

34 CFR Part 304

Thursday
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Part III

**Department of
Education**

**34 CFR Part 304
Special Education; Personnel Preparation
To Improve Services and Results for
Children With Disabilities; Final Rule**

DEPARTMENT OF EDUCATION**34 CFR Part 304**

RIN 1820-AB46

Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities

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

ACTION: Final regulations.

SUMMARY: The Secretary establishes regulations governing specific provisions of the Personnel Preparation Program to Improve Services and Results for Children with Disabilities. The regulations are needed to implement changes to the Individuals with Disabilities Education Act (IDEA or the Act) that were adopted as part of the IDEA Amendments of 1997. Specifically, the regulations establish procedures to implement section 673(h) of IDEA which requires that individuals who receive a scholarship through personnel preparation projects funded under the Act must subsequently provide special education and related services to children with disabilities (or, for leadership personnel, work in areas related to their preparation) for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy their service obligation must repay all or part of the cost of their assistance in accordance with the regulations. The regulations implement requirements governing, among other things, the service obligation for scholars, oversight by grantees, repayment of scholarship, and procedures for obtaining deferrals or exemptions from service or repayment obligations.

DATES: These regulations are effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: Renee Bradley, U.S. Department of Education, 600 Independence Avenue, Washington, DC 20202-2641. Telephone: (202) 358-2849. If you use a telecommunications device for the deaf (TDD), you may call at (202) 205-9374.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On July 10, 1998 we published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (63 FR 37466). In the preamble to the NPRM,

we discussed on pages 37466 through 37469 the major provisions proposed to implement the service obligation requirements. These are summarized below. In several instances the final regulations contain changes from the NPRM. These changes are noted below, and are fully explained in the Analysis of Comments and Changes section of this preamble.

These regulations restate the statutory requirement for the service obligation under this program, stipulate that the service requirement applies to individuals who receive scholarship assistance from a funded project, and clarify that scholarships may be awarded only to individuals pursuing degrees, licenses, certifications, or endorsements related to special education, related services, or early intervention services.

Subpart A—General

Section 304.3 defines key terms used in this part of the regulations, including related services, special education, academic year, full-time work, and scholarship.

Subpart B—What Conditions Must Be Met By the Grantee?

Section 304.20 reflects our intention to announce for each personnel training grant competition a specific percentage, up to 75 percent, of a grantee's total award that must be used to support scholarships. The provision would allow us to award grants that use less than the published percentage to pay for scholarships in light of the unique nature of a particular project. However, because financial support for graduate assistants is not considered scholarship assistance, such costs may not be paid from the minimum percentage of grant funds that must be used to support scholarships.

Section 304.21 stipulates the types of costs that would be allowable under program grants.

Section 304.22 identifies requirements that grantees must meet in disbursing scholarships. Paragraph (a) relates to citizenship or residency requirements. Paragraph (b) requires grantees to limit a scholarship to the amount by which the cost of attendance at the institution exceeds the amount of any grant assistance the individual receives under Title IV of the Higher Education Act. The final regulation deletes paragraph (c) of the NPRM that specified that scholarship assistance would be limited to an individual's cost of attendance for no more than four academic years total, with certain exceptions (see the discussion in the

Analysis of Comments and Changes section elsewhere in this preamble).

Section 304.23 lists the assurances that must be provided by a grantee intending to provide scholarships. These include providing a written agreement with each scholar who receives a scholarship that specifies the terms and conditions applicable to the scholarship. The most significant part of this agreement is the requirement that the scholar provide special education and related services to children with disabilities or early intervention services to infants and toddlers and their families on a full-time basis; and for a period of at least two years for every year for which assistance was received. Paragraph (b)(2) requires scholars to fulfill their service obligation by working in a position or positions in which a majority of the persons to whom the individual provides services are receiving from the individual special education and related services as defined in Part B of the Act or early intervention as defined in Part C of the Act. Because scholars who enter leadership positions related to special education do not typically serve a classroom or caseload of students, paragraph (b)(3) would apply a somewhat different standard to the service obligation for those who receive scholarships from leadership training projects (section 673(c) of the Act). Those scholars would be required to work full-time, for a period of at least two years for each year of assistance, in a position (or positions) in which a majority of the scholar's time is expended on work related to his or her training (i.e., special education, related service, or early intervention leadership).

