may provide for mediation at an earlier stage, thereby allowing for informal dispute resolution before or after the State complaint process, preventing the need for a due process hearing. However, mediation may not be used to deny or delay the parents' right to due process. The previous existence of the option to request Secretarial review was not a substitute for these other procedural rights for parents. It is not necessary to add a note describing these other procedural safeguards in § 303.512, as they are adequately described elsewhere in these regulations.

The substance of the notes following this section is incorporated into § 303.512. The language of proposed Note 1 references a complaint that is also the subject of a due process hearing, but does not discuss the situation of a complaint that also becomes the subject of a mediation proceeding. Although the IDEA Amendments of 1997 encourage the use of mediation as a dispute resolution tool, a party's mediation request should not serve as an excuse for a State to delay the State complaint resolution timelines. Therefore, a mediation proceeding should not in and of itself be considered an ''exceptional circumstance'' under § 303.512(b) so as to extend the 60-day time limit for resolution of complaints, unless the parties agree to such an extension.

Changes: Paragraphs (b) and (c) have been combined into a new paragraph (b). A new paragraph (c) has been added to clarify that if an issue in a complaint is the subject of a due process hearing, that issue (but not those outside of the due process proceeding) would be set aside until the conclusion of the due process hearing, and that the hearing decision regarding an issue in a due process hearing would be binding in a State complaint resolution; however, a public agency's failure to implement a due process decision would have to be resolved by the lead agency. The notes following this section have been removed, and their substance incorporated into § 303.512.

Policies Related to Payment for Services (§ 303.520)

Comment: There were many comments regarding the use of private and public insurance under Part C. A few commenters supported proposed § 303.520(d) and (e), as well as corresponding notes. Supporting the provision in proposed § 303.520(d) on requiring families to use private insurance only if there are no costs, parents of children with disabilities described the financial costs and resulting hardship to them when required to use private insurance to pay for services.

Many commenters opposed the proposed changes. Regarding the use of private insurance, many stated that the policies in proposed § 303.520(d) and Notes 1 and 2 contradict the ''payor of last resort'' concept underlying Part C. Many commenters referred to the policy in § 303.527 that Part C Federal funds are to supplement existing sources of funds, not provide full support, for early intervention. Commenters stated that prior to Part C, private insurance would have been the payor of first resort for many early intervention services, and Medicaid the secondary source of payment.

Commenters also stressed that, because FAPE does not apply to Part C, basing § 303.520(d) on the Notice of Interpretation published in 1980 regarding Part B, six years prior to the passage of Part C, is invalid. Further, in emphasizing the differences in Part B and Part C policy, commenters noted that under Part B, services are to be provided at no cost to the parents, whereas under Part C parents may be required to pay fees for services. Commenters stated that it is contradictory to allow systems of payment, but prohibit the use of private insurance if there is a financial cost to families. A few commenters also stated they believed the Department did not adequately determine whether or not there is a cost to parents in requiring the use of private insurance, and that a cost-benefit analysis was not done.

Commenters were also very concerned about the impact to Part C programs nationwide if private insurance is more difficult to access; some stated that proposed § 303.520(d) could cause States to eliminate their infant and toddler programs entirely. Commenters stated that because Federal programs like Medicaid and Title V require that private insurance must be billed first for services covered in whole or in part by such insurance, if private insurance is not accessible, Medicaid or Title V will not be accessible. Some commenters suggested that the use of private insurance under Part C be treated in the same manner as it is under Title V and Medicaid and in this way remain in compliance with the mandate of § 303.527.

In addition, some commenters stated that a policy that allows parents to deny access to private insurance, thereby requiring the expenditure of State and Federal funds, has caused private insurance companies to deny payment for services if Part C potentially covers the service. Insurance policies also often state that they will not cover services if deductibles and co-payments are paid *for* the family instead of *by* the family. Commenters also stated that some State statutes require that private insurance is utilized prior to State funds and the proposed § 303.520 undermines these statutes.

Regarding public insurance, commenters stated that parental consent should not be required for access to public insurance, e.g., Medicaid, if the child is eligible for the public insurance. The commenters also argued that States should be given the flexibility to require application for public health insurance as a condition for receiving early intervention services, not only to enable Part C access to other sources of funding, but also to ensure that children have access to health and medical care.

Those commenting against proposed § 303.520(e) and Note 3, regarding proceeds from insurance, stated that such a rule potentially precludes putting dollars back into an already under funded program. Commenters stated that under 34 CFR 80.25, States should be required to return income received from public and private insurance payments to the Part C program. Further, if the Department does not require such reinvestment, commenters requested that it at least remain silent on the issue rather than risk giving States encouragement for using insurance reimbursements without any restrictions.

Discussion: As the foregoing comments note, there are many ramifications to a proposed regulation regarding the use of private and public insurance under Part C. Therefore, the policy in proposed § 303.520(d) will not be finalized until more thorough examination of the issues can be done through the process initiated by the April 14 and August 14, 1998 solicitations for comments, and in light of the specific Part C statutory language and framework.

However, with respect to the issue of reimbursements in proposed § 303.520(e) and Note 3, the reasons underlying the changes made to the corresponding § 300.142(f) in Part B provide support for the same changes in Part C. This section clarifies that if a public agency receives funds from public or private insurance for services under these regulations, the public agency is not required to return those funds to the Department or to dedicate those funds for use in the Part C program, which is how program income must be used, although a public agency retains the option of using those funds in this program if it chooses to do so. Reimbursements are similar to refunds,

credits, and discounts that are specifically excluded from program income in 34 CFR 80.25(a). The expenditure that is reimbursed is considered to be an expenditure of funds from the source that provides the reimbursement. Nothing in IDEA, however, prohibits States from reinvesting insurance reimbursements back into the Part C program, and this regulatory provision should not be viewed as discouraging such practice. Reinvestment of insurance reimbursements in the Part C program is undeniably a valuable method of helping fund the program; however, to avoid confusion, it is necessary to clarify by regulation that no current Federal law requires such reinvestment.

In addition, proposed paragraph (e) has been revised to clarify that funds expended by a public agency from reimbursements of Federal funds will not be considered State or local funds for purposes of § 303.124. If Federal reimbursements were considered State and local funds for purposes of the supplanting prohibition in § 303.124 of these regulations, States would experience an artificial increase in their base year amounts and would then be required to maintain a higher, overstated level of fiscal effort in the succeeding fiscal year.

Changes: Proposed § 303.520(d), and Notes 1 and 2, are removed; proposed § 303.520(e) is redesignated as § 303.520(d) with changes to conform to § 300.142(f); and Note 3 is incorporated into the text of § 303.520(d).

(**Note:** This attachment will not be codified in the Code of Federal Regulations)

Attachment 2—Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

Summary of Public Comments

Many commenters expressed concern about the costs and burden of complying with requirements incorporated into the Assistance to States for the Education of Children with Disabilities, Notice of Proposed Rulemaking (NPRM). Commenters complained about the cost of implementing various statutory requirements incorporated into the NPRM and identified a variety of requirements in the NPRM not required by the statute that would increase administrative costs for school districts. Some commenters talked about the need to employ additional staff to comply with new requirements and others talked about the additional paperwork required. Some commenters expressed concern about the effect of the requirements on the ability of schools to provide instruction to nondisabled children and the difficulty teachers and administrators would have in implementing the proposed regulations. Very few commenters specifically addressed the Department's analysis of the benefits and costs of the statutory and non-statutory changes incorporated into the proposed regulations.

One commenter stated that the analysis of the impact was inadequate and that the cost to school systems did not appear to be taken seriously. However, this commenter did not provide comments on the cost assumptions or analysis of specific items in the NPRM.

One commenter questioned the discussion in the NPRM that indicated a possible reduction of personnel needed to conduct evaluations by 25 to 75 percent, and suggested that additional meetings would probably be required for 18 to 24 months until the appropriate assessments can be conducted at annual reviews and that additional personnel would be needed. Another commenter agreed that the changes related to the conduct of the triennial reevaluation may reduce some paperwork, but noted that savings would not be realized immediately for individual children because of the need for baseline data. One commenter stated that it has taken the evaluation team one hour just to decide whether there is a need to gather additional information.

A few commenters provided specific information about the cost and time involved to comply with some of the requirements that were analyzed in the NPRM. For example, one commenter pointed out that it would cost his district $18,000 to provide for substitute teachers so regular education teachers could attend 900 IEP meetings lasting one to two hours—or $20 per meeting. Another commenter stated that the cost of providing substitute teachers would be an enormous burden for school districts, noting that the average IEP meeting takes 1.5 to 2 hours.

The Department also received a few comments on the cost of providing education to children who have been suspended or expelled. One commenter said that the projections do not take into account the expense of providing homebound services, alternative placements or access to the general curriculum. Another commenter agreed that the estimates of $29–$70 were too low and pointed out that an out-of-district day placement in Vermont runs about $20,000–$25,000 per school year.

All of these comments were considered in conducting the analysis of the benefits and costs of the final regulations. All of the Department's estimates and the assumptions on which they are based are described below.

Summary of Potential Benefits and Costs

Benefits and Costs of Statutory Changes

For the information of readers, the following is an analysis of the costs and benefits of the most significant statutory changes made by IDEA Amendments of 1997 that are incorporated into the Assistance to States for the Education of Children with Disabilities regulations. In conducting this analysis, the Department examined the extent to which changes made by the IDEA Amendments of 1997 added to or reduced the costs for school districts and others in relation to the costs of implementing the IDEA prior to the enactment of the IDEA Amendments of 1997. Based on this analysis, the Secretary has concluded that the statutory changes included in this regulation will not, on net, impose significant costs in any one year, and may result in savings to State and local educational agencies. An analysis of specific provisions follows:

Participation in Assessments

Section 300.138 incorporates statutory requirements relating to the inclusion of children with disabilities in general State and district-wide assessments and the conduct of alternate assessments for children who cannot be appropriately included in general assessments.

Although children with disabilities have not been routinely included in State and district-wide assessments, the requirement to include children with disabilities in assessment programs in which they can be appropriately included, with or without accommodations, does not constitute a change in Federal law. Because this statutory change is a clarification of, not a change in, the law, no cost impact is assigned to this requirement, which is incorporated in § 300.138(a) requiring the participation of children with disabilities in general assessments.

However, States were not previously required to conduct alternate assessments for children who could not participate in the general assessments. The statutory requirement to develop and conduct alternate assessments beginning July 1, 2000, therefore, imposes a new cost for States and districts.

The impact of this change will depend on the extent to which States and districts administer general assessments, the number of children who cannot appropriately participate in those assessments, the cost of developing and administering alternate assessments, and the extent to which children with disabilities are already participating in alternate assessments.

The analysis of the impact of this requirement assumes that alternate tests would be administered to children with disabilities on roughly the same schedule as general assessments. This schedule will vary considerably from State to State and within States, depending on their assessment policy. In most States, this kind of testing does not begin before the third grade. In many States and districts, general assessments are not administered to children in all grades, but rather at key transition points (for example, in grades 4, 8, and 11).

The extent to which States and districts will need to provide for alternate assessments will also vary depending on how the general assessments are structured. Based on the experience of States that have implemented alternate assessments for children with disabilities, it is estimated that about one to two percent of the children in any age cohort will be taking alternate assessments.

Based on this information, it is estimated that about 18 to 36 million of the children who are expected to be enrolled in public schools in school year 2000–2001 will be candidates for general assessments. Of these, about 200,000 to 700,000 will be children

with disabilities who may require alternate assessments.

The costs of developing and administering these assessments are also difficult to gauge. In its report *Educating One and All,* the National Research Council states that the estimated costs of performance-based assessments programs range from less than $2 per child to over $100 per student tested. The State of Maryland has reported start-up costs of $191 per child for testing a child with a disability and $31 per child for the ongoing costs of administering an alternate assessment.

The cost impact of requiring alternate assessments will be reduced to the extent that children with disabilities are already participating in alternate assessments. Many children with disabilities are already being assessed outside the regular assessment program in order to determine their progress in meeting the objectives in their IEPs. In many cases, these assessments might be adequate to meet the new statutory requirement.

Based on all of this information, the cost impact of this statutory change is not likely to be significant, and will be justified by the benefits of including all children in accountability systems.

Incidental Benefits

The change made by section 613(a)(4) of the Individuals with Disabilities Education Act (IDEA), incorporated in § 300.235, generates savings by reducing the time that would have been spent by special education personnel on maintaining records on how their time is allocated in regular classrooms among children with and without disabilities.

To calculate the impact of this change, one needs to estimate the number of special education personnel who will be providing services to children with and without disabilities in regular classrooms and the amount and value of time that would have been required to document their allocation of time between disabled and nondisabled children.

Based on State-reported data on placement, it appears that about 4.4 million children will spend part of their day in a regular classroom this school year. States reported employing about 404,000 teachers and related services personnel in total for school year 1995–96. The statutory change will eliminate unnecessary paperwork for those special education personnel who have been working in the regular classroom and documenting their allocation of time, and will encourage the provision of special education services in the regular classroom—a change that will benefit children with disabilities.

