum of—
(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and
(B) That amount multiplied by the percentage by which the increase in the funds appropriated under section 619 of the Act from the preceding fiscal year exceeds 1.5 percent; or
(iii) The sum of—
(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and
(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.
(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under §300.808 may exceed the sum of—
(1) The amount the State received under section 619 of the Act for the preceding fiscal year; and
(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.
(c) If the amount available for allocation to States under §300.808 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (a)(1) of this section.
(Authority: 20 U.S.C. 1419(c)(2)(B) and (C))
§300.810 Decrease in funds.
If the amount available for allocations to States under §300.807 for a fiscal year is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:
(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—
(1) The amount the State received under section 619 of the Act for fiscal year 1997; and
(2) An amount that bears the same relation to any remaining funds as the increase the State received under section 619 of the Act for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.
(b) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State is allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.
(Authority: 20 U.S.C. 1419(c)(3))
§300.811 [Reserved]
§300.812 Reservation for State activities.
(a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§300.813 and 300.814.
(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—
(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or
(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.
(Authority: 20 U.S.C. 1419(e))
§300.813 State administration.
(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), a State may use not more than 25 percent of the maximum amount the State may reserve under §300.812 for any fiscal year.
(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act.
(Authority: 20 U.S.C. 1419(e))
§300.814 Other State-level activities.
Each State must use any funds the State reserves under §300.812 and does not use for administration under §300.813—
(a) For support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than three or older than five as long as those services also benefit children with disabilities aged three through five;
(b) For direct services for children eligible for services under section 619 of the Act;
(c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the Act;
(d) To supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but no more than one percent of the amount received by the State under section 619 of the Act for a fiscal year;
(e) To provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and literacy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten; or
(f) At the State's discretion, to continue service coordination or case management for families who receive services under Part C of the Act, consistent with §300.814(e).
(Authority: 20 U.S.C. 1419(f))
§ 300.815 Subgrants to LEAs.
Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds that the State does not reserve under § 300.812 to LEAs in the State that have established their eligibility under section 613 of the Act.
(Authority: 20 U.S.C. 1411(g)(1))

§ 300.816 Allocations to LEAs.
(a) Base payments. The State must first award each LEA described in § 300.815 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.
(b) Base payment adjustments. For fiscal year 1998 and beyond:
(1) If a new LEA is created, the State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities assisted by the new LEA, among the new LEA and the affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the LEAs;
(2) If two or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and
(3) If two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three through five changes, the allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA.
(c) Allocation of remaining funds. After making allocations under paragraph (a) of this section, the State must:
(1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and
(2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.
(d) Use of best data. For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.
(Authority: 20 U.S.C. 1411(g)(1))

§ 300.817 Reallocation of LEA funds.
If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas the other LEAs serve.
(Authority: 20 U.S.C. 1411(g)(2))

§ 300.818 Part C of the Act inapplicable. Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under section 619 of the Act.
(Authority: 20 U.S.C. 1419(b))

Appendix A to Part 300—Excess Costs Calculation
Except as otherwise provided, amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities. Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate. An LEA must spend at least the average annual per student expenditure on the education of an elementary school or secondary school child with a disability before funds under Part B of the Act are used to pay the excess costs of providing special education and related services.
Section 602(b) of the Act and § 300.16 require the LEA to compute the minimum average amount separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools. LEAs may not compute the minimum average amount it must spend on the education of children with disabilities based on a combination of the enrollments in its elementary schools and secondary schools.
The following example shows how to compute the minimum average amount an LEA must spend for the education of each of its elementary school children with disabilities under section 602(b) of the Act before it may use funds under Part B of the Act.

a. First the LEA must determine the total amount of its 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: The following is an example of a computation for children with disabilities enrolled in an LEA’s elementary schools. In this example, the LEA had an average elementary school enrollment for the preceding school year of 800 (including 100 children with disabilities). The LEA spent the following amounts last year for elementary school students (including its elementary school children with disabilities):

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>From State and local</td>
<td>$6,500,000</td>
</tr>
<tr>
<td>From Federal funds</td>
<td>600,000</td>
</tr>
</tbody>
</table>

Total expenditures 7,100,000

Of this total, $6,000,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures.