Section 304.23(b)(4) clarifies that the service obligation requirements as applied to part-time scholars will be based on the accumulated academic years of training for which the scholarship is received.

Section 304.23(c) through (f) respectively identify grantee assurances related to: scholarship repayment, the grantee's standards for measuring a scholar's academic progress, the grantee's responsibility for ensuring compliance with the service obligation requirements, and the grantee's procedures for notifying scholars in writing of their service obligation upon their exit from the training project. A grantee would provide assurances to the Department that it has established policies or procedures to address each of these requirements and the remaining requirements in § 304.23, prior to receiving a training grant under IDEA. In the final regulations, specific

reference to a tracking system in § 304.23(e) has been eliminated.

Section 304.23(g) and (h) identifies the requirements governing maintenance and submission of information related to each scholarship recipient that enable grantees to monitor compliance of scholars with the proposed regulations.

Section 304.23(i) requires grantees to notify the Department at the time an individual has failed to fulfill or has chosen not to fulfill the applicable service obligation within the appropriate time period.

Subpart C—What Conditions Must Be Met By the Scholar?

Section 304.30 specifies the requirements that a scholar must meet in order to receive a scholarship under the program including (a) being enrolled in a course of study leading to a degree, certificate, endorsement, or license related to special education, related services, or early intervention services; (b) entering into a written agreement with the grantee establishing the service obligation requirements; (c) receiving training at the institution or agency designated in the scholarship; (d) not accepting educational allowances from any other entity if that allowance conflicts with the individual's obligations under the program; (e) maintaining satisfactory academic progress; and (f) providing information to the grantee. In the final regulation, § 304.30(f) has been modified to eliminate a specific requirement for a tracking system and, instead, to require that the scholar provide information as requested by the grantee.

The final regulation also adds a new § 304.23(g) that requires the scholar to notify the grantee institution of changes in address, employment setting, or employment status throughout the duration of the service obligation.

Section 304.31 identifies circumstances under which a scholar may receive a deferral or exemption to the repayment requirement.

Section 304.32 specifies the requirements governing the accrual of interest and assessment of costs that would be included as part of the individual's payback obligation.

Section 304.32(e) lists the various points at which a scholar enters repayment status.

Section 304.32(f) authorizes the Department to establish a repayment schedule that a scholar in repayment status must follow.

Analysis of Comments and Changes

In response to our invitation in the NPRM, thirty-nine parties submitted

comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we not address technical and other minor changes—and suggested changes the law does not authorized the Secretary to make.

Section 304.3 What Definitions Apply to This Program?

Comments: Several commenters requested that we clarify the proposed definition of “academic year”. Specifically, these commenters noted that the NPRM defines “academic year” in terms of a full-time course of study and asked how to interpret the definition, and determine the required service obligation, for scholars pursuing special education, related service, or early intervention degrees or certificates on a part-time basis. Other commenters proposed limiting the definition of “scholarship” in the NPRM to exclude disbursements for fees, student stipends, books, travel, and other types of financial assistance. These commenters stated that the service obligation provisions in the proposed regulations should apply only to scholars receiving tuition assistance since tuition scholarships are typically much higher than those used to pay other costs.

Discussion: We agree that further clarification of the term “academic year”, and of how it applies to part-time students, is needed. Section 673(h) of the Act requires students receiving scholarship assistance to fulfill a service obligation for a period of 2 years for each year of assistance. The proposed regulations reflected our interpretation of the Act that the period of the scholar's service obligation must be calculated based on the period for which the student was enrolled in a full-time course of study (what constitutes a “full-time course of study” is to be determined by the grantee institution). Colleges and universities that award IDEA-funded scholarships to part-time students must, therefore, add up the period for which a part-time scholar receives a scholarship and calculate the length of the individual's service obligation based on the number of accumulated full-time academic years for which the student received financial assistance. For example, a scholar who obtains a degree after attending a university on a half-time basis for 4 academic years would accumulate 2 full-time academic years of assistance and have a 4-year service obligation (2

years for each year of assistance) upon completion of the program. Thus, the final regulations define “academic year” for part-time students as the equivalent of a full-time academic year based on the accumulation of part-time periods of study. Also, the work requirements in § 304.23 of the final regulations clarify that the period of a scholar's service obligation is dependent on the number of “academic years” for which the individual receives scholarship assistance.