Individualized Education Programs

The final regulations incorporate a number of statutory changes in section 614(d) that relate to the IEP process and the content of the IEP. With the exception of one requirement (the requirement to include a regular education teacher on the IEP team), it has been determined that, on balance, these changes will not increase the cost of developing IEPs. Moreover, all the changes will produce significant benefits for children and families. Key changes include:

Clarifying that the team must consider a number of special factors to the extent they are applicable to the individual child. The statutory changes that are incorporated in § 300.346 do not impose a new burden on school districts because the factors that are listed should have been considered, as appropriate, under the IDEA before the enactment of IDEA Amendments of 1997. These include: behavioral interventions for a child whose behavior impedes learning, language needs for a child with limited English proficiency, Braille for a blind or visually impaired child, the communication needs of the child, and the child's need for assistive technology.

Strengthening the focus of the IEP on access to the general curriculum in statements about the child's levels of performance and services to be provided. The statutory changes that are incorporated in § 300.347 relating to the general curriculum should not be burdensome because the changes merely refocus the content of statements that were already required to be included in the IEP on enabling the child to be involved in and progress in the general curriculum.

Requiring an explanation of the extent to which a child will not be participating with nondisabled children. This statutory requirement, which is incorporated in § 300.347(a)(4), does not impose a burden because it replaces the requirement for a statement of the extent to which the child will be able to participate in regular educational programs.

Requiring the IEP to include a statement of any needed modifications to enable a child to participate in an assessment, and, in cases in which a child will not be participating in a State or district-wide assessment, to include a statement regarding why the assessment is not appropriate and how the child will be assessed. This statutory requirement, which is incorporated in § 300.347(a)(5), will require some additional information to be included in the IEPs for some children, but will not impose a significant burden on schools. Each year an estimated 1.6 to 3.2 million children with disabilities are in grades in which schools are administering State or district-wide assessments. Prior to the enactment of the IDEA Amendments of 1997, Federal law required the participation of children with disabilities in general assessments with accommodations, as needed. Data indicate that about 50 percent of children with disabilities have been participating in State and local assessments. Many of these children are receiving needed modifications and their IEPs currently include information about those modifications. The requirement for statements in the IEP about how children will be assessed will affect IEPs for children who cannot participate in the general assessments and who are entitled to participate in alternate assessments (estimated to be 200,000 to 700,000 children, beginning in school year 2000–2001).

Allowing the IEP team to establish benchmarks rather than short-term objectives in each child's IEP. There is considerable variation across States, districts, schools, and children in the amount of time spent on developing and describing short-term objectives in each child's IEP. While it would be difficult to estimate the impact of this statutory change, contained in § 300.347(a)(2), it clearly affords schools greater flexibility and an opportunity to reduce paperwork in those cases in which the team has previously included unnecessarily detailed curriculum objectives in the IEP document. This change potentially reduces the burden in preparing IEPs for 6 million children each year.

Prior to the enactment of the IDEA Amendments of 1997, IDEA required the participation of the ''child's teacher,'' typically read as the child's special education teacher, but it did not explicitly require a regular education teacher. The IDEA Amendments of 1997, incorporated in § 300.344 (a)(2) and (a)(3) and § 300.346(d) of the final regulations, require the participation of the child's special education teacher and a regular education teacher if the child is or may be participating in the regular education classroom, while acknowledging that a regular education teacher participates in developing, reviewing, and revising the child's IEP ''to the extent appropriate.''

The impact of this change will be determined by the number of children with disabilities who are or who may be participating in the regular classroom in a given year, the number and length of IEP meetings, the extent of the regular education teacher's participation in them, the opportunity cost of the regular education teacher's participation, and the extent to which regular education teachers are already attending IEP meetings.

State-reported data for school year 1994–1995 indicates that about 3.9 million children with disabilities aged 3 through 21 spend at least 40 percent of their day in a regular classroom (children reported as placed in regular classes and resource rooms). The participation of the regular education teacher would be required for all of these children since these children are spending at least part of their day in the regular classroom.

State data also show that an additional 1.2 million children were served in separate classrooms. A regular education teacher's participation will clearly be required for those children in separate classes who are spending part of their school day in regular classes (less than 40 percent of their day). Other children may be participating with nondisabled children in some activities in the same building. While a child's individual needs and prospects will determine whether a regular education teacher would need to attend a child's IEP meeting in those cases, some proportion of these children are children for whom participation in regular classrooms is a possibility, therefore requiring the participation of a regular education teacher.

Although the prior statute did not require the participation of a regular education teacher, it is not uncommon for States or school districts to require a child's regular education teacher to attend IEP meetings.

Based on all of this information, it is estimated that the participation of a regular education teacher may be required in an

additional 3.9 to 5.3 million IEP meetings in the next school year.

While the opportunity costs of including a regular education teacher in these meetings will be significant because of the number of meetings involved, these costs will be more than justified by the benefits to be realized by teachers, schools, children, and families. Involving the regular education teacher in the development of the IEP will not only provide the regular education teacher with needed information about the child's disability, performance, and educational needs, but will help ensure that a child receives the supports the child needs in the regular classroom, including services and modifications that will enable the child to progress in the general curriculum.

Parentally-Placed Students in Private Schools

This statutory change, which is incorporated in § 300.453, would require school districts to spend a proportionate amount of the funds received under Part B of IDEA on services to children with disabilities who are enrolled by their parents in private elementary and secondary schools.

The change does not have an impact on most States because the statute does not represent a change in the Department's interpretation of the law as it was in effect prior to the enactment of the IDEA Amendments of 1997. However, in four Federal circuits, the courts have concluded that, without the statutory change, school districts generally were responsible for paying for the total costs of special education and related services needed by students with disabilities who have been parentally-placed in private schools. Therefore, this change does produce potential savings for school districts in those 19 States affected by these court decisions. The States are: Arkansas, Colorado, Connecticut, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, New Mexico, Nebraska, New York, North Dakota, Oklahoma, South Dakota, Texas, Utah, Vermont, and Wyoming.

To determine the impact of the change, one needs to estimate the number of parentally-placed children with disabilities that LEAs in these States would have been required to serve, but for this change. Using private school enrollment data for school year 1995–1996 and projected growth rates, it is estimated that approximately 1.5 million students will be enrolled in private schools in these 19 States in this school year.

There is no reliable data on the number of children with disabilities who are parentally-placed in private schools. However, if one assumes that children with disabilities are found in private schools in the same proportion as they are found in public schools in these States, or at least in the same proportion that children with speech impairments and learning disabilities are found in public schools, one would estimate that there are between 80,000 and 120,000 children with disabilities who are parentally-placed in private schools.

If one assumes that, on average, the cost of providing a free appropriate education to these students would be approximately equal to the average excess costs for educating students with disabilities—$7,184 per child for school year 1998–1999—the costs of providing FAPE to these children would be significant.

Under the statutory change, LEAs schools would still be required to use a portion of the Federal funds provided under Part B of IDEA to provide services to parentally-placed children—an amount proportionate to the percentage of the total population of children with disabilities who are parentally-placed—and to carry out required child find and evaluation activities. Therefore, in estimating the impact of this statutory change, one needs to subtract the cost of these public school obligations from the total projected savings. One would also need to take into account the fact that some of the costs that would have been covered by the school districts will simply shift to other sources such as the private schools or the families of the children. However, even if one discounts the amount of projected savings to the public sector by 50 percent to take into possible cost-shifting, the total net savings attributable to the change in the law for these 19 States is expected to be very significant.

Mediation

Section 300.506 reflects the new statutory provisions in section 615(e) of IDEA, which require States to establish and implement mediation procedures that would make mediation available to the parties whenever a due process hearing is requested. IDEA specifies how mediation is to be conducted.

The impact of this change will depend on the following factors: the number of due process hearings that will be requested, the extent to which the parties to those hearings will agree to participate in mediation, the cost of mediation, the extent to which mediation would have been used in the absence of this requirement to resolve complaints, and the extent to which mediation obviates the need for a due process hearing.

Data for previous years suggests one can expect about one complaint for every 1000 children served or about 6,000 requests for due process hearings during this school year. This projection probably overstates the number of complaints because it does not take into account the effect of the IDEA Amendments of 1997, which, on balance, can be expected to result in better implementation of the law and higher parental satisfaction with the quality of services and compliance with IDEA.

Many of these complaints would have been resolved through mediation even without the statutory change. Over 39 States had mediation systems in place prior to the enactment of the IDEA Amendments of 1997. Data for 1992 indicate that, on average, States with mediation systems held mediations in about 60 percent of the cases in which hearings were requested. Nevertheless, the number of mediations is expected to increase even in States that already have mediation systems. Although most States report using mediation as a method of resolving disputes, there have been considerable differences in its implementation and use. In general, the extent to which mediation has been used in States probably depends on the extent to which parents and others were informed of its availability and possible benefits in resolving their complaints and the extent to which the mediator was perceived as a neutral third-party. The changes made by the IDEA Amendments of 1997 are expected to eliminate some of the differences in State mediation systems that have accounted for its variable use and effectiveness.

The benefits of making mediation more widely available are expected to be substantial, especially in relation to the costs. States with well-established mediation systems conduct considerably fewer due process hearings. For example, in California, hearings were held in only 5 and 7 percent of the cases in which they were requested in 1994 and 1995, respectively. The average mediation appears to cost between $350 and $1000, while a due process hearing can cost tens of thousands of dollars. Based on the experience that many different States have had with mediation, it is estimated that hundreds of additional complaints will be resolved through mediation. The benefits to school districts and benefits to families are expected to be substantial.

Discipline

The final regulations (§§ 300.121, 300.122, 300.520, and 300.521) incorporate a number of significant changes to IDEA that relate to the procedures for disciplining children with disabilities.

Some of the key changes contained in section 615(k) afford school districts additional tools for responding to serious behavioral problems, and in that regard, do not impose any burdens on schools or districts.

The statutory change reflected in § 300.520(a)(2) would give school officials the authority to remove children who engaged in misconduct involving weapons or illegal drugs. Under prior law, school officials had the authority to remove children who brought guns, but could not remove children who engaged in misconduct involving other weapons or illegal drugs over the objection of their parents unless they prevailed in a due process proceeding or obtained a temporary restraining order from a court. The statutory change reflected in § 300.521 would give school officials the option of seeking relief from a hearing officer rather than a court in the case of a child the school is seeking to remove because the child poses a risk of injury to the child or others. In both cases, the child would continue to receive services in an alternative educational setting that is required to meet certain standards. It is difficult to assess the impact of either of these statutory changes on schools because there is virtually no information available on the extent to which parents disagree with districts that propose to remove these children. This new authority would only be used in those cases. Nevertheless, the benefits of this authority appear to be substantial insofar as the changes help schools provide for a safe environment for all children, while ensuring that any children with disabilities who are moved to an alternative setting continue to receive the services they need.

The statutory change reflected in § 300.520(b) will require school officials to

convene the IEP team in certain cases in which removal is contemplated to develop an assessment plan and behavioral interventions (or that the IEP team members review the child's behavioral intervention plan if there is one). The impact of this requirement is discussed below as part of the discussion of non-statutory changes.

The requirement in section 612(a)(1)(A), incorporated in § 300.121, that all children aged 3 through 21 must have made available to them a free appropriate public education, including children who have been suspended or expelled from school, does not represent a change in the law as the law was interpreted by the Department prior to the enactment of the IDEA Amendments of 1997. It clarifies the Department's long-standing position that the IDEA requires the continuation of special education and related services even to children who have been expelled from school for conduct that has been determined not to be a manifestation of their disability.

However, this statutory change does represent a change in the law in two circuits in which Federal Circuit courts disagreed with the Department's interpretation of the law—the 4th and 7th Circuits. The affected States are: Virginia, Maryland, North Carolina, South Carolina, West Virginia, Illinois, Indiana, and Wisconsin.

To assess the impact of this change, one needs to estimate the extent to which students would have been excluded from education, but for this change in the statute, and the cost of providing the required services to these students during the period they are expected to be excluded from their regular school due to a long-term suspension or expulsion.

There is a paucity of data available on disciplinary actions, and very little for the States in the 4th and 7th Circuits. Using data collected by the Office for Civil Rights for school year 1994, it is estimated that approximately 60,000 students with disabilities aged 6 through 21 will be suspended during this school year in the affected States. But to determine the impact of the prohibition on ceasing services in these States, one needs to know the number of suspensions each student received and their duration—information that is not provided by OCR data. However, more detailed data compiled by a few States would suggest that a relatively small percentage of students with disabilities who are suspended (no more than about 15 percent) receive suspensions of greater than 10 days at a time and a much smaller number of students are expelled.

Little information is available on the cost of providing services in an alternative setting for a student who has been suspended temporarily or expelled from school. However, it is reasonable to assume that the average cost per day of providing services in an alternative setting probably would be no less than the average daily total costs of serving children with disabilities, which is about $75 per day. Although costs will vary considerably depending on the needs of the individual student and the type of alternative setting, costs are likely to be higher on average because districts are unlikely to be able to achieve the same economies of scale in providing services to small numbers of children in alternative settings as they do in serving children generally.