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Expenditures</td>
<td>$7,100,000</td>
</tr>
<tr>
<td>Less capital outlay</td>
<td>-60,000</td>
</tr>
<tr>
<td>Total expenditures</td>
<td>$7,040,000</td>
</tr>
</tbody>
</table>

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

(1) LEA, Part B allocation,
(2) ESFA, Title I, Part A allocation,
(3) ESFA, Title III, Parts A and B allocation,
(4) State and local funds for children with disabilities, and
(5) State or local funds for programs under ESFA, Title I, Part A, and Title III, Parts A and B.

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:

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>From funds under IDEA, Part B allocation</td>
<td>$200,000</td>
</tr>
<tr>
<td>From funds under ESFA, Title I, Part A allocation</td>
<td>250,000</td>
</tr>
<tr>
<td>From funds under ESFA, Title III, Parts A and B allocation</td>
<td>50,000</td>
</tr>
<tr>
<td>From funds under ESFA, Title II, Parts A and B allocation</td>
<td>500,000</td>
</tr>
<tr>
<td>From State funds and local funds for children with disabilities</td>
<td>150,000</td>
</tr>
<tr>
<td>From State and local funds for programs under ESFA, Title I, Part A, and Title III, Parts A and B</td>
<td>1,150,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>1,150,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total expenditures less capital outlay and debt</td>
<td>7,040,000</td>
</tr>
<tr>
<td>Other deductions</td>
<td>-1,100,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$5,950,000</td>
</tr>
</tbody>
</table>

c. Except as otherwise provided, the LEA next must determine the average annual per
Appendix B to Part 300—Proportionate Share Calculation

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—

(1) A proportionate share of the LEA's subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21.

This is an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and

(2) A proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5.

This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

Consistent with section 612(a)(10)(A)(i) of the Act and § 300.133 of these regulations, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA eligible to receive special education and related services under Part B, as compared with the total number of eligible parentally-placed private school children with disabilities enrolled in private schools located in the LEA. This ratio is used to determine the proportion of the LEA's total Part B subgrant under section 611(f) of the Act for children aged 3 through 21, and under section 619(g) of the Act for children aged 3 through 5, to be expended on services for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA.

The following is an example of how the proportionate share is calculated:

There are 320 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's subgrant must be spent for the group of eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA.

Total allocation to Flintstone $152,500

Divided by total number of eligible children 320

Average allocation per eligible child $475.625

Multiplied by the number of parentally-placed children with disabilities 20

Amount to be expended for parentally-placed children with disabilities $9,512.50

Appendix C to Part 300—National Instructional Materials Accessibility Standard (NIMAS)

Under sections 612(a)(23)(A) and 617(c)(4) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary of Education establishes the NIMAS. Under section 617(c)(4) of the Act, the NIMAS applies to print instructional materials published after July 19, 2006. The purpose of the NIMAS is to help increase the availability and timely delivery of print instructional materials to blind or other persons with print disabilities in elementary and secondary schools.

Technical Specifications—The Baseline Element Set

The Baseline Element Set details the minimum requirement that must be delivered to fulfill the NIMAS. It is the responsibility of publishers to provide the NIMAS-conformant XML content file, a package file (OPF), a PDF-format copy of the title page (or whichever page(s) contain(s) ISBN and copyright information), and a full set of the content's images. All of the images included within a work must be provided in a folder and placeholders entered in the relevant XML document indicating their location (all images must be included). The preferred image type is SVG, next is either PNG or JPEG format. Images should be rendered in the same size/proportion as their original at 300 dpi. Images should be named with relative path filenames in XML files (example: img-"staricon.jpg" src="/images/10022/staricon.jpg" alt="star icon").