We believe that the definition of “scholarship” in the proposed regulations reflects congressional intent. The Act requires individuals receiving a “scholarship” to fulfill an appropriate service obligation for every year for which assistance was received. The Act does not limit the service obligation to students receiving certain types of assistance. Thus, we interpret “scholarship” to refer to all types of financial assistance that a scholar might receive under an IDEA-funded project, including assistance used to pay for student fees, stipends, books, travel, as well as tuition. Moreover, the proposed regulations followed the Act by basing the service requirements on the period for which the scholar receives assistance, not on the amount of assistance an individual receives.

Changes: The proposed definition of “academic year” has been revised to mean a full-time course of study, or the equivalent of a full-time course of study for a part-time student.

Section 304.20 What are the Requirements for Directing Grant Funds?

Comments: Several commenters expressed concern that requiring grantees to expend at least 75% of their grant on scholarships would impede the ability of projects to implement regional training or distance education programs, or other unique (but costly) training methods. Other commenters noted similar constraints on projects that require extensive faculty supervision of scholars and questioned the basis for the Secretary to impose a cap on a project's nonscholarship costs. Some commenters also questioned the rationale for not considering graduate assistantships to be scholarship assistance, as was explained in the preamble to the NPRM. Finally, one commenter stated that the minimum percentage of a grant that must be used for scholarships should be established for each competition rather than on a project-by-project basis.

Discussion: As the preamble to the NPRM indicates, setting a minimum percentage of grant funds that must be used for scholarships is one means of

addressing the significant shortage of qualified individuals available to serve certain populations of children with disabilities (e.g., children with low-incidence disabilities) and is consistent with Congress' expectation that personnel training monies be used to support students pursuing training. We believe that establishing an appropriate limit on nonscholarship costs offers the most effective option for addressing well-established personnel shortages in the special education, related services, and early intervention fields. Moreover, we recognize the responsibility of States and institutions to provide necessary training programs and, therefore, consider it appropriate to focus Federal dollars on student support rather than university program expenses.

We emphasize that the regulation authorizes the Secretary to establish a minimum scholarship-directed percentage of up to 75% (i.e., the percentage will not exceed 75%). We consider 75% a reasonable level at which to require scholarship support for some competitions based on OSEP's extensive review of past budgets for a variety of OSEP training grants. However, the actual published percentage will be determined on a competition-by-competition basis depending on the type of projects to be funded. The feasibility of, and need for, distance education programs (used, for example, by projects preparing personnel to serve those with low-incidence disabilities) and other costly features (e.g., extended supervision, regional training, etc.) will be taken into account when the percentage for a grant competition is set. The final regulations also clarify that the Secretary can allow an exception to the published percentage for a particular project applicant only in exceptional circumstances when the Secretary determines that an exception is necessary to achieve the purposes of the program.

The explanation in the preamble as to how institutions of higher education (IHEs) should classify costs for graduate assistantships was intended to clarify the distinction between scholarships that pay for student expenses and payments made to students in return for working as graduate assistants. As we indicated in the NPRM, funding for graduate assistants cannot be considered "scholarship" assistance and, therefore, cannot be included as part of the minimum percentage of grant funds that must be used to pay for scholarships, since assistantships are conditioned on the individual working for the institution. Scholarship assistance, on the other hand, supports the cost of the

student's attendance and is dependent, under section 673(h) of the Act, on the individual fulfilling a service obligation in return for that assistance. In order to fulfill Congress' mandate that students receiving financial support under IDEA subsequently work in the special education field, we again note that applicants proposing to use IDEA funds to pay graduate assistants to assist in facilitating or administering projects must classify those funds as personnel or other nonscholarship costs and count those costs against the applicable percentage limit for nonscholarship expenditures. If, as some commenters indicated, an IHE considers the practical work experience gained by its graduate assistants as an essential educational component of the student's training, then we would urge the IHE to incorporate that work into the student's course of study. In that way, an individual's tuition-supported scholarship would cover the cost of such training and students need not be compensated separately for their work.