While this statutory change will have a cost impact on the States in the 4th and 7th Circuits, the costs for these States will be justified by the benefits of continuing educational services for children who are the least likely to succeed without the help they need.

The statutory change reflected in § 300.122 could generate potential savings for all States by removing the obligation to provide educational services to individuals 18 years old or older who were incarcerated in adult prisons and who were not previously identified as disabled. No information is available on the number of prisoners with disabilities who were not previously identified.

Triennial Evaluation

The previously existing regulations required a school district to conduct an evaluation of each child served under IDEA every three years to determine, among other things, whether the child is still eligible for special education. The IDEA Amendments of 1997 change this requirement to reduce unnecessary testing and therefore reduce costs. Specifically, section 614(c) of IDEA, incorporated in § 300.533, allows the evaluation team to dispense with additional tests to determine the child's continued eligibility if the team concludes this information is not needed. However, these tests must be conducted if the parents so request.

The savings resulting from this change will depend on the following factors: the number of children for whom an evaluation is conducted each year to comply with the requirement for a triennial evaluation, the cost of the evaluation, and an estimate of the extent to which testing will be reduced because it is determined by the IEP team to be unnecessary and is not requested by the parents.

Based on an analysis of State-reported data, it is estimated that approximately 1.5 million children will be eligible for triennial evaluations in school year 1998–1999 or roughly 25 percent of the children to be served.

The IDEA Amendments of 1997 make it clear that districts no longer need to conduct testing to determine whether a child still has a disability, if the evaluation team determines this information is not needed and the parent agrees. However, while the regulation permits the team to dispense with unneeded testing to determine whether the child still has a disability, the team still has an obligation to meet to review any existing evaluation data and to identify what additional data are needed to determine whether the child is still eligible for special education and related services, the present levels of performance of the child, and whether any modifications in the services are needed. In view of these requirements, it is assumed that there will be some cost associated with conducting the triennial evaluation even in those cases in which both the team and the parents agree to dispense with testing. It is estimated that the elimination of unnecessary testing could reduce the opportunity costs for the personnel involved in conducting the triennial evaluation by as much as 25 to 75 percent. While there is no national data on the average cost of conducting a triennial evaluation under the current regulations, it is assumed that a triennial evaluation would require the participation of several professionals for several hours and cost as much as $1000.

These savings would be somewhat mitigated by the increased costs associated with the new statutory requirement to obtain parental consent before conducting a reevaluation. Under the final regulations, parental consent would be required if a test is conducted as part of a reevaluation, for example, or when any assessment instrument is administered as part of a reevaluation.

If one assumes, for purposes of this analysis, that savings are achievable in roughly half of the triennial evaluations that will be conducted and that elimination of unnecessary testing could reduce personnel costs by at least 25 percent, one would project substantial savings for LEAs that are attributable to this change.

Benefits and Costs of Proposed Non-statutory Regulatory Provisions

The following is an analysis of the benefits and costs of the nonstatutory final regulatory provisions that includes consideration of the special effects these changes may have for small entities.

The final regulations primarily affect State and local educational agencies, which are responsible for carrying out the requirements of Part B of IDEA as a condition of receiving Federal financial assistance under IDEA. Some of the proposed changes also affect children attending private schools and consequently indirectly affect private schools.

For purposes of this analysis as it relates to small entities, the Secretary has focused on local educational agencies because these regulations most directly affect local school districts. The analysis uses a definition of small school district developed by the National Center for Education Statistics for purposes of its recent publication, ''Characteristics of Small and Rural School Districts.'' In that publication, NCES defines a small district as ''one having fewer students in membership than the sum of (a) 25 students per grade in the elementary grades it offers (usually K–8) and (b) 100 students per grade in the secondary grades it offers (usually 9–12)''. Using this definition, approximately 34 percent of the Nation's school districts would be considered small and serve about 2.5 percent of the Nation's students. NCES reports that approximately 12 percent of these students have IEPs.

Both small and large districts will experience economic impacts from this rule. Little data are available that would permit a separate analysis of how the changes affect small districts in particular.

This analysis assumes that the effect of the final regulations on small entities would be roughly proportional to the number of children with disabilities served by those districts.

For school year 1998–1999, we estimate that approximately 47 million children will be enrolled in public elementary and secondary schools. Using the NCES definition and assuming all districts grew at the same rate between school year 1993–1994 and 1998–1999, the Secretary estimates that approximately 1.18 million children are enrolled in small districts. Applying the NCES estimate of 12 percent, we estimate that these districts serve approximately 140,000 children with disabilities of the 6 million children with disabilities served nationwide.

There are many provisions in the final regulations that are expected to result in economic impacts—both positive and negative. This analysis estimates the impact of those non-statutory provisions that were not required by changes that were made in the statute by the IDEA Amendments of 1997. In conducting this analysis, the Department estimated the additional costs or savings for school district attributable to these provisions in relation to the costs of implementing the statute, as amended by the IDEA Amendments of 1997.

The following is a summary of the estimated economic and non-economic impact of the key changes in this final regulation:

Section 300.2—Applicability to public agencies—The regulations add charter schools to the list of entities to which the regulations apply. Language is also added in paragraph (b)(2) regarding the applicability of the regulations to each public agency that has direct or delegated authority to provide special education and related services in a State receiving Part B funds, regardless of that agency's receipt of Part B funds. Neither change imposes any additional burden; both were included for clarity.

Section 300.7—Child with a disability—The final regulations add a new paragraph (a)(2) to clarify that if a child has one of the disabilities listed in paragraph (a), but only needs a related service and not special education, the child is not a ''child with a disability'' under Part B, unless the service is considered special education under State standards. This change is not likely to affect the number of children eligible for services under this part substantially because this clarification reflects a longstanding interpretation of the Department.

Section 300.7(c)(1)—Autism—The final regulations amend the definition of ''autism'' to clarify that if a child manifests characteristics of this disability category after age 3, the child could be diagnosed as having ''autism'' if the other criteria are satisfied. This clarification does not impose any additional burden on LEAs.

Section 300.7(c)(9)—Attention deficit disorder—The final regulations amend the definition of ''other health impairment'' to add ADD/ADHD to the list of conditions that could render a child eligible for services under this part. The language relating to other health impairments is also modified to clarify that limited strength, vitality or alertness includes a child's heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment. This change will not increase costs for LEAs because it reflects the Department's longstanding policy interpretation regarding the eligibility of children with ADD/ADHD.

Section 300.8—Definition of day—The final regulations add definitions of ''day,'' ''business day,'' and ''school day,'' terms that are used in the statute. Including these definitions will reduce confusion about the meaning of these terms and will not impose costs. The definition of ''day'' represents the Department's longstanding interpretation of that term. In defining ''business day,'' the Department used a commonly understood measure of time so that both parents and school officials could easily understand timelines established in the regulations.

Section 300.10—Definition of educational service agency—The final regulations clarify that the term ''educational service agency'' includes agencies that meet the definition of ''intermediate educational units'' under prior law. This change does not impose any costs on States.

Section 300.18—Charter schools as LEAs—The final regulations amend the definition of an ''LEA'' to include public charter schools established as LEAs under State law. This change, which adds clarity, does not impose any costs.

Section 300.19—Native language—The final regulations expand the definition of ''native language'' to clarify that in all direct contact with the child, communication must be in the language normally used by the child and not the parents if there is a difference between the two, and that for individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual. This clarification does not impose any additional costs for LEAs beyond what Federal law would already require.

Section 300.20—Foster parents—The final regulations clarify that foster parents may act as parents unless State law prohibits such practice. This provision does not impose any costs. The definition is intended to promote the appropriate involvement of foster parents consistent with the best interests of the child by ensuring that those who best know the child are involved in decisions about the child's education. To the extent there is any economic impact, it should reduce costs on States and local agencies that they would otherwise incur for training and appointing surrogate parents for children whose educational interests could appropriately be represented by their foster parents.

Section 300.22—Definition of public agency—The final regulations add public charter schools to the list of public agencies. This change does not impose any additional costs on States as Federal law already requires States to be ultimately responsible for ensuring FAPE for all children with disabilities in public schools in the State.

Section 300.24—Related services—The final regulations modify the definition of occupational therapy to make clear that it encompasses services provided by a qualified occupational therapist—a clarification that does not impose any additional costs. The final regulations revise the definition of parent counseling and training to include helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

Section 300.26(b)(3)—Definition of ''specially-designed instruction''—Paragraph (b)(3) defines ''specially-designed instruction'' in order to give more definition to the term ''special education,'' which is defined in this section as ''specially-designed instruction.'' The definition is intended to clarify that the purpose of adapting the content, methodology, or delivery of instruction is to address the child's unique needs and to ensure access to the general curriculum. This provision increases the potential of children with disabilities to participate more effectively in the general curriculum.

Section 300.26—Travel training—The final regulations amend the definition of ''special education'' to include a reference to travel training in paragraph (a)(2) and a definition of travel training in paragraph (b)(4)—clarifications that do not impose any additional costs.

Section 300.121—Free appropriate public education—The final regulations add language to clarify that the responsibility to provide FAPE beginning no later than a child's third birthday means that an IEP or IFSP must be in effect by that date, and that a child turning three during the summer must receive services if the IEP team determines that the child needs extended school year services. This language, which represents the Department's longstanding interpretation of the statute, does not impose any additional burden on LEAs. The final regulations also include language in paragraph (e) to clarify that the group determining a child's eligibility must make an individualized determination as to whether a child who is progressing from grade to grade needs special education and related services—another clarification that does not impose any additional costs for LEAs.

Section 300.121—FAPE for Children suspended or expelled from school—Section 300.121 incorporates the statutory provision that the right to a free appropriate public education extends to children with disabilities who have been suspended or expelled from school. Paragraph (d)(1) clarifies that a public agency need not provide services to a child who has been suspended for fewer than 10 days in a school year if services are not provided to nondisabled children. Paragraph (d)(2) describes when and to what extent services must be provided to children who have been removed from their current educational placement for more than 10 school days in a given school year. Paragraph (d)(2) provides that the public agency must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and advance toward achieving the goals in the child's IEP if the suspension is for 10 school days or less or is for behavior that is not a manifestation of the child's disability. In the case of suspensions of 10 days or fewer, school personnel, in consultation with the special education teacher, determine if, and to what extent services must be provided to a child who has been suspended for more than 10 days in a

given school year. In the case of suspensions of more than 10 days, this determination would be made by the IEP team. Paragraph (d)(2) also refers to the statutory standard for services for children removed for misconduct involving weapons, drugs, and substantial likelihood of injury.

In determining whether and how to regulate on this issue, the Department considered the impact of various alternatives on small and large school districts and children with disabilities and their families, especially the adverse educational impact on a child who has been suspended for more than a few days and on more than one occasion. The final regulations strike an appropriate balance between the educational needs of students and the burden on schools. Schools will be relieved of the potential obligation to provide services for a significant population of children who are briefly suspended a few times during the course of the school year, but required to consider the educational impact of suspensions on children with chronic or more serious behavioral problems who are repeatedly excluded from school.

The cost of this regulation depends on how the statutory requirement to provide services to children who have been suspended or expelled is interpreted. If the statute is read to require schools to provide services to all children who are suspended for one or more school days, this regulation would result in substantial savings for school districts. If the statute is read to give schools the flexibility not to provide services to children suspended for fewer than 10 school days at a time, regardless of the cumulative effect, as long as there is no pattern of exclusion that warrants treating an accumulation that exceeds 10 school days as a change in placement, this regulation would impose some additional costs.

Based on data collected by the Office for Civil Rights for school year 1992 and data on the number of children who are currently being served under IDEA, it is estimated that approximately 300,000 children with disabilities will be suspended for at least one school day during this school year. Many of these children will be suspended on more than one occasion for one or more days. Because of the differences among the children who are expected to be suspended and the range of their service needs, the costs of and the burden associated with providing individualized services in an alternative setting to every child who is suspended for one or more school days would be substantial. Limiting the requirement to children who have been suspended for more than 10 days in the school year would reduce costs substantially. Based on data from a few selected States, it appears that no more than about 45,000 of these 300,000 children with disabilities will be suspended for more than 10 days in a school year. Of these, an estimated 15,000 are expected to be suspended at least once for more than 10 consecutive days.

Section 300.122(a)(3)—Exception to right to FAPE (Graduation)—Paragraph (a)(3) provides that a student's right to FAPE ends when the student has graduated with a regular high school diploma, but not if the student graduates with some other certificate, such as a certificate of attendance, or a certificate of completion. The final regulations further clarify that graduation constitutes a change in placement, requiring written prior notice. Given the importance of a regular high school diploma for a student's post-school experiences, including work and further education, making it clear that the expectation for children with disabilities is the same as for nondisabled children provides a significant benefit to children with disabilities. The impact of this change, however, is difficult to assess. Many States, including most of those that report a high number of children with disabilities leaving school with a certificate of completion or some other certificate that is not a regular high school diploma, indicate that students with disabilities have the right to continue to work to earn a regular high school diploma after receiving that certificate. Little information is available to evaluate how many students who now can return to school after receiving some other certificate of completion do so, or how many would return to school if States are required to adopt a policy that clearly indicates that students who exited with a certificate have the right to continued services. Several State directors of special education indicated that relatively few students who now can return, do so. The cost of serving even 10,000 of the 25,000 students who exit each year with certificates would be substantial.