NIMAS-conformant content must be valid to the NIMAS 1.1 [see ANSI/ISO 23888 2003 or subsequent revisions]. In addition, files are required to use the tags from the Baseline Element Set when such tags are appropriate. Publishers are encouraged to augment the required Baseline Element Set with tags from the Optional Element Set (elements not included in the Baseline as applicable. For the purposes of NIMAS, appropriate usage of elements, both baseline...
and optional, is defined by the DAISY Structure Guidelines. Files that do not follow these guidelines in the selection and application of tags are not conformant to this Standard. Both optional elements and appropriate structure guidelines may be located within 239.86–2002 and 239.86–2005 available from http://www.daisy.org/.

### THE BASELINE ELEMENT SET

<table>
<thead>
<tr>
<th>Element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>a. Document-level tags</strong></td>
<td></td>
</tr>
<tr>
<td>head</td>
<td>Contains metainformation about the book but no actual content of the book itself, which is placed in <code>&lt;book&gt;</code>.</td>
</tr>
<tr>
<td>book</td>
<td>Surrounds the actual content of the document, which is divided into <code>&lt;frontmatter&gt;</code>, <code>&lt;bodymatter&gt;</code>, <code>&lt;rearmatter&gt;</code>, <code>&lt;head&gt;</code>, which contains metadata, precedes <code>&lt;book&gt;</code>.</td>
</tr>
<tr>
<td>meta</td>
<td>Indicates metadata about the book. It is an empty element that may appear repeatedly only in <code>&lt;head&gt;</code>. For the most current usage guidelines, please refer to <a href="http://www.daisy.org/z3986/">http://www.daisy.org/z3986/</a></td>
</tr>
</tbody>
</table>

**b. Structure and Hierarchy**

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The highest-level container of major divisions of a book. Used in <code>&lt;frontmatter&gt;</code> and <code>&lt;bodymatter&gt;</code> to mark the largest divisions of the book (usually parts or chapters), inside which <code>&lt;level2&gt;</code> subdivisions (often sections) may nest. The class attribute identifies the actual name (e.g., part, chapter) of the structure it marks. Contrast with <code>&lt;level3&gt;</code>.</td>
</tr>
<tr>
<td>2</td>
<td>Contains subdivisions that nest within <code>&lt;level1&gt;</code> subdivisions. The class attribute identifies the actual name (e.g., subpart, chapter, subsection) of the structure it marks.</td>
</tr>
<tr>
<td>3</td>
<td>Contains sub-subdivisions that nest within <code>&lt;level2&gt;</code> subdivisions (e.g., sub-subsections within subsections). The class attribute identifies the actual name (e.g., section, subpart, subsubsection) of the subordinate structure it marks.</td>
</tr>
<tr>
<td>4</td>
<td>Contains further subdivisions that nest within <code>&lt;level3&gt;</code> subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.</td>
</tr>
<tr>
<td>5</td>
<td>Contains further subdivisions that nest within <code>&lt;level4&gt;</code> subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.</td>
</tr>
<tr>
<td>6</td>
<td>Contains further subdivisions that nest within <code>&lt;level5&gt;</code> subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.</td>
</tr>
<tr>
<td>h1</td>
<td>Contains the text of the heading for a <code>&lt;level1&gt;</code> structure.</td>
</tr>
<tr>
<td>h2</td>
<td>Contains the text of the heading for a <code>&lt;level2&gt;</code> structure.</td>
</tr>
<tr>
<td>h3</td>
<td>Contains the text of the heading for a <code>&lt;level3&gt;</code> structure.</td>
</tr>
<tr>
<td>h4</td>
<td>Contains the text of the heading for a <code>&lt;level4&gt;</code> structure.</td>
</tr>
<tr>
<td>h5</td>
<td>Contains the text of the heading for a <code>&lt;level5&gt;</code> structure.</td>
</tr>
<tr>
<td>h6</td>
<td>Contains the text of the heading for a <code>&lt;level6&gt;</code> structure.</td>
</tr>
</tbody>
</table>