Changes: Section 304.20(b) has been amended to clarify that the Secretary may award a grant that uses less than the published percentage for scholarships in exceptional circumstances if the Secretary determines that such an exception is necessary to achieve the purposes of the program.

Section 304.22 What are the Requirements for Grantees in Disbursing Scholarships?

Comments: Four commenters expressed concern about limiting scholars to four years of financial assistance. These commenters suggested that regulations authorize scholars to receive four years of assistance per grant, thereby enabling individuals to receive additional assistance under subsequent grants.

Discussion: We agree that the 4-year limit on assistance under § 304.22(c) of the proposed regulations should be amended. The proposed limit was viewed as a reasonable period for individuals to obtain their degree. It was not, however, intended to preclude scholars from receiving assistance under subsequent grants when pursuing additional degrees or training (e.g., doctoral training). We believe that the best way to address the commenters' concerns is to eliminate the provision in the proposed regulations that would have established the limit. By not imposing a specific time limit on scholarship assistance (and eliminating the need for the exceptions to the time limit as set out in proposed paragraph (c)), scholars, in effect, will be

authorized to receive financial assistance for the same period as that which applies to the grant. For example, an individual can receive up to 5 years of assistance under a 5-year training grant provided the remaining regulatory requirements are satisfied, including the requirement in § 304.22(b) that the level of assistance not exceed the difference between the student's cost of attendance and the amount of student financial aid the scholar receives. Scholars may also receive assistance under subsequent grants in order to obtain additional training (e.g., doctoral, postdoctoral training).

Changes: Paragraph (c), including the 4-year limit on financial assistance, in this section of the proposed regulations has been removed from the final regulations.

Section 304.23 What Assurances Must be Provided by a Grantee That Intends to Provide Scholarships?

Comments: Several commenters requested that the length of a scholar's service obligation be proportional to the amount of financial assistance received. Other commenters requested that the regulations not apply to post-doctoral students.

Most comments on this section questioned the service obligation requirements in the proposed regulations, particularly the proposed requirement in § 304.23(b)(2) that the majority of the persons to whom the scholar provides services be children receiving special education, related, or early intervention services. Some of these commenters stated that the service obligation provisions would serve to limit the ability of scholars to work in regular education settings or prevent special education teachers from being promoted out of the classroom. Others indicated that the work requirements would negatively impact teachers in early intervention settings who serve both infants and toddlers with disabilities and those considered "at risk of" developmental delays.

A number of commenters on the service obligation requirements also requested clarification in the regulations for determining whether an individual working part-time has fulfilled the applicable service obligation. Other commenters viewed the work requirements for leadership personnel as unduly narrow. In addition, some commenters asked whether individuals could begin fulfilling their service obligation by working in the IDEA field during their training program.

Some commenters asked that Federal program officials determine the appropriateness of the employment

settings in which each former scholar proposes to fulfill his or her service obligation. Similarly, many commenters sought a much larger Federal role—and a reduced grantee role—in tracking scholars following completion of their training programs. Other commenters recognized the need for grantees to track their former scholars and sought additional Federal funding to carry out that function. Many were concerned with the additional time and paperwork burden associated with tracking that the proposed regulations placed on grantee institutions, particularly large training universities. Others requested clarification as to what happens if an institution is unable to locate a former scholar. Lastly, a number of commenters requested clarification on how the regulations applied to scholars who do not complete their training.

Discussion: As explained in the preamble discussion to § 304.3, the Act bases a scholar's service obligation on the period for which the individual received financial assistance rather than on the amount of that assistance. Thus, regardless of the amount of financial assistance offered to a scholar, the Act requires that the scholar choose between fulfilling the two-year per year of assistance service obligation, on the one hand, or paying back the scholarship on the other. Both the proposed and final regulations reflect these options.

The statute also does not provide a basis for excepting certain types of scholarships from the work or repay requirements. Thus, a post-doctoral student, for example, receiving scholarship assistance from a leadership preparation project funded under section 673(c) of the Act is required to fulfill the service obligation requirements specified in § 304.23(b)(3) or repay the scholarship.