Section 300.125—Child find—The final regulations clarify the link between child find under Parts B and C. The final regulations also add language clarifying that the State's child find responsibilities extend to highly mobile children such as the homeless and migrant children and children progressing from grade to grade if they are suspected of having disabilities and in need of special education. None of these changes impose any requirements beyond what the statute has been interpreted to require.

Section 300.132(c)—LEA participation in transition planning conference—The regulations require an LEA representative to participate in planning conferences arranged by the lead agency for children who are receiving services under Part C and may be eligible for preschool services under Part B. This requirement does not result in significant costs for school districts. Only about 100,000 children age out of early intervention services each year and in many cases, LEA representatives have been participating in the transition planning conferences for these children, although they have not been required to do so.

Section 300.136—Personnel standards—The final regulations add new paragraphs (b)(3) and (b)(4) to clarify that a State is not required to establish any particular academic degree requirement for entry-level employment of personnel in a particular profession or discipline and that a State may modify its standard if it has only one entry-level academic degree requirement. This language clarifies the extent of flexibility afforded to States in meeting IDEA's personnel standards requirement and therefore may reduce costs for States and LEAs. The final regulations also add language in a new paragraph (g)(2) that explains that the State option relating to allowing LEAs to use the most qualified personnel available can be invoked even if a State has reached its established date for a specific profession—another clarification regarding the flexibility that is available to States. Language is added in a new paragraph (g)(3) that clarifies that a State that continues to experience shortages must address them in its CSPD.

Section 300.139—Reporting on assessments—The final regulations require SEA reports on wide-scale assessments to include children with disabilities in aggregated results for all children to better ensure accountability for results for all children. This regulation is expected to have a minimal impact on the cost of reporting assessment results. It could increase the number of data elements reported depending on whether States continue to report trend data for a student population that does not include children with disabilities to the extent required by § 300.138. There will be no impact on school districts since this requirement applies to reports that are prepared by the State educational agency.

Section 300.142—Medicaid reimbursement—The final regulations add language to paragraph (b)(1) specifying that a noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. A new paragraph (b)(3) has been added regarding the responsibility of State agencies and LEAs to provide all services described in a child's IEP in a timely manner regardless of which agency pays for the services. These clarifications of statutory requirements relating to interagency coordination between educational and noneducational agencies do not impose any additional costs.

Section 300.142(e)—Use of public insurance—Paragraph (e) describes the circumstances under which a public agency may access a parent's Medicaid or other public insurance to pay for required services. Paragraph (e)(2) provides that a public agency may not require parents to sign up for public insurance in order for their child to receive FAPE. Paragraph (e)(2) further clarifies that a public agency may not require parents to assume an out-of-pocket expense and may not use a child's benefits if that use would decrease available coverage, require the parents to pay for services that would otherwise be covered by public insurance, increase premiums or lead to discontinuation of insurance, or risk loss of eligibility for home and community-based waivers. Under the statute, public agencies are required to provide children with disabilities with a free, appropriate public education. It has been the Department's longstanding interpretation under IDEA and section 504 of the Rehabilitation Act that this means a public agency may not require parents of children with disabilities to use private insurance

proceeds to pay for services their children are entitled to receive if the parents would incur a financial cost as a result. A financial cost would include an out-of-pocket expense, a decrease in coverage, or an increase in premiums. This interpretation is equally applicable to the use of public insurance. Although these changes appear to limit an LEA's access to public insurance to cover the costs of FAPE, all of these changes are based on the statutory requirement to provide FAPE and, therefore, do not impose additional costs on LEAs beyond what the law would require. Moreover, these clarifications would not affect the use of public insurance programs such as Early Periodic Screening, Diagnosis and Testing that do not impose any limits on coverage or require any co-payments.

Section 300.142(f) and (g)—Use of private insurance— Paragraph (f)(1) clarifies that public agencies may only access parents' private insurance to pay for required services if the parents consent to its use. As noted above, it has been the Department's longstanding interpretation that a public agency may not require parents to use private insurance proceeds to pay for services the child is entitled to receive if the parents would incur a financial cost as a result. Because it is reasonable to assume that use of private insurance will result in a financial cost in almost all cases, this provision, which would allow for the use of private insurance with parental consent, would increase options available to LEAs for accessing insurance—that is, in cases in which the parents consent, whether or not a financial cost is incurred.

However, to ensure that use of parents' insurance proceeds is voluntary and that parents do not experience unanticipated financial consequences, the final regulations require that parents provide informed consent. This consent must be obtained each time a public agency attempts to access private insurance. This clarification could have the effect of limiting access to the use of private insurance but is consistent with the Department's longstanding interpretation that such use must be voluntary.

A new paragraph (g) is added that clarifies that Part B funds may be used for services covered by a parent's public or private insurance and to cover the costs of accessing a parent's insurance such as paying deductible or co-pay amounts. This clarification does not impose any additional costs on LEAs.

Section 300.142(h)—Program income— This paragraph clarifies that a public agency that receives proceeds from insurance for services is not required to return those funds to the Department or dedicate those funds to this program and that funds expended by a public agency from reimbursement of Federal funds will not be considered reimbursement for purposes of §§ 300.154 and 300.231 of these regulations. This change increases flexibility for State and local agencies in using the proceeds from insurance.

Section 300.142(i)—Construction—This paragraph makes it clear that the IDEA regulations should not be read to alter the requirements imposed by other laws on a State Medicaid agency or any other agency administering a public insurance program. This clarification does not impose any additional costs.

Section 300.148—Public participation— The final regulations add language to clarify that if a policy or procedure has been through a State-required public participation process that is comparable to and consistent with the Federal requirements, the State would not have to subject the policy or procedure to public comment again. This should result in savings to States and would not increase burden.

Section 300.152—Commingling—Language has been added to clarify that the required assurance regarding commingling may be satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of Part B funds and that separate bank accounts are not required. This guidance merely incorporates the Department's prior interpretation and does not add any burden for States.

Section 300.156(b)—Annual description of Part B set-aside funds—Paragraph (b) provides that if a State's plans for the use of its State level or State agency funds do not differ from those for the prior year the State may submit a letter to that effect instead of submitting a description of how the funds would be used. The effect of this regulation is inconsequential because it implements the Department's long-standing interpretation that a letter is sufficient in this case.

Section 300.197—Compliance—Paragraph (c) requires SEAs to consider adverse complaint decisions under the State complaint procedures in meeting their responsibilities under § 300.197 to determine whether any LEA or State agency is failing to comply. Consideration of these decisions is expected to impose minimal burden on States that are appropriately meeting their responsibilities under this section.

Section 300.231—Maintenance of effort (MOE)—The final regulations make it clear that an LEA meets the maintenance of effort requirement by spending at least the same total or average per capita amount of State and local school funds for the education of children with disabilities as in the prior year. This change reduces the burden on LEAs of maintaining spending on special education in those cases in which the State is willing to assume increased responsibility for funding.

Section 300.232—Exception to maintenance of effort— Paragraph (a) makes it clear that an LEA may only reduce expenditures associated with departing personnel if those personnel are replaced by qualified, lower-salaried personnel. Allowing LEAs to reduce their expenditures by not replacing departing personnel would violate congressional intent, as expressed in the House and Senate Committee reports, and diminish special education services in those districts. The final regulations also clarify that in those cases in which an LEA is invoking the exception to the MOE requirement and replacing personnel who have departed with lower salaried personnel, that this must be done consistent with school board policies, applicable collective bargaining agreements, and State law. This clarification of the relationship does not impose any additional burden beyond what local policies and law would otherwise impose.

Section 300.234—Schoolwide programs— The final regulations add language clarifying that children with disabilities in schoolwide projects must receive services in accordance with an IEP and must be afforded all of the rights and services guaranteed to such children under the IDEA. This clarification does not impose any additional burden on LEAs.

Section 300.280—Notice for public participation—The final regulations clarify what constitutes ''adequate'' notice in paragraphs (b) and (c) and do not impose any additional burden.

Section 300.281—Public participation— Paragraph (a) further clarifies the ''reasonableness'' standard implied in the statutory requirement, while paragraph (b) reflects a statutory requirement in the General Education Provisions Act. These changes do not impose any additional costs.

Section 300.300—Child find—The final regulations clarify that the State must ensure child find is fully implemented throughout the State. This clarification does not impose any additional costs. The final regulations also add language to clarify that the services and placement needed by each child with a disability must be based on the child's unique needs and not on the child's disability. This clarification does not impose any costs on school districts.

Section 300.301(c)—Implementation of IEP—The final regulations add language in a new paragraph (d) making it clear that there can be no delay in implementing a child's IEP in any case in which the payment source is being reconciled. This clarification does not impose any additional costs.

Section 300.308—Assistive technology— The final regulations add a provision that clarifies that a public agency must permit a child to have access to a school-purchased assistive technology device at home or in another setting if necessary to ensure FAPE. This change does not impose any additional costs on school districts because it implements a longstanding policy of the Department.

Section 300.309—Extended school year services—The final regulations specify that States may not limit eligibility for extended school year services based on disability and may not limit types and amounts of services; and clarify that States may establish standards such as likelihood of regression for determining eligibility for ESY and that every child is not entitled to receive ESY. These changes in the regulations impose no burden beyond what is required by the statute because they reflect the Department's longstanding policy interpretation of what is required to provide FAPE.

Section 300.312—Charter schools—The final regulations add a new provision that makes clear that children with disabilities who attend charter schools and their parents retain all rights under these regulations. The regulations further explain which entity in the State is responsible for ensuring that the requirements of the regulations are met. These clarifications do not impose any additional burdens on States, schools

districts, or charter schools beyond what the statute would otherwise require.

Section 300.313—Developmental delay (DD)—The final regulations add a new provision describing the use of the developmental delay designation. This section sets out the requirements for use of the DD designation. It clarifies that States and LEAs may use the DD designation for any child who has an identifiable disability, provided all the child's identified needs are addressed, and clarifies that States may adopt, if they wish, a common definition of DD for Parts B and C. These changes clarify the flexibility the statute affords States in using the DD designation and, therefore, impose no costs.

Section 300.341—State standards—The final regulations clarify that a child placed by a public agency must receive an education that meets SEA and LEA standards. The cost impact of this change depends largely on the extent to which non-special education personnel in schools in which a public agency is placing children do not meet SEA and LEA standards. Approximately four percent of the six million children expected to be served under IDEA in school year 1998–1999 are expected to be placed in private schools. Because these schools are typically schools for exceptional children, virtually all of the professionals employed by these schools are special education teachers and related services personnel, who must meet SEA and LEA under the prior law, as implemented by the regulations. Paragraph (b) clarifies that each public educational agency is responsible for developing and implementing an IEP for each child it serves or places or refers. This clarification imposes no additional cost on public agencies since it represents a longstanding interpretation of the statute.

Section 300.342(b)—Implementation of IEPs—The final regulations add language requiring that each child's IEP be accessible to the child's teachers and service providers and that each teacher and provider be informed of specific responsibilities related to implementing the IEP and of needed accommodations, modifications, and supports for the child. This regulation is not expected to impose any undue burden on schools. The regulations clarify what is minimally required to promote effective implementation of the IEP requirements and allow schools flexibility in determining how to comply.

Section 300.342(c)—Use of IFSP—Paragraph (c) requires school districts to obtain written informed consent from parents before using an IFSP instead of an IEP, which is based on an explanation of the differences between the two documents. The regulation would impose a cost burden on districts in those States that elect to allow parents to opt for the use of an IFSP instead of an IEP. However, once a form is developed that explains the differences between an IFSP and an IEP, the costs of providing this form to parents and obtaining written consent are most likely minimal, and are justified by the benefits of ensuring that parents understand the role of the IEP in providing access to the general education curriculum.

Section 300.342(d)—Effective date for IEPs—Paragraph (d) provides that all IEPs developed, reviewed, or revised on or after July 1, 1998 must meet the requirements of IDEA, as implemented. This language clarifies the statute and eliminates the burden that would be associated with redoing all IEPs to conform with the new requirements before July 1. The one-time cost of reconvening millions of IEP teams before July 1 would have been substantial.

Section 300.344(c) and (d)—Participants in IEP meetings—The final regulations add a new paragraph (c) clarifying that determinations about the knowledge and expertise of other individuals invited to be on the IEP team are made by the parent or the public agency that invited them. This clarification reduces potential burden by minimizing opportunities for disputes with respect to whether the parent or public agency may invite another individual to participate on the team. A new paragraph (d) has been added to clarify that a public agency may designate another IEP team member as the public agency representative of the IEP team. Permitting an individual to perform dual functions will reduce the cost of conducting IEP meetings for school districts.