**c. Block elements**

<table>
<thead>
<tr>
<th>Element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>author</td>
<td>Identifies the writer of a work other than this one. Contrast with <code>&lt;docauthor&gt;</code>, which identifies the author of this work. <code>&lt;author&gt;</code> typically occurs within <code>&lt;blockquote&gt;</code> and <code>&lt;cite&gt;</code>.</td>
</tr>
<tr>
<td>blockquote</td>
<td>Indicates a block of quoted content that is set off from the surrounding text by paragraph breaks. Compare with <code>&lt;q&gt;</code>, which marks short, inline quotations.</td>
</tr>
<tr>
<td>list</td>
<td>Contains some form of list, ordered or unordered. The list may have an intermixed heading <code>&lt;hd&gt;</code> (generally only one, possibly with <code>&lt;protnote&gt;</code>) and an intermix of list items <code>&lt;li&gt;</code> and <code>&lt;pagemenum&gt;</code>. If bulleted and outline enumerations are part of the print content, they are expected to prefix those list items in content, rather than be implicitly generated.</td>
</tr>
<tr>
<td>note</td>
<td>Marks each list item in a <code>&lt;list&gt;</code>. <code>&lt;li&gt;</code> content may be either inline or block and may include other nested lists. Alternatively, it may contain a sequence of list item components, including but not limited to the heading and page number of each entry in a table of contents.</td>
</tr>
<tr>
<td>p</td>
<td>Contains a paragraph, which may contain subsidiary <code>&lt;list&gt;</code> or <code>&lt;db&gt;</code>.</td>
</tr>
<tr>
<td>sidebar</td>
<td>Contains information supplementary to the main text and/or narrative flow and is often boxed and printed apart from the main text block on a page. It may have a head <code>&lt;hd&gt;</code>.</td>
</tr>
<tr>
<td>cite</td>
<td>Marks a reference (or citation) to another document.</td>
</tr>
<tr>
<td>dd</td>
<td>Marks a definition of the preceding term <code>&lt;dt&gt;</code> within a definition list <code>&lt;dl&gt;</code>. A definition without a preceding <code>&lt;dt&gt;</code> has no semantic interpretation, but is visually presented aligned with other <code>&lt;db&gt;</code>.</td>
</tr>
<tr>
<td>dl</td>
<td>Contains a definition list, usually consisting of pairs of terms <code>&lt;dt&gt;</code> and definitions <code>&lt;dd&gt;</code>. Any definition can contain another definition list.</td>
</tr>
</tbody>
</table>
## THE BASELINE ELEMENT SET—Continued

<table>
<thead>
<tr>
<th>Element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>df</td>
<td>Marks a term in a definition list <code>&lt;df&gt;</code> for which a definition <code>&lt;dd&gt;</code> follows. For the most current usage guidelines, please refer to <a href="http://www.daisy.org/z3986/">http://www.daisy.org/z3986/</a>.</td>
</tr>
</tbody>
</table>

#### d. Inline Elements

| Emphasis | `<em>` indicates emphasis. Usually `<em>` is rendered in italics. Compare with `<strong>`. |
| Quotation | `<q>` contains a short, inline quotation. Compare with `<blockquote>`, which marks a longer quotation set off from the surrounding text. |
| Subscript | `<sub>` marks a subscript character (printed below a character's normal baseline). Can be used recursively and/or intermixed with `<sup>`. |
| Superscript | `<sup>` marks a superscript character (printed above a character's normal baseline). Can be used recursively and/or intermixed with `<sub>`. |
| Line Break | `<br>` marks a forced line break. |
| Line Number | `<linenum>` contains a line number, for example in legal text. [Use only when `<br>` is used, and only for lines numbered in print book.] |
| Page Number | `<pagenum>` contains one page number as it appears from the print document, usually inserted at the point within the file immediately preceding the first item of content on a new page. [NB: Only valid when it includes an id attribute]. |
| Footnote Reference | `<noteref>` marks one or more characters that reference a footnote or endnote `<note>`. Contrast with `<annonote>`, `<notetext>`, and `<notetitle>` are independently skippable. For the most current usage guidelines, please refer to [http://www.daisy.org/z3986/](http://www.daisy.org/z3986/). |