We have provided in the final regulations greater flexibility for purposes of determining whether a scholar's job is sufficiently focused on serving children with disabilities. Section 304.23(b) of the final regulations authorizes a scholar to serve in a position in which the individual spends a majority of his or her time providing special education, related, or early intervention services. Thus, a former scholar who provides services under Part B or Part C of IDEA (Part B) to children with disabilities, would satisfy § 304.23(b)(2) as long as a majority of his or her students are children with disabilities receiving Part B or Part C services from the individual (§ 304.23(b)(2)(i)) or the individual spends a majority of his or her time providing services under Part B or Part C (§ 304.23(b)(2)(ii)).

We believe that it is critical that scholars be required to work extensively with children with disabilities since the service obligation requirements in section 673(h) were adopted in response to the continued shortages of qualified personnel providing special education, related services, and early intervention services. We also believe that it is critical for personnel providing services under IDEA to be capable of working with children with disabilities in regular education settings given the requirement in Part B of IDEA that children with disabilities be educated, to the maximum extent appropriate, with nondisabled children in the regular education environment. Accordingly, the final regulations permit, as the proposed regulations would have permitted, a scholar to work with children with disabilities in the regular education classroom. If the individual's primary purpose for being in a regular education classroom is to provide IDEA-related services to children with disabilities, then that individual would be considered to be providing IDEA services to children with disabilities during the time the individual is in that regular education classroom (for purposes of § 304.23(b)(2)(i) or (b)(2)(ii)), even though one or more nondisabled children may benefit from that individual working in the classroom. The regulations, therefore, support the expectation that children with disabilities be served in the least restrictive environment appropriate to the child. At the same time, the majority-student or majority-time requirement in § 304.23(b)(2) ensure that limited IDEA training monies do in fact benefit the targeted population—children and infants and toddlers with disabilities.

The final regulations also do not diminish the importance of regular education teachers being trained to serve children with disabilities. To the contrary, regular education teachers, and individuals in regular education training programs, are encouraged to participate in courses or other aspects of IDEA-funded training programs. On the other hand, a current regular education teacher who accepts scholarship assistance under an IDEA personnel training program, like all other IDEA-funded scholars, must subsequently work in the special education, related service, or early intervention field (or payback the scholarship) consistent with the requirements of these regulations. Because special education teachers, related service and early intervention service providers, and special education leadership personnel

continue to be in high demand in schools and school districts across the Nation, directing personnel training funds under IDEA toward addressing that demand is clearly warranted.

The regulations do not limit a scholar's opportunities for advancement as long as the position to which the former scholar advances meets the service obligation requirements in this section. For example, a former scholar who received training to work with the high-incidence disability population, subsequently works as a special education teacher, and then advances into a position as a special education administrator would continue to meet the requirements in § 304.23(b)(2) if the majority of students for which the administrator is responsible are receiving services under either Part B or C of IDEA. On the other hand, a secondary school principal position, in which the administrator is responsible for the entire student population (a majority of which is not disabled) likely would not qualify as an appropriate work setting under the regulations. Of course, a former scholar need not work in a qualified setting once the period of the service obligation has been met or if the individual pays back the portion of the scholarship that is proportional to the period for which the service obligation was not completed.

As some commenters noted, a State may serve, through its infant and toddler program under Part C of the Act, those infants and toddlers in the State who would be at risk of experiencing substantial developmental delays without early intervention services. In those States, these "at-risk" infants and toddlers qualify as infants and toddlers with disabilities and are eligible to receive early intervention services under Part C. Thus, whether a former scholar of an early intervention training program who is providing early intervention services to infants and toddlers with identified disabilities or developmental delays, and to at-risk infants and toddlers, would meet the service obligation requirements in this section of the regulations may depend upon whether the State has elected to serve at-risk infants and toddlers under Part C of IDEA. If the State has elected to include the at-risk population under its Part C program, and the scholar works full-time with that population, then § 304.23(b)(2) of the regulations would be satisfied. On the other hand, if the State does not serve at-risk infants and toddlers under Part C, then the scholar could still satisfy the regulations by serving mostly Part C-eligible children or spending a majority of his or

her time providing Part C services to such children under § 304.23(b)(2)(ii).