Section 300.344(b)—Including the child in the IEP meeting—Paragraph (b) requires the school to invite students to participate in IEP meetings if the meeting will include consideration of transition services needs or transition services. The effect of this provision is to give 14- and 15-year-olds, and in some cases, younger students the opportunity to participate. The existing regulations have required schools to invite students to meetings in which transition services were to be discussed. These would include all students aged 16 years and older, and in some cases, younger students. The law has also given other children, if appropriate, the opportunity to participate in the IEP meeting. Therefore, in some cases, 14- and 15-year-olds may be already participating. The costs of notifying students about a meeting or trying to ensure that the students' interests and preferences are accommodated are more than justified by the benefits of including students in a discussion of their own transition needs, including their planned course of study in secondary school.

Section 300.345(b)—Participants in IEP meeting—The final regulations clarify that the public agency must inform parents of their right and that of the public agency to invite someone to the IEP meeting who has knowledge or special expertise. This additional requirement will impose minimal burden on schools because this information could be included in other notices the schools are already required to provide to parents.

Section 300.345(f)—Copy of the IEP—The final regulations require the public agency to provide parents a copy of the IEP. The cost of this change will depend on the extent to which parents are currently receiving copies. Under current regulations, schools are required to provide a copy to parents who request one. It is reasonable to assume that schools routinely provide a copy to parents who attend the IEP meeting. The cost of providing copies to those parents who would not otherwise receive copies is not likely to be substantial.

Section 300.346(a)(1)—Performance on assessments—The final regulations require the IEP team to consider the child's performance on general State and district-wide assessments, in considering the child's initial or most recent evaluation. This clarification is not likely to impose an additional costs because one can reasonably assume that most IEP teams would consider this information as a matter of course in determining the child's present levels of performance.

Section 300.347—Transition services—The final regulations delete the requirement from the existing regulations that requires a justification for not providing particular transition services. This change eliminates unnecessary paperwork.

Section 300.349—Private school placements—The final regulations incorporate the previous regulatory requirement regarding inviting a representative of the private school to a child's IEP meeting. This requirement does not impose a significant burden, while helping to ensure appropriate implementation of IEPs for children placed in private schools.

Section 300.350—Accountability—The final regulations include a statement regarding the responsibilities of public agencies and teachers to make good faith efforts to ensure that a child achieves the growth projected in the IEP, even though the IEP should not be regarded as a performance contract. This clarification does not impose any additional costs on agencies and is intended to promote proper implementation of the IEP requirements.

Section 300.401—Children placed in private schools—The final regulations specify that a child placed in a private school by a public agency as a means of providing FAPE must receive an education that meets the standards that apply to the SEA and LEA. For example, all personnel who provide educational services must meet the personnel standards that apply to SEA and LEA personnel providing similar services. This change could increase the costs of these placements to the extent this change required private schools to increase their salaries in order to recruit regular education personnel who meet SEA and LEA standards. However, the costs imposed by this change are expected to be minimal. Less than two percent of the six million children served under Part B are placed by public agencies in private schools. These schools are typically special schools in which most of the education personnel are providing special education and related services. These personnel have been required to meet SEA and LEA standards under prior law.

Section 300.403—Reimbursement for private placements—The final regulations include language in paragraph (c) that makes it clear that a private placement must be appropriate to be eligible for reimbursement, but does not need to meet State standards. This clarification, which is based on Supreme Court decisions regarding the basic standard for reimbursement, does not impose any additional costs on State or local agencies.

Section 300.451—Consultation on child find—The final regulations add a new

paragraph (b) to require public agencies to consult with representatives of parentally-placed private school students on how to conduct child find. Paragraph (a) clarifies that the child find activities for parentally-placed children must be comparable to child find activities for children with disabilities in public schools. The consultation requirement may impose an additional burden but is expected to better enable school districts to carry out this mandatory function. The requirement for comparability does not impose any additional burden, but clarifies the intent of the statute, which does not distinguish between child find activities for children enrolled in public schools and those conducted for children in private schools.

Section 300.452—Services plan—A paragraph has been added that clarifies that a services plan must be implemented for each parentally-placed private child who is receiving services under Part B. This clarification does not impose any additional burden.

Section 300.453—Expenditures on child find in private schools—A new paragraph (b) requires States to conduct a child count of private school children with disabilities and consult with representatives of private school children in deciding how to conduct that count. This count is necessary to enable States to determine how much they are required to spend on providing special education and related services to this population. A new paragraph (c) clarifies that the costs of child find for private school children may not be considered in determining whether the LEA met the requirement for proportionate expenditures on parentally-placed children. This provision does not impose any additional cost on school districts because it has been the Department's longstanding interpretation that child find includes the identification of children in private schools and that the cost of child find for private school children may not be considered in determining whether the LEA has met the requirements to serve children in private schools. Paragraph (d), which clarifies that States and LEAs are not prohibited from spending additional funds on providing special education and related services to parentally-placed children beyond what would be required, does not impose any additional costs. Paragraph (b) requires the LEA to conduct a child count of children with disabilities in private schools on the same day in which the overall count is conducted, to consult with private school representatives on conducting that annual count, and to use that count to determine required expenditures. Although the requirement to conduct the child count on a date certain limits LEA flexibility and the required consultation imposes a burden, both requirements help ensure that the child count accurately reflects the size of the private school population.

Section 300.454—Services to children in private schools—The final regulations clarify that no private school child has an individual right to receive any of the services the child would receive if enrolled in a public school. This section further provides that each LEA shall consult with representatives of private school children in determining which children will receive services, what services will be provided, how and where services would be provided, and how they would be evaluated. The regulations make it clear that the representatives must have a genuine opportunity to express their views and that the consultation must be before the LEA makes its final decisions. The regulations also require the LEA to conduct meetings to develop a services plan for each private school child and to ensure the participation of a representative of the child's private school at the meeting. These regulations help ensure effective implementation of the provisions relating to serving parentally-placed children and impose minimal burden on school districts.

Section 300.455—Services to children in private schools—The final regulations clarify that services provided private school children must be provided by personnel meeting SEA standards; that children in private schools may receive different amounts of services than children in public schools; and that there is no individual entitlement to services; each child to be provided services must have a services plan. These changes do not impose any additional costs on school districts; indeed they reflect the Department's longstanding interpretation of the provisions relating to serving parentally-placed children.

Section 300.456—Treatment of transportation—Consistent with the Department's longstanding interpretation, the final regulations state that transportation must be provided to private school children if necessary to enable them to benefit from the services that are offered. The regulations also clarify that the cost of providing the transportation may be included in calculating whether the LEA has met its financial obligations. The final regulations further clarify that the LEA is not required to provide transportation between the child's home and the private school. These clarifications could reduce the potential cost for school districts of complying with the requirement for proportionate expenditures.

Section 300.457—Complaints of parentally-placed children—The final regulations make it clear that due process procedures do not apply to parentally-placed children. This clarification will reduce costs to the extent that LEAs have allowed parents to use the due process procedures to bring complaints relating to parentally-placed children. This section also clarifies that due process procedures do apply to child find. This change will increase costs to the extent that parents were unaware of their ability to bring complaints about child find and now do so.

Section 300.500(b)(1)(iii)—Parental consent—The final regulations add language to clarify that a revocation of consent does not have retroactive effect if the action consented to has already occurred. This change protects LEAs from complaints regarding services provided in reliance on parental consent that was subsequently revoked. It does not impose any costs on LEAs.

Section 300.501(b)—Parental access to meetings—Paragraph (b) of § 300.501 defines when and how to provide notice to parents of meetings in which they are entitled to participate. It further limits what is meant by the term ''meeting.'' These regulations impose the minimal requirements necessary to implement the statute. The language in paragraph (b)(1) helps to clarify what is required to provide parents with a meaningful opportunity to attend meetings while the language in paragraph (b)(2) is designed to reduce unnecessary burden by clarifying what constitutes a ''meeting.''

Section 300.501(c)—Placement meetings—Paragraph (c) of § 300.501 specifies that the procedures to be used to meet the new statutory requirement of parental involvement in placement decisions. It provides that the procedures used for parental involvement in IEP meetings also be used for placement meetings. These include specific requirements relating to notice, methods for involving parents in the meeting, and recordkeeping of attempts to ensure their participation. Because in many cases placement decisions will be made as part of IEP meetings, as is already the case in most jurisdictions, the impact of this regulation will be minimal. In those cases in which placement meetings are conducted separately from the IEP meetings, the benefits of making substantial efforts to secure the involvement of parents and provide for their meaningful participation in any meeting to discuss their child's placement more than justify the costs.

Section 300.502—Independent educational evaluation—Paragraph (a) provides that on request for an independent education evaluation (IEE) parents are provided with information about where an IEE may be obtained and the agency criteria applicable to IEEs, criteria that must be consistent with the definition of an IEE. Paragraph (b) makes it clear that if a parent requests an IEE, the agency must either initiate a due process hearing to show that its evaluation is appropriate or provide for an IEE at public expense. The final regulations also provide that a public agency may request an explanation from the parents regarding their concerns when a parent requests an IEE at public expense, but such an explanation may not be required and the public agency may not delay providing the IEE, or initiating a due process hearing. These provisions requiring the agency to provide information to the parents and take action do not result in significant additional costs because if the agency did not take action, parents would be free to request due process to compel action. It is important for parents to be informed about the relevant agency criteria for an IEE since the parent has a right to an IEE at public expense and the IEE must meet agency criteria to be considered by the public agency in determining eligibility.

Paragraph (e) provides that a public agency may not impose conditions or timelines related to obtaining an independent evaluation. This requirement, which arguably limits the flexibility of school districts, is critical to ensuring that school districts do not find ways to circumvent the right provided by the IDEA to parents to obtain an independent evaluation.

Sections 300.504(b)(14)—Notice to parents regarding complaint procedures—The final regulations require that the required

procedural safeguards notice to parents include information about how to file a complaint under State complaint procedures. Because districts are already required to provide this notice to parents, the additional cost of adding this information will be one-time and minimal. The burden on small districts could be minimized if each SEA were to provide its LEAs with appropriate language describing the State procedures for inclusion in the parental notices. Making parents aware of a low cost and less adversarial mechanism that they can use to resolve disputes with school districts should result in cost savings and more cooperative relationships between parents and districts.

Section 300.505(a)(3)—Parental consent for reevaluation—Paragraph (a)(3) clarifies that the new statutory right of parents to consent to a reevaluation of their child does not require parental consent prior to the review of existing data or administering a test or other evaluation procedure that is given to all children (unless all parents must consent). As a matter of good practice, school personnel should be engaged in reviewing information about the child's performance on an on-going basis. Requiring parental consent for this activity would have imposed a significant burden on school districts with little discernable benefit to the children served under these regulations.

Paragraph (c)(2) uses the procedures that were in the prior regulations dealing with inviting parents to IEP meetings as a basis for defining what it means to undertake ''reasonable measures'' in obtaining parental consent. The intent of the change is to meaningfully operationalize the statutory right of parents to consent to a reevaluation of their child. Given the importance of parental involvement in all parts of the process, any burden imposed by the proposed recordkeeping requirements is justified by the benefits of securing parental consent to the reevaluation.

Section 300.506—Impartial mediation—Paragraph (b)(2) specifies that if the mediator is not selected from the list of mediators on a random basis, such as rotation, both parties must be involved in selecting the mediator and agree with the selection of the mediator. Paragraph (c) interprets the statutory requirement that mediation be conducted by an impartial mediator to mean that a mediator may not be an employee of any LEA or a State agency that is providing direct services to the child and must not have a personal or professional conflict of interest. However, a person will not be considered an employee merely for being paid to serve as a mediator. Since participation in mediation is voluntary, it must be viewed as an attractive alternative to both public agencies and parents. Both parties must trust the process and the first test of that is the selection of the mediator. It is unlikely that parents would regard an employee of the other party to the dispute to be impartial or a person who has a personal or professional conflict of interest. Providing for impartiality should help promote the use of mediation and improve its overall effectiveness in resolving disagreements. The impact of disallowing these individuals from serving as mediators is not likely to have a significant impact on States, given current practices. Many States contract with private organizations to conduct their mediations. Others use employees of the State educational agency, which, in most cases, is not the agency providing direct services. Given the significant benefits to children, families, and school districts of expeditiously resolving disagreements without resort to litigation, the benefits of this change easily justify any cost or inconvenience to States.

Section 300.506(d)(2)—Failure to participate in meeting—Paragraph (d)(2) would specify that a parent's failure to participate in a meeting at which a disinterested person explains the benefits of and encourages the use of mediation could not be used as a reason to deny or delay the parent's right to a due process hearing. This change is not likely to limit the benefits to school districts of mediation as it is unlikely that parents who are unwilling to participate in such a meeting with a disinterested person would be willing to engage in the voluntary mediation provided for in the statute.

Section 300.507(c)(4)—Failure to provide notice—Paragraph (c)(4) makes it clear that failure by parents to provide the notice required by the statute cannot be used by a school district to delay or deny the parents' right to due process. This regulation would eliminate the possibility that public agencies will delay a due process hearing pending receipt of a notice that they deem to be acceptable. This regulation does not impose any cost on school districts and would help ensure that parents are afforded appropriate and timely access to due process.