#### e. Tables

| Table | `<table>` contains cells of tabular data arranged in rows and columns. A `<table>` may have a `<caption>`. It may have descriptions of the columns in `<col>`s or groupings of several `<col>`s in a `<colgroup>`. A simple `<table>` may be made up of just rows `<tr>`. A long table crossing several pages of the print book should have separate `<pagenum>` values for each of the pages containing that table or in the pages that it starts. Note the logical order of optional `<thead>`, optional `<tbody>`, then one or more of either `<tbody>` or just rows `<tr>`. This order accommodates simple or large, complex tables. The `<thead>` and `<tfoot>` information usually helps identify content of the `<tbody>` rows. For a multiple-page print `<table>` the `<thead>` and `<tfoot>` are repeated on each page, but not redundantly tagged. |
| Id | `<id>` indicates a table cell containing `<tr>` or `<td>` cells. For the most current usage guidelines, please refer to [http://www.daisy.org/z3986/](http://www.daisy.org/z3986/). |

#### f. Images

| Image Group | `<imggroup>` provides a container for one or more `<img>` and associated `<caption>`s and `<prodnote>`s. A `<prodnote>` may contain a description of the image. The content model allows: 1) multiple `<img>` if they share a caption, with the ids of each `<img>` in the `<caption>` in the `imgref`=`id1 id2 ...` form, 2) multiple captions if several captions refer to a single `<img id='xx'>` where each caption has the same `captionimgref='xx'`, 3) multiple `<prodnote>` if different versions are needed for different media (e.g., large print, braille, or print). If several `<prodnote>` refer to a single `<img id='xx'>`, each prodnote has the same `<prodnotemerge='xx'>`. Points to the image to be rendered. An `<img>` may stand alone or be grouped using `<imggroup>`. Note that providing extracted images is not a requirement of the NIMAS. If they are included, it is best to refer to them using `<img>` within the `<imggroup>` container. |
| Image | `<img>` describes a `<table>` or `<imggroup>`. If used with `<table>` it must follow immediately after the `<table>` start tag. If used with `<imggroup>` it is not so constrained. For the most current usage guidelines, please refer to [http://www.daisy.org/z3986/](http://www.daisy.org/z3986/). |

1. **The Optional Elements and Guidelines for Use**

 Publishers are encouraged to apply markup beyond the baseline (required) elements. The complete DTBook Element Set reflects the tags necessary to create the six types of Digital Talking Book and Braille output. Because of the present necessity to subdivide the creation of alternate format materials into distinct phases, the Panel determined that baseline elements would be provided by publishers, and optional elements would be added to the NIMAS-conformant files by third party conversion entities. In both circumstances the protocols for tagging digital files should conform to the most current ANSI/NISO Z39.86 specification. Content converters are directed to the most current DAISY Structure Guidelines [http://www.daisy.org/z3986/](http://www.daisy.org/z3986/) for guidance on their use.

Since the publication of the original National File Format report from which the NIMAS technical specifications were derived, ANSI/NISO Z39.86-2002 was updated and is now ANSI/NISO Z39.86-2005. It may be best to avoid using the following optional elements which are no longer included in ANSI/NISO Z39.86-2005: `style`, `notice`, `hr`, and `levelname`.

Also, the following new elements were introduced by ANSI/NISO Z39.86-2005 and should be considered optional elements for the NIMAS: `bridgehead`, `byline`, `covertitle`, `datefile`, `epigraph`, `linegroup`, and `poem`.


2. **Package File**

A package file describes a publication. It identifies all other files in the publication and provides descriptive and access information about them. A publication must include a package file conforming to the NIMAS. The package file is based on the
Open eBook Publication Structure 1.2 package file specification. For most recent
details please see http://www.openpub.org/obebps/obebps1.2/download/oeb12-
xhtml.html#sect2). A NIMAS package file must be an XML-valid Oeb P5 1.2 package file
instance and must meet the following additional standards:
- The NIMAS Package File must include the following Dublin Core (dc:meta)data:
  - dc:Title
  - dc:Creator (if applicable)
  - dc:Publisher
  - dc:Date (Date of NIMAS-compliant file creation—yyy-mm-dd)
  - dc:Format (="NIMAS 1.0.0")
  - dc:Identifier (a unique identifier for the NIMAS-compliant digital publication, e.g.,
    print ISBN = "NIMAS—exact format to be determined.
  - dc:Language (one instance, or multiple in the case of a foreign language textbook, etc.)
  - dc:Rights (details to be determined).
And the following x-metadata items:
- nimas-SourceEdition (the edition of the print textbook)
- nimos-SourceDate (date of publication of the print textbook).