Although the critical need for full-time special education, related service, and early intervention personnel is well-documented, we recognize that some former scholars may elect, for a variety of reasons, to work part-time following their training. Thus, we agree that § 304.23(b)(1)(ii) and (b)(3)(ii) of the proposed regulations should clarify that part-time employment is authorized. However, because an individual's service obligation is based on full-time employment, a part-time worker must still meet the full-time obligation, by accumulating the periods of part-time work, by the end of the regulatory time period (i.e., the sum of the number of years required plus three additional years). For example, a scholar who received two years of financial assistance would have seven years to complete a four-year service obligation. If that scholar subsequently works full-time for an initial two years and half-time for the next four (i.e., the equivalent of two full-time years), the individual would meet the service obligation required under this section. Accordingly, the final regulations authorize individuals to fulfill their service obligation through employment on a full-time or full-time equivalent basis. By "full-time equivalent" we mean the accumulation of part-time employment periods to equal full-time employment. What constitutes "full-time employment" is determined by the individual's employer or the agencies the individual serves, as stated under the definition of "full-time" in § 304.3.

The work requirements in the Act and regulations that apply to scholarship recipients in leadership training programs enable scholars to pursue a wide variety of administrative or other leadership positions related to the provision of services under IDEA. By requiring leadership program graduates to spend a majority of their time performing work related to their training, we expect these former scholars to help address the shortage of qualified supervisory and policymaking officials, and university faculty, in the special education, related service, and early intervention fields. As indicated previously, however, IDEA leadership funds are not intended to pay for the training of administrators (e.g., principals) who work primarily with a nondisabled student population (although former scholars can certainly assume those positions after the period of their service obligation or by paying back their scholarship). We believe the proposed regulatory requirements established an appropriate standard that

is sufficiently focused on children with disabilities, yet provides for limited work in other areas.

We recognize that in some instances individuals may begin, or already be, working in the special education, related service, or early intervention fields prior to completing the training program for which they received scholarship assistance. For example, a current special education teacher could receive a scholarship to pursue an additional degree or certificate in special education; or a scholar working toward a doctorate in a leadership training program may begin teaching in a university's special education program while completing a dissertation or other component of a degree. In cases in which a scholarship recipient is both completing training and working in a job that would satisfy the service obligation requirements (e.g., the special education teacher who provides Part B services to a majority of his or her students), we agree that the regulations should afford some flexibility to enable individuals to count toward the period of their service obligation appropriate work performed before the completion of training. At the same time, it is expected that scholarship recipients fulfill a service obligation that is sufficiently related to the training for which assistance was provided. Because some persons may work in this type of job before completing training, the final regulations authorize scholars to count toward the period of their service obligation requirement work that is performed after the completion of one full-time academic year of training. Of course, the applicable job must meet the work setting and other requirements in the regulations, and the individual must fulfill the remaining portion of the service obligation upon completion of the training.

Assigning responsibility for determining the appropriateness of a former scholar's work setting to the Department would create additional burden on scholars and limit the flexibility on grantee institutions that the Act intentionally provides. Section 673(h) of the Act states that applicants for IDEA training grants "will ensure" that their scholarship recipients subsequently meet the service obligation requirements, meaning that the grantee institution is responsible for determining whether a scholarship recipient has fulfilled his or her subsequent work obligations under this section of the regulations. The Act recognizes that the grantee institution is in the best position to counsel and assist its former scholars in meeting the work responsibilities that result from

receiving an IDEA-funded scholarship. Moreover, imposing an across-the-board rule for scholarship recipients to consult the Federal Government regarding the appropriateness of their work setting would be overly burdensome to scholars. Therefore, the regulations, consistent with the Act, rely upon the expertise of the grantee institution to assist its scholar in obtaining an appropriate job (or jobs) among the many employment options available to the individual following training.