Section 300.510(b)(2)(vi)—Access to findings and decisions—The final regulations give parents the option of selecting an electronic or written copy of the findings and decisions in the administrative appeal of a due process decision. This is consistent with the statutory right of the parents to a written or electronic copy of the decision and findings in the due process hearing. It is important to ensure that parents are provided the decisions and findings in a way that is most useful to them. The cost of implementing this requirement is expected to be negligible.

Section 300.513(b)—Attorneys' fees—Paragraph (b) provides that funds provided under Part B of IDEA could not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of IDEA. This regulation does not increase the burden on school districts or otherwise substantially affect the ability of school districts to pay attorneys' fees that are awarded under IDEA or to pay for their own attorneys. It merely establishes that attorneys' fees must be paid by a source of funding other than Part B based on the Department's position that limited Federal resources not be used for these costs. This regulation is not expected to have a cost impact on small (or large) districts because all districts have non-Federal sources of funding that are significantly greater than the funding provided under IDEA. Currently, funds provided to States under the IDEA represent about ten percent of special education expenditures.

Section 300.514(c)—Hearing officer decisions—The final regulations clarify that if a State hearing officer in a due process hearing or a review official in a State level review agrees with the parents that a change in placement is appropriate, the child's placement must be treated in accordance with that agreement. This regulation is not expected to have a significant cost impact because it is based on the Supreme Court's language in *Burlington School Committee v. Department of Education*, and the decisions of appellate courts in such circuits as the 3rd and 9th. If paragraph (c) were not included in the regulation, in many cases, parents would be expected to be able to successfully argue, as they have in the past, that the hearing officer's decision to change the placement of a child be implemented. The cost impact of this regulation in other circuits and cases in which the placement change would not have occurred is indeterminate because in some cases implementation of the hearing officer's decision will result in moving children to more costly placements and, in other cases, to less costly placements. In either case, the benefits to the child of securing an appropriate placement justify any potential increase in costs or other burdens to the school district.

Section 300.519—Change in placement—The final regulations define a change in placement in the context of disciplinary removals as a removal for more than 10 consecutive school days or a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and, because of such factors as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. This change does not impose any additional costs. It is consistent with longstanding interpretations of the law.

Section 300.520(a)—Authority of School Personnel—Paragraph (a) clarifies that school personnel may remove a child with a disability for school code violations for up to 10 days at a time more than once during a school year, as long as such removals do not constitute a change in placement. This clarification does not result in any additional costs or savings for school districts because it is consistent with the Department's longstanding interpretation of the law and the statute, as amended.

Section 300.520(b) and (c)—Behavioral interventions—Paragraph (b) of this section makes it clear that if a child is removed from his or her current placement for 10 schools days or fewer in a given year, the school is not required to convene the IEP team to develop an assessment plan for the child. Paragraph (b) further provides that a school would be required to do so if the child were suspended for more than 10 days in a given school year. Paragraph (b) specifies that the IEP team meeting to consider behavioral interventions occur within 10 business days of the behavior that leads to discipline rather than 10 calendar days, and clarifies that, if the child does not have a behavior intervention plan, the purpose of the meeting is to develop an assessment plan. After completing the assessments specified in the plan, the team must meet to develop appropriate behavioral interventions to address that behavior. Because the statute

could be read to require that the IEP team be convened for this purpose the first time a child is suspended in a given year, the requirement in the final regulations would significantly reduce the burden on school districts.

The business day alternative would further minimize the burden on school districts and would not have a significant impact on children with disabilities, in light of other protections for children.

In determining whether to regulate on this issue, the Secretary considered the potential benefits of providing behavioral interventions to children who need them and the impact on school districts of convening the IEP team to develop behavioral interventions if children are suspended.

Based on consideration of the costs and benefits to children and schools, the IEP team should not be required to meet and develop or review behavioral interventions for a child unless the child was engaged in repeated or significant misconduct. The costs and burden of convening the team the first time a child is suspended outweigh any potential benefits to the child if the child is receiving a short-term suspension for an infraction. At the same time, the benefits of requiring a plan for a child who has already been suspended for more than 10 days justify the costs given the benefits of early intervention to both students and schools.

The final regulations further provide that in the case of a subsequent suspension of less than 10 days that does not constitute a change in placement for a child who has a behavioral intervention plan, a meeting would not be required to review the behavioral intervention plan unless one or more team members believe that the child's IEP or its implementation need modification. Since the statute could be read to require that the IEP team meet to review the child's plan each time the child is suspended, this language further reduces the cost to school districts.

Section 300.521—Due process hearing for removal—The final regulations specify that a hearing officer is to make the determination authorized by section 615(k)(2) of IDEA (regarding whether a child's current educational placement is substantially likely to result in injury to self or others) in a due process hearing.

A hearing that meets the requirement for a due process hearing is the most appropriate forum for expeditiously and fairly determining whether the district has demonstrated by substantial evidence (defined by statute as ''beyond a preponderance of the evidence'') that maintaining the current placement is substantially likely to result in injury and to consider the appropriateness of the child's current placement and the efforts of the district to minimize the risk of harm.

The cost impact of this regulation on school districts will be limited because in cases in which school districts and parents agree about the proposed removal of a dangerous child, no hearing is necessary. In those few cases in which there is disagreement, the benefits of conducting a due process hearing justify the costs.

Section 300.523—Manifestation determination—Paragraph (a) makes it clear that a school is required to conduct a manifestation review only when the removal constitutes a change in placement.

As was the case in considering section 300.520(c), the Department considered the potential benefits to the child and impact on districts of convening the IEP team.

The conclusion was that the IEP team should not be required to meet and determine whether the child's behavior was a manifestation of the disability unless the district is proposing a suspension of more than 10 days at a time or a suspension that constitutes a pattern of exclusion. The cost of convening the team to conduct a manifestation review outweigh the potential benefits to a child being suspended for a few days, particularly because the statute clearly allows the school a period of ten days after the misconduct occurs to convene the team for purposes of conducting the manifestation determination. In the case of short term suspensions, the team would often be meeting after the child had already returned to school.

The primary purpose of this review is to ensure that a child will not be punished for behavior that is related to his or her disability. The team is required to consider, for example, whether the child's disability has impaired his or her ability to understand the impact and consequences of his or her behavior and whether the child's disability has impaired the child's ability to control the behavior subject to discipline. Conducting this review is of little use after the child has returned to school. A review would have limited applicability to future actions. Even in those cases in which the child engaged in identical misconduct, one's assessment of the relationship between the child's behavior and disability could change. Moreover, the statute clearly contemplates an individualized assessment of the conduct at issue. Once a child has been suspended for more than 10 days in a given year, the team will already be considering the need for changes in the child's behavior intervention plan, if the child has one, or will be meeting to develop one, if the child does not. Requiring an additional meeting to examine the relationship between the child's behavior and disability is unlikely to produce additional information that would inform the development of appropriate behavioral strategies. Requiring the behavioral assessment to be conducted once a child has been suspended for 10 days in a school day will help ensure that the district responds appropriately to the child's behavior.

This regulation would significantly reduce costs for school districts if the statute is read to require a manifestation review every time a child is suspended.

Section 300.523(f)—Manifestation determination—The final regulations clarify that if the team identifies deficiencies in the child's IEP, its implementation, or placement, the agency must take immediate steps to remedy the deficiencies. This clarification does not impose any costs beyond what the statute would require.

Section 300.526—Placement in alternative setting—Language is added to paragraph (c) to make clear that a school district may request a hearing officer to extend a 45-day placement on the grounds that returning a child to his or her regular placement would be dangerous. This change, which increases the options available to school districts for dealing with a child engaged in dangerous behavior, does not impose any costs on school districts.

Section 300.527—Basis of knowledge—The final regulations make a number of clarifying changes: Language is added to paragraph (b)(2) to clarify that the behavior or performance must be in relation to one of the disability categories. Paragraph (b)(4) has been revised to require that expressions of concern about the child be made to personnel who have responsibility for child find or special education referrals. A new paragraph has been added to clarify that if an agency acts and determines that the child is not eligible, and provides proper notice to the parents, and there are no additional bases of knowledge that were not considered, the agency would not be held to have a basis of knowledge. These changes reduce costs for LEAs by further specifying what is required for determining that an LEA has a basis for knowledge that a child is a child with a disability. By specifying, for example, that expressions of concern be made to personnel responsible for child find or special education referral eliminates the possible interpretation that a school must provide services and other protections to children who were the subject of conversation between any two people in the school. Without these clarifications, commenters have suggested that potentially all children could avail themselves of IDEA protections.

Roughly three million nondisabled children are expected to be the subject of disciplinary actions during this school year. Parents are likely to raise this issue in the case of long-term suspensions and expulsions in which identification as a child with a disability ensures the non-cessation of educational services, among other protections. An estimated 300,000 nondisabled children receive long-term suspensions or expulsions in a given school year. Based on the public comments on this section of the regulations, it would appear that a basis for knowledge claim could be sustained in a significant percentage of these cases. Assuming for purposes of this analysis that it could be sustained in about 10 percent of cases, the costs of providing services, for example, to those children during the period in which they are excluded from school would be considerable because only a minority of States currently provide services to children without disabilities who have been disciplined. Therefore, the savings resulting from these clarifications are considerable.

Section 300.528—Expedited due process hearings—The final regulations specify that States establish a timeline for expedited due process hearings that meets certain standards. These include: ensuring written decisions are mailed to the parties in less than 45 days, with no extensions that result in a decision more than 45 days from the request for the hearing, and providing for the same timeline whether the hearing is requested by a public agency or parent. Paragraph (b) further clarifies that the State

may alter other State-imposed procedural rules from those it uses for other hearings. These clarifications provide States with maximum flexibility in conducting these hearings while ensuring equitable treatment for parents and public agencies. Requiring such hearings within 45 days imposes minimal burden on States since 45 days provides ample time—more time than proposed by many of the commenters—and the requests for such hearings are not expected to be great. Requests for expedited hearings will only be made in those cases involving serious misconduct in which there is a disagreement between the parents and public agency regarding action proposed by the public agency.

Section 300.529—Transmittal of education records—The final regulations clarify that a child's special education and disciplinary records may only be transmitted to the extent that such transmission is permitted under the Family Educational Rights and Privacy Act (FERPA). This clarification, which restricts the extent to which such records may be transmitted to certain agencies, consistent with the requirements of FERPA, does not impose any burden on school districts.

Section 300.532—Evaluation procedures—The final regulations require that assessments of children with limited English proficiency must be selected and administered to ensure that they measure the extent to which a child has a disability and needs special education, and do not instead measure the child's English language skills. This change, which clarifies requirements under both IDEA and Title VI, does not impose any additional burden. The final regulations also add language requiring that if an assessment is not conducted under standard conditions, information about the extent to which the assessment varied from standard conditions, such as the qualifications of the person administering the test or the method of test administration, must be included in the evaluation report. This change will impose a burden on school districts only to the extent that the evaluation team does not currently include information in its report on the extent to which an assessment varied from standard conditions. Information about the qualifications of the person administering the test and the method of test administration is needed so that the team of qualified professionals can evaluate the effects of variances in such areas on the validity and reliability of the reported information. The final regulations clarify that in evaluating a child all needs of the child must be identified, including any commonly linked to a disability other than the child's. This change does not impose any additional burden on districts, but clarifies what is intended by the term ''comprehensive'.

Section 300.533(b)—Review of existing data—The final regulations make it clear that the group that is responsible for reviewing existing data on the child as part of an initial evaluation or a reevaluation need not meet to conduct this review. This clarification reduces costs for school districts by eliminating unnecessary meetings of this group.

Section 300.534(b)—Eligibility determination—Paragraph (b) clarifies that children are not eligible if they need specialized instruction because of limited English proficiency or lack of instruction in reading or math, but do not need specialized instruction because of a disability. This clarification does not impose any costs on school districts, but reflects the statutory intent.

Section 300.534(c)—Termination of eligibility—Paragraph (c) clarifies that an evaluation is not required before the termination of a student's eligibility under Part B due to graduation with a regular high school diploma or aging out under State law. This clarification reduces the costs for school districts by eliminating the need to conduct evaluations for the 146,000 students who are expected to exit high school in school year 1998–1999 by graduating or aging out.

Section 300.535(a)(1)—Eligibility determination procedures—The final regulations add parents to the variety of sources from which the public agency will draw in interpreting evaluation data for the purpose of determining if the child is a child with a disability. This change imposes minimal burden while providing for meaningful parental involvement, consistent with the requirements for including parents in the team that determines eligibility.

Section 300.552(e)—Placement in regular classroom—The final regulations provide that a child may not be denied placement in an age-appropriate regular classroom solely because the child's education requires modification to the general curriculum. This change clarifies the requirement in the law that a child may only be removed from the regular educational environment if education in the regular class cannot be achieved satisfactorily with the use of supplementary aids and services. Although this clarification may result in an increase in the number of children served in regular classes, it does not impose costs on school districts beyond what the statute itself would require because of the longstanding requirement to serve children in the least restrictive environment.