The following metadata were proposed also as a means of facilitating recordkeeping,
storage and file retrieval.
- dc:Subject (Lang Arts, Soc Studies, etc.)
- nimos-grade (specific grade level of the print textbook, e.g., Grade 6)
- nimos-gradeRange (specific grade range of the print textbook, e.g., Grades 4-5)

An additional suggestion references the use of:
- dcaudienceEducationLevel (for the grade and gradeRange identifiers, noting that
  Dublin Core recommends using education level with an appropriate controlled
  vocabulary for context, and recommends the U.S. Department of
  Education’s Level of Education vocabulary online at http://www.ed.gov/admin
  reference/index.jsp. Using educationLevel obviates the need for a separate field for
  gradeRange since dc elements can repeat more than once. A book used in more than
  one grade would therefore have two elements, one with value “Grade 4” and
  another with value “Grade 5.”

A final determination as to which of these specific metadata elements to use needs to be
clarified in practice. The package manifest must list all provided files (text, images, etc.).

(Note: For purposes of continuity and to minimize errors in transformation and
processing, the NIMAS-compliant digital text should be provided as a single document.)

3. Modular Extensions
The most current DAISY/NSISO standard, formally the ANSI/NSISO 239.86,
Specifications for the Digital Talking Book defines a comprehensive system for creating
Digital Talking Books. A part of this standard is DTBook, an XML vocabulary that provides
a core set of elements needed to produce most types of books. However, DTBook is not intended to be an exhaustive vocabulary for all types of books.

Guidelines for the correct approach to extend the DAISY/NSISO standard have been
established. Mathematics, video support, testing, workbooks, music, dictionaries,
chemistry, and searching are some of the extensions that have been discussed. Visit http://www.daisy.org/23986/ to learn more about modular extensions.

End

Appendix D to Part 300—Maintenance of Effort and Early Intervening Services

LEAs that seek to reduce their local maintenance of effort in accordance with
§300.205(a) and use some of their Part B funds for early intervening services under
§300.228 must do so with caution because the local maintenance of effort reduction
at the LEA level and the authority to use Part B funds for early intervening services are
interconnected. The decision that an LEA makes about the amount of funds that it uses
for one purpose affects the amount that it may use for the other. Below are examples that
illustrate how §§300.205(a) and 300.228(a) affect one another.

Example 1: In this example, the amount that is 15 percent of the LEA’s total grant (see
§300.228(a)), which is the maximum amount that the LEA may use for EIS, is less than the
amount that may be used for MOE reduction (50 percent of the increase in the LEA’s grant
from the prior year’s grant) (see §300.205(a)).

Prior Year’s Allocation $300,000
Current Year’s Allocation $500,000
Increase $200,000
Maximum Available for MOE Reduction $100,000
Maximum Available for EIS $90,000

If the LEA chooses to use no funds for MOE, it may set aside $300,000 for EIS (EIS maximum $300,000 less $0 means $300,000 for EIS).
If the LEA chooses to use $100,000 for MOE, it may set aside $200,000 for EIS (EIS maximum $300,000 less $100,000 means $200,000 for EIS).
If the LEA chooses to use $150,000 for MOE, it may set aside $150,000 for EIS (EIS maximum $300,000 less $150,000 means $150,000 for EIS).
If the LEA chooses to use $300,000 for MOE, it may not set aside anything for EIS (EIS maximum $300,000 less $300,000 means $0 for EIS).
If the LEA chooses to use $500,000 for MOE, it may not set aside anything for EIS (EIS maximum $300,000 less $500,000 means $0 for EIS).

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