Statutory intent, as well as the need for program effectiveness and efficiency, also requires that grantees ensure that their former scholars fulfill the service obligation requirements in the regulations. Both the proposed and final regulations are intended to provide training institutions maximum flexibility to determine, through the most efficient means possible, the compliance of their scholars with the applicable statutory and regulatory requirements. Thus, rather than establishing a specific type of system that grantees must follow, § 304.23(e) required that grantees establish policies and procedures, including a "tracking system," to determine the compliance of their scholars with their service obligations outlined in the required agreement between each scholar and the grantee. The broad, flexible language of paragraph (e) was viewed as the least burdensome means for grantees "to ensure," as the Act requires, that scholarship recipients fulfill their employment obligations. Nevertheless, the term "tracking system" has been removed from the regulations since many commenters believed that this term suggested a specific and more complicated procedure than might be necessary for certain institutions to comply with the Act and regulations. Grantee institutions still remain responsible for ensuring that their former scholars comply with the service obligation requirements and for notifying the Department if a scholar fails to fulfill his or her obligation. Since no specific type of "tracking system" is required, grantees are free to utilize existing practices at their institution (e.g., alumni office procedures or university accreditation practices for reporting on the progress and employment status of former graduates), modify those practices, or develop new procedures specific to graduates of IDEA training programs. Regardless of the approach instituted, we expect that the costs incurred under § 304.23(e) will be primarily the initial costs of establishing the institution's policies and procedures for following former scholars.

The estimates of the time and paperwork burden associated with implementing § 304.23(e) were developed following a review of the history of IDEA training programs and available data, including the number of scholarships awarded by funded projects. We agree that the relevant burden could depend on the size of the institution and the number of scholars. It is more likely, however, that the time and effort needed to follow former scholars will depend upon the institutions' existing practices and whether those institutions receiving IDEA training grants can adopt or modify those practices for purposes of fulfilling their responsibilities under § 304.23 and other provisions of these regulations. Moreover, the Department intends to closely monitor the impact of the requirements of this section on funded projects and to provide technical assistance (e.g., sharing model procedures of other projects) during the continued implementation of § 304.23 and of the final regulations as a whole. Aside from the fact that the Act compels grantee institutions to ensure their scholars' compliance, we also note that the grantee's procedures for following former scholars will provide the institution with valuable evaluative information related to the success of its training program and the progress of its graduates.

We do recognize, however, that in some instances, an institution may be unable to locate a former scholar regardless of its persistency in doing so. If, for example, the institution has sent the scholar a letter of inquiry and follow-up reminders without receiving any response, and it cannot otherwise verify that the former scholar has met the service obligation requirements, then the institution must notify the Department of the individual's possible noncompliance.

We note that the regulations apply to training program drop-outs in the same manner as other scholarship recipients. Thus, an individual receiving financial assistance under an IDEA-funded grant who fails to satisfy the service obligation must repay the cost of the assistance consistent with § 304.23(c). We expect that grant applicants, however, will minimize the number of students who do not complete their training by accepting, and limiting scholarship assistance to, highly-qualified students able to sustain satisfactory performance and complete their program of studies. In addition, grantee institutions should establish sufficient support services to ensure the success of their students. We also note that drop-outs who had received

scholarship assistance would not be able to meet their service obligation (and, therefore, must payback their scholarship) if they are not qualified to fill available special education, related service, or early intervention jobs that meet the requirements in § 304.23(b)(2) or (b)(3)(i).

Changes: Section 304.23(b)(1)(iii) and (b)(3)(iii) have been revised to clarify that the length of an individual's service obligation is based on the number of "academic years" for which scholarship assistance was received. Also, § 304.23(b)(2) has been revised to authorize scholars to work in positions in which the individual spends a majority of his or her time providing special education, related, or early intervention services. In addition, a new paragraph, § 304.23(b)(5), has been added to the final regulations to allow scholars to count toward their service obligation employment that meets the regulatory requirements and is performed subsequent to the completion of one academic year of the training. Finally, § 304.23(e) of the proposed regulations has been amended by removing the term "tracking system" as a required component of the grantee's policies and procedures for determining the compliance of scholars with their regulatory obligations.

Section 304.30 What are the Requirements for Scholars?

Comments: A number of commenters asked that the regulations highlight the need for scholars to provide information to the grantee institution following training, including changes in address and the status of the individual's employment. These commenters emphasized the importance of former scholars providing this information in order for institutions to ensure that the service obligation requirements are being fulfilled.