Section 300.562—Access to records—The final regulations make clear that agencies must comply with requests for access to records by parents prior to any meetings, but no more than 45 days after request, consistent with FERPA. This provision minimizes burden on LEAs by not imposing a shorter deadline than provided by FERPA, except as necessary to provide access before an IEP meeting or hearing. This provision helps ensure that parents have the ability to adequately prepare for and participate in IEP meetings and due process hearings, which are crucial to ensuring each child's right to a free appropriate public education.

Section 300.571—Consent for disclosure of information—The final regulations provide for an exception to the requirement for parental consent for disclosure of education records, consistent with the language in § 300.529. This does not impose any costs on school districts and resolves an apparent contradiction in the regulations with respect to disclosure of education records to law enforcement and juvenile justice agencies.

Section 300.574—Children's rights relating to records—The final regulations clarify that the parents' rights under FERPA transfer to the student at age 18. The regulations further provide that if the rights of parents under Part B of IDEA are transferred to the student at the age of majority, then the rights of parents regarding education records also transfer. This clarification does not impose any additional costs on school districts.

Section 300.581–300.587—Procedures for enforcement—The final regulations clarify the types of notice and hearing that the Department would provide before taking an enforcement action under Part B of IDEA. Providing clarity about the applicable procedures for the various types of enforcement actions will benefit potential subjects of enforcement actions and the Department by ensuring that time and resources are not spent on unnecessary disputes about procedures or needless process.

Section 300.589—Waiver procedures—The final regulations describe the procedures to be used by the Secretary in considering a request from an SEA of a waiver of the supplement, not supplant and maintenance of effort requirements in the IDEA Amendments of 1997. This regulation does not impose any cost on local school districts. The procedures will only affect a State requesting a waiver under Part B.

Section 300.624—Capacity-building subgrants—The final regulations make it clear that States can establish priorities in awarding these subgrants. The language provides permissive authority to be used at the discretion of each State, clarifying the intent of the statutory change and imposing no burden on State agencies. Allowing States to use these funds to foster State-specific improvements should lead to improving educational results for children with disabilities.

Section 300.652—Advisory panel functions—The final regulations add language stating that the panel's responsibilities include advising on the education of students with disabilities who have been incarcerated in adult prisons. This additional burden will not impose significant costs.

Section 300.653—Advisory panel procedures—The final regulations include language in paragraph (d) to require panel meetings to be announced long enough in advance to afford people a reasonable opportunity to attend and require that agenda items be announced in advance and that meetings be open. These changes impose minimal burden while facilitating meaningful participation in the meetings.

Sections 300.660(a) and 303.510(a)—Information about State complaint procedures—The final regulations require States to widely disseminate their complaint procedures. While this proposed requirement would increase costs for those State educational agencies that have not established procedures for widely disseminating this information, the Secretary could have prescribed specific mechanisms for this dissemination but chooses not to, in order to give SEAs flexibility in determining how to accomplish this. The requirement would not have any direct impact on small districts and would benefit parents who believe that a public agency is violating a

requirement of these regulations, by providing them the information they would need to get an official resolution of their issue without having to resort to a more formal, and generally more costly, dispute resolution mechanism.

Section 300.660(b) and 303.510(b)—Remedies—The final regulations require States in resolving complaints to address how to remedy the failure to provide appropriate services, including awarding of compensatory relief and corrective action. This clarification does not impose any additional costs beyond those that would be otherwise required by the statute.

Section 300.661(c) and 303.512(c)—Requirements for complaint procedures—The final regulations add language that clarifies how the State complaint process interacts with the due process hearing process. The language clarifies that a State may set aside any part of a complaint being addressed in a due process hearing; that the due process hearing decision is binding; and that failure to implement a due process decision must be addressed by the SEA. This clarification is expected to reduce costs by reducing unnecessary disputes about the relationship between the two processes.

Sections 300.661 and 303.512—Secretarial review—The final regulations delete the provision providing for Secretarial review of complaints filed under State complaint procedures. The effect of this change on small (and large) districts would be inconsequential because of the small number of requests for these reviews. This was done in recognition of the report of the Department's Inspector General of August 1997, that noted that this procedure provides very limited benefits to children with disabilities or to IDEA programs and involves a considerable expenditure of the resources of the Office of Special Education Programs and other offices of the Department. The Inspector General's report concluded that greater benefit to the programs and individuals covered by IDEA would be achieved if the Department eliminated the Secretarial review process and focused on improving State procedures for resolving complaints and implementing IDEA programs. This change, and the changes in §§ 300.660(b), 300.503(b)(8), 303.510(b), and 303.403(b)(4) that require greater public notice about the State complaint procedures, would implement those recommendations.

Sections 300.662 and 303.511—State reviews—This change relieves States of the requirement to review complaints about violations that occurred more than three years before the complaint. This limitation on the age of the complaints is expected to reduce the cost to SEAs of investigating and reviewing complaints. There is no reason to believe this change would adversely affect small districts. There is also no reason to expect that this proposal would have a significant negative impact on individuals or entities submitting complaints under these procedures as it is unlikely that complaints alleging a violation that occurred more than three years in the past and that do not allege a continuing violation or request compensatory services would result in an outcome that puts the protected individuals under these regulations in a better position than they would have been in if no complaint had been filed. On the other hand, allowing States to focus their complaint resolution procedures on issues that are relevant to the current operation of the State's special education program may serve to improve services for these children.

Section 300.712—Allocations to LEAs—The final regulations clarify how to calculate the base payments to LEAs under the permanent formula in a case in which LEAs have been created, combined, or otherwise reconfigured. Although recalculation itself imposes some burden on the SEA, the regulations provide the SEA with considerable flexibility in doing that recalculation. For example, the SEA determines which LEAs have been affected by the creation, combination, or reconfiguration and what child count data to use in allocating the funds among the affected LEAs.

Language has also been added to the regulations that in implementing the permanent formula States must apply, on a uniform basis, the best data available to them. This clarification does not impose any additional burden on States in allocating funds.

Section 300.753—Annual child count—The final regulations clarify that the SEA may count parentally-placed private school children if a public agency is providing special education or related services that meet State standards to these children. This clarification does not impose any burden on SEAs or LEAs while helping to ensure a more equitable distribution of IDEA funds.

ATTACHMENT 3.—DISPOSITION OF NPRM NOTES IN FINAL PART 300 AND 303 REGULATIONS [1]

[Note: Attachment 3 will not be codified in the Code of Federal Regulations]

I. List of notes by section in NPRM	II. Disposition of notes in final regulations
Subpart A	
300.1—*Purposes:*	
• Independent living	• In discussion under § 300.1; and in Appendix A (Re-transition services).
300.2—*Applicability to State, local, and private agencies:*	
• Requirements are binding on each public agency regardless of whether it receives B funds.	• Added to Reg as § 300.2(a)(2).
Definitions Used in This Part	
1. List of terms defined in specific sections	1. Moved to Index under ''Definitions.''
2. Abbreviations used	2. Terms identified in Reg text.
300.6—*Assistive technology service:*	
• Definitions of assistive technology device and service are identical to Technology Act of 1988.	• Deleted.
300.7—*Child with a disability:*	
1. Autism characteristics after age 3 is still Autism	1. Added to Reg as § 300.7(c)(1)(ii).
2. Developmental Delay—Explanation	2. Added to Reg at § 300.7(b)(2).
3. Dev. Delay—H.Rpt statement on importance of	3. In discussion under § 300.7(b).
4. Emotional disturbance (ED)—H.Rpt statement	4. In discussion under § 300.7(c).
5. ADD/ADHD—Eligible under OHI or other disability category if meet criteria under § 300.7(a).	5. ''ADD/ADHD'' and ''limited alertness'' added to § 300.7(c)(9).
300.12—*General curriculum:*	
• Term relates to content and not setting	• Added to Reg (IEP—§ 300.347(a)(1)(i), (2)(i)). In discussion of ''Gen. Cur.''
300.15—*IEP Team:*	
• IEP team may also serve as placement team	• In discussion under § 300.16.
300.17—*LEA:*	
• Charter school that meets def of ''LEA'' is eligible for B-$; & must comply w/B if it receives B-$.	• Added to Reg as part of § 300.312.
300.18—*Native language:*	
• (1) Sections where term is used	• (1) Listed in Index.

ATTACHMENT 3.—DISPOSITION OF NPRM NOTES IN FINAL PART 300 AND 303 REGULATIONS [1]—Continued

[Note: Attachment 3 will not be codified in the Code of Federal Regulations]

I. List of notes by section in NPRM	II. Disposition of notes in final regulations
(2) Exceptions to definition	(2) Added to Reg at § 300.19. In discussion under § 300.19.
300.19—*Parent:*	
• ''Parent'' includes a grandparent or stepparent, etc	• Added to Reg at § 300.20(a)(3).
300.22—*Related services:*	
1. All related services may not be required	1. In discussion under § 300.24.
2. H. Rpt. on O/M services and travel training	2. In discussion under § 300.24. —Travel training added as § 300.26(a)(2)(ii) and (b)(4).
3. Use of paraprofessionals if consistent w/.136	3. In discussion under §§ 300.24; 300.136.
4. Transportation—same as nondisabled; accommodations	4. Added to Q–33 in Appendix A.
300.24—*Special education:*	
• A child must need special education to be eligible under Part B of the Act	• Added to Reg as § 300.(7)(a)(2); In discussion under § 300.26.
300.27—*Transition services:*	
• May be special education or related services.. List under § 300.27(c) is not exhaustive	• Added to Reg as § 300.29(b). In discussion under § 300.29.
Subpart B	
300.121—*Free appropriate public education:*	
1. FAPE obligation begins on 3rd birthday	1. Added to Reg as § 300.121(c).
2. Re-child progressing from grade to grade	2. Added to Reg as §§ 300.121(e), 300.125(a)(2)(ii), and § 300.300(d).
300.122—*Exception to FAPE for certain ages:*	
1. FAPE and graduation	1. ''Prior notice'' added to Reg as § 300.122(a)(3)(iii). —A new § 300.534(c)(2) states that evaluation is *not* required for graduation with a regular diploma.
2. H.Rpt. Re-students with disabilities in adult prisons	2. Added as § 300.122(a)(2)(ii).
300.125—*Child find:*	
1. Collection of data subject to confidentiality	1. Added to Reg as § 300.125(e).
2. Services must be based on unique needs	2. Added to Reg as § 300.300(a)(3).
3. Child find under Parts B and C	3. Added to Reg as § 300.125(c).
4. Extend child find to highly mobile children	4. Added to Reg as § 300.125(a)(2)(i).
300.127—*Confidentiality of * * * information:*	
• Reference to FERPA	• Deleted. (Already covered under 300.560–300.576.)
300.130—*Least restrictive environment:*	
• H. Rpt. statement Re-continuum	• Added to Reg at § 300.130(a).
300.135—*Comprehensive system of personnel development:*	
• H.Rpt—Disseminate information on Ed research * * * States able to use info—(a)(2) Re—SIP.	• In discussion under § 300.135.
300.136—*Personnel standards:*	
1. Regs require States to use own highest requirements. Defs not limited to traditional categories.	1. Added to Reg as § 300.136(b)(2).
2. State may require * * * good faith effort * * * shortages	Added to Reg as § 300.136(g)(2).
3. If State only 1 entry-level degree, modification of standard to ensure FAPE won't violate (b)/(c).	3. Added to Reg as § 300.136(b)(4).
300.138—*Participation in assessments:*	
• Only small no. children need alternate assmts	• In discussion under § 300.138.
300.139—*Reports relating to assessments:*	
• Re aggregate data ((b)), PA may also Rpt data other ways (e.g.,.. trendline * * *)	• In discussion under § 300.139.
300.142—*Methods of ensuring services:*	
1. H.Rpt—Import. of ensuring services Re E/non-ed agencies* * *Medicaid	1. Added to Reg at § 300.142(b)(1)(ii).
2. Intent of (e) = services @ no cost-parents	2. In discussion under § 300.142.
3. Pub Agency can pay certain pvt insur costs for parents	3. Added to Reg at § 300.142(g).
4. If PA receives $ from insurers to return the $	4. Added to Reg at § 300.142(h)(2).
300.152—*Prohibition against commingling:*	
• Assurance is satisfied by sep accounting system.	• Added to Reg as § 300.152(b).
300.185—*Meeting the excess cost requirement:*	
• LEA must spend certain minimum amount * * * Excess costs = costs of special ed that exceed minimum.	• In discussion under § 300.185.
300.232—*Exception to maintenance of effort:*	
• H.Rpt—Voluntary departure Re—personnel paid at/ near top—scale; guidelines to invoke exception.	• Added to Reg as § 300.232(a)(2).
300.234—*Schoolwide programs:*	
• Although funds may be combined, disabled children must still receive services re-IEP	• Added to Reg at § 300.234(c).
200.241—*Treatment of charter schools:*	

ATTACHMENT 3.—DISPOSITION OF NPRM NOTES IN FINAL PART 300 AND 303 REGULATIONS [1]—Continued

[Note: Attachment 3 will not be codified in the Code of Federal Regulations]

I. List of notes by section in NPRM	II. Disposition of notes in final regulations
• B-Regs that apply to pub schools also apply to charter schools; H.Rpt—Expect full compliance.	• In discussion under § 300.241.
Subpart C	
300.300—*Provision of FAPE:*	
1. FAPE Requirement applies to disabled children in school and those with less severe disabilities.	1. In discussion under § 300.300.
2. State must ensure child find fully implemented	2. Added to Reg at § 300.300(a)(2).
3. Why age range—child find is greater than FAPE	3. In discussion under § 300.300.
300.302—*Residential placement:*	
• Requirement applies to placements in St. schools	• In discussion under § 300.302.
300.303—*Proper functioning of hearing aids:*	
• Statement from H. Rpt. on 1978 appropriation bill related to status of hearing aids	• In discussion under § 300.303.
300.304—*Full educational opportunity goal:*	
• S.Rpt (1975) on arts—Brooklyn Museum:	• In discussion under § 300.304.
300.305—*Program options:*	
• List not exhaustive	• In discussion under § 300.305.
300.307—*Physical education:*	
• H.Rpt (142)—Must assure PE available to all HC	• In discussion under § 300.307.
300.309—*Extended school year services:*	
1. LEA may not limit to particular categories or duration. All disabled children not entitled	1. Added to Reg at § 300.309(a)(3).
2. States may establish standards * * * Factors may consider = likelihood of regression	2. In discussion under § 300.309.
300.341—*SEA Responsibility (Re—IEPs):*	
• Section applies-all public agencies, including other State agencies	• Added to Reg as § 300.341(b).
300.342—*When IEPs must be in effect:*	
1. It is expected that IEPs will be implemented immediately after the meeting (with exceptions).	1. In discussion under § 300.342.
2. Requirements—incarcerated youth apply 6–4–97	2. Deleted.
3. IEP vs IFSP—written informed consent	3. In discussion under § 300.342(c).
300.343—*IEP meetings:*	
• Offer of services within 60 days—consent	• In discussion under § 300.343.
300.344—*IEP Team:*	
• Reg Ed teacher at IEP meeting = one who works with the child; if more than one—designate.	• In discussion under § 300.344
300.345—*Parent participation:*	
• Parent notice Re—bring others..procedure used = agency discretion * * * But keep record of efforts.	• Added to Reg as § 300.345(b).
300.346—*Development; review, & revision of IEP:*	
1. Importance Re—Consideration of special factors	1. In discussion under § 300.346.
2. Re—''Deaf Students Educational Services'' (1992)	2. In discussion under § 300.346.
3. IEP team and LEP students	3. In discussion under § 300.346.
300.347—*Content of IEP:*	
1. Import of transition services for students below 16	1. In discussion under § 300.347.
2. H.Rpt Re—import of general curriculum	2. In discussion under § 300.347.
3. H.Rpt—Gen Curriculum—length of IEP vs adjustments	3. In discussion under § 300.347.
4. H.Rpt—Teaching methods not in IEP	4. In discussion under § 300.347.
5. Reports to parents on Annual Goals vs Reg. Reports	5. In discussion under § 300.347.
6. H.Rpt—transition service needs vs services	6. In discussion under § 300.347.
7. OK for transition-needs/services below 14 and 16	7. In discussion under § 300.347.
300.350—I*EP—accountability:*	
• Public agency must make good faith effort; parents have right to complain	• Added to Reg as § 300.350(b).
300.360—*Use of LEA allocation for direct services:*	
• If LEA doesn't apply for Pt. B funds, SEA must use in LEA	• Added to Reg at § 300.360(b).
Subpart D	
300.453—*Expenditures:*	
• LEAs may provide services beyond those required	• Added to Reg at § 300.453(d).
300.456—*Location of services:*	
1. Zobrest—Re on-site services	1. In discussion under § 300.456.
2. Transportation to from site * * * not from home	2. Added to Reg at § 300.456(b)(1).
Subpart E	
300.500—*Gen. Resp. of public agencies; definitions:*	
• Parent consent, if revoked is not retroactive	• Added to Reg at § 300.500(b)(1)(iii).
300.502—*Independent educational evaluation:*	
1. Parent not required to specify areas of disagreement	1. Added to Reg at § 300.501(b).
2. Pub agencies—should make info on IEEs widely available; may not require parent-evals meet all criteria.	2. Added to Reg at § 300.502(a)(2).

ATTACHMENT 3.—DISPOSITION OF NPRM NOTES IN FINAL PART 300 AND 303 REGULATIONS [1]—Continued

[Note: Attachment 3 will not be codified in the Code of Federal Regulations]

I. List of notes by section in NPRM	II. Disposition of notes in final regulations
300.505—*Parental consent:*	
1. Pub. agency may use due process to override refusal, unless doing so—inconsistent w/ St law.	1. In discussion under § 300.503.
2. PA must provide servs in any area not in dispute; if nec—FAPE—use override; may recons proposal.	2. In discussion under § 300.503.
3. If parents refuse-reeval needed for servs, & St law prevnts override-reeval, PA may cease servs.	3. In discussion under § 300.503.
300.506 *Mediation:*	
1. H. Rep—If mediator not selected randomly Pub. agency and parents both must select ...	1. Added to Reg at § 300.506(b)(2)(ii).
2. H. Rep—Preserve parental access Rts—FERPA; confidentiality pledge	2. In discussion under § 300.506.
300.507—*Impartial due process hearing; parent notice; disclosure:*	
1. Determination of whether hearing request is based on new info must be made by HO ...	1. In discussion under § 300.507.
2. H. Rep. Re—Attorneys' fees; and the value of the parent notice requirement	2. In discussion under § 300.507.
300.510—*Finality of decision; appeal; impartial review:*	
1. SEA may conduct review directly or thru another agency; but remains response for final decision.	1. In discussion under § 300.510.
2. All parties have right to counsel; if Rev Officer holds a hearing, other rights in 300.509 apply.	2. In discussion under § 300.510.
300.513—*Attorneys' fees:*	
• A State may enact a law permitting HOs to award fees	• In discussion under § 300.513.
300.514—*Child's status during proceedings:*	
• Public agency may use normal procedures for dealing with children who are endangering themselves or others.	• In discussion under § 300.514.
300.520—*Authority of School personnel:*	
1. Removal for 10 days or less—not a chg in placmt; a series of removals that total +10 days may be.	1. In discussion under § 300.520.
2. PA need not conduct review in (b), but encouraged Ck if—serves in accord w/IEP..or addressed.	2. In discussion under § 300.520.
300.523—*Manifestation determination review:*	
1. H.Rpt—Ex of manifestation vs not * * * But not intended— base finding on tech violation-IEP.	1. In discussion under § 300.523.
2. If manifestation—LEA must correct any deficiencies found	2. Added to Reg at § 300.523(f).
300.524—*Determination that behavior not a manifestation of disability:*	
• During pendency—child remains in current placmt or placmt under 300.526, whichever applies.	• In discussion under § 300.524.
300.526—*Placement during appeals:*	
• An LEA may seek subsequent expedited hearings if child still dangerous & issue not resolved.	• Added to Reg as § 300.526(c)(4).
300.532—*Evaluation procedures:*	
1. Re LEP—accurate assmt of child's lang proficency	1. In discussion under § 300.532.
2. If no one at sch Re-LEP, contact LEAs, IHEs	2. In discussion under § 300.532.
3. If assmt not done under standard conditions, include in eval Rpt. Info needed by team ..	3. Added to Reg as § 300.532(a)(2).
300.533—*Determination of needed evaluation data:*	
• Purpose of review by a group; composition of team will vary depending on nature or disability.	• In discussion under § 300.533.
300.535—*Procedures for determining eligibility and placement:*	
• All eval sources not required for each child	• In discussion under § 300.535.
300.551—*Continuum of alternative placements:*	
• Home instruction usually only for limited No. children (medically fragile)	• In discussion under § 300.551.
300.552—*Placements:*	
1. Group in (a)(1) could also be IEP team—if .344	1. In discussion under § 300.552.
2. Main rule in LRE = indiv decisions + alternate placmts; applicability to preschool children.	2. Added to Reg at § 300.552.
3. If IEP team considers-provides for behavioral interventions * * * many disruptive children-Reg cl.	3. In discussion under § 300.552.
300.553—*Nonacademic settings:*	
• Section taken from 504 Regs	• In discussion under § 300.553.
300.554—*Children in public or private institutions:*	
• LRE provisions apply to Children in public and private institutions	• In discussion under § 300.554.
300.573—*Destruction of information:*	
• Info may be kept forever unless parents reject; (Why records are important * * *)	• In discussion under § 300.573.
300.574—*Children's rights:*	
1. Under FERPA Regs, Rts transfer at age 18	1. Added to Reg at § 300.574(b).
2. If Rts transfer re-.517, Rts re Ed-records also transfer; but public agency must give 615 notice to parents and student.	2. Added to Reg at § 300.574(c).
300.587—*Enforcement:*	
• Other enforcement actions include cease and desist order * * * and a compliance agreement.	• In discussion under § 300.587.

ATTACHMENT 3.—DISPOSITION OF NPRM NOTES IN FINAL PART 300 AND 303 REGULATIONS [1]—Continued

[Note: Attachment 3 will not be codified in the Code of Federal Regulations]

I. List of notes by section in NPRM	II. Disposition of notes in final regulations
Subpart F	
300.600—*Responsibility for all educational programs:*	
• Provision = Congressional desire—central point of contact. S.Rpt (1975) * * * Options	• In discussion under § 300.600.
300.623—*Amount required for subgrants to LEAs':*	
• Amt. required for subgrants will vary—yr-to-yr. $ for subgrants 1 yr become flow-thru in next.	• In discussion under § 300.623.
300.624—*State discretion in awarding subgrants:*	
• Purpose of subgrants to LEAs—to provide $ SEA can direct Re needs—can't address Re-formula-$.	• In discussion under § 300.624.
300.650—*Establishment of Advisory panels:*	
• Panel must advise on students in Adult prisons	• Added to Reg at § 300.652(b).
300.660—*Adoption of State complaint procedures:*	
• SEA may award compensory damages Re-denial of FAPE	• Added to Reg at § 300.660(b).
300.661—*Minimum State complaint procedures:*	
1. If complaint also subject of a hearing, must set aside any part addressed-hearing; but resolve the rest.	1. Added to Reg at § 300.661(c)(1).
2. If issue in complaint already decided in a hearing (same parties), H-decision = binding	2. Added to Reg at § 300.661(c)(2).
300.662—*Filing a complaint:*	
• SEA must resolve complaint, even if it is filed by indiv-organization in another State	• Added to Reg at § 300.662(a).
Subpart G	
300.712—*Allocations to LEAs:*	
• Re-85%—use best data available; new data not needed-pvt schs. Re-15%—use best (Examples).	• Added to Reg at § 300.712.
300.750—*Annual report of children served-report requirement:*	
• Report—solely for allocation purposes; count may differ from children who receive FAPE	• In discussion under § 300.750.
300.753—*Annual report of children served-criteria for counting children:*	
1. State may count children in Head Start if Sp Ed	1. Covered by reg. note deleted.
2. Criteria related to counting children in private schools and certain Indian children	2. Covered by reg. note deleted.
300.754—*Annual report of children served-other responsibilities of SEA:*	
• Data are not to go to Secretary in personally identifiable form	• In discussion under § 300.754.
Part 303	
303.19—*Parent:*	
• Definition: examples of grandparent, stepparent	• Added to Reg in § 303.19(a)(3).
303.510—*Adopting Complaint Procedures:*	
1. Complaints can be against any public agency or private provider; these procedures are in addition to other rights.	1. Public/private added to Reg in § 303.510(a)(1); ''other rights'' in discussion under § 303.512.
2. Compensatory services possible	2. Added to Reg in § 303.510(b).
303.511—*An organization or individual may file a complaint:*	
• Complaints from out-of-state OK	• Added to Reg in § 303.510(a)(1).
303.512—*Minimum State complaint procedures:*	
1. Same issues in complaint and due process hearing	1. Added to Reg in § 303.512(c)(1).
2. Issues previously decided in due process hearing	2. Added to Reg in § 303.512(c)(2).
303.520—*Policies related to payment for services:*	
1. Use of private insurance must be voluntary	1. Deleted.
2. State can use Part C funds to pay insurance costs	2. Deleted.
3. Insurance reimbursements not treated as program income; spending Federal reimbursements doesn't violate nonsupplanting rule.	3. ''Program income'' added to discussion under § 303.512; ''nonsupplanting'' added to Reg in § 303.512(d)(2).

[1] All notes have been removed as notes from the regulations. The substance of certain notes has been added to the text of the regulation, or included in the Notice of Interpretation on IEPs in ''Appendix A.'' A description of each of these notes (and *most* of the other notes in the NPRM) is included in the ''discussion'' under the Analysis of Comments (Attachment 1 to the final regulations). Column II, above, describes the primary action taken with each note (e.g., (1) ''Added to Reg * * *'' (or to Appendix A); (2) ''In discussion under * * *;'' or ''Deleted.'')

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