Discussion: Although the statute requires that grantees ensure that their scholarship recipients fulfill their service obligation, we recognize that scholars have a responsibility to keep their institutions informed of their whereabouts and their progress toward meeting the work requirements in § 304.23(b). Scholars, therefore, are expected to provide any information the institution requests that is needed to determine whether the scholar has fulfilled the service obligation requirements or needs to repay the scholarship. Moreover, scholars should keep their institution apprised of changes in address or job status throughout the period of their service obligation, enabling institutions to keep

track of their former scholars more readily.

Changes: Section 304.30(f) of the proposed regulations has been amended to require that a scholar provide his or her training institution with any requested information that is necessary for the grantee to determine the scholar's progress in meeting the service obligation requirements. Also, under § 304.30, a new paragraph (g) has been added to the final regulations to require that each scholar notify the grantee institution of changes in address, employment setting, or employment status during the period of the service obligation.

Section 304.31 What are the Requirements for Obtaining a Deferral or Exemption to Performance or Repayment Under an Agreement?

Comments: Some commenters requested that deferral of the service obligation requirements be authorized for scholars who are pregnant or have other temporary medical conditions.

Discussion: We do not believe that expanding the bases for receiving a deferral of the service obligation requirements is needed. As in the proposed regulations, § 304.23(b) of the final regulations provides for an additional three years, beyond the number of years required by the Act, to complete the service obligation. Thus, a scholar with a four-year service obligation, for example, has seven years to fulfill that requirement. The additional three-year time period in the regulations is intended to provide greater flexibility in meeting the work obligation for those former scholars who become pregnant, experience short-term illness, relocate, or, for other reasons, choose not to work full-time or in successive years. In addition, § 304.31(b) of the regulations authorizes scholars to obtain a deferral of the service obligation time period (i.e., number of years required plus three additional years) under different types of circumstances, including the situation where a disability prevents an individual from working. Thus, a disabling medical condition may provide a basis for a deferral.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those

we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM published on July 10, 1998 (63 FR 37469).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

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

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

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.325, Personnel Preparation to Improve Services and Results for Children with Disabilities.)

List of Subjects in 34 CFR Part 304

Education of individuals with disabilities, Elementary and secondary education, Grant programs—education, Individuals with disabilities, Reporting and recordkeeping requirements, Schools.

Dated: December 6, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

For the reasons discussed in the preamble, the Secretary amends Title 34 of the Code of Federal Regulations by revising Part 304 to read as follows:

PART 304—SPECIAL EDUCATION—PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.

304.1 Purpose.

304.2 What is the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program?

304.3 What definitions apply to this program?

304.4 What regulations apply to this program?

Subpart B—What Conditions Must Be Met By the Grantee?

304.20 What are the requirements for directing grant funds?

304.21 What are allowable costs?

304.22 What are the requirements for grantees in disbursing scholarships?

304.23 What assurances must be provided by a grantee that intends to provide scholarships?

Subpart C—What Conditions Must Be Met By the Scholar?

304.30 What are the requirements for scholars?

304.31 What are the requirements for obtaining a deferral or exception to performance or repayment under an agreement?

304.32 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

Authority: 20 U.S.C. 1473, unless otherwise noted.

Subpart A—General

§ 304.1 Purpose.

Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities program are required to complete a service obligation, or repay all or part of the costs of such assistance, in accordance with section 673(h) of the Individuals with Disabilities Education Act and the regulations of this part.

(Authority: 20 U.S.C. 1473(h))

§ 304.2 What is the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program?

The Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program (program) provides financial assistance under section 673 of the Act to—

(a) Help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and

(b) Ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

(Authority: 20 U.S.C. 1473(a))

§ 304.3 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Department
EDGAR
Grantee
Project
Recipient
Secretary

(b) The following definitions apply to this program:

Academic year means—

(1) A full-time course of study—
(i) Taken for a period totaling at least nine months; or

(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters; or

(2) For a part-time student, the accumulation of periods of part-time courses of study that is equivalent to an "academic year" under paragraph (b)(1) of this section.

Act means the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.

Early intervention services means early intervention services as defined in section 632(4) of the Act.

Full-time, for purposes of determining whether an individual is employed full-time in accordance with § 304.23, means a full-time position as defined by the individual's employer or by the agencies served by the individual.

Payback means monetary repayment of scholarship assistance in lieu of completion of a service obligation.

Related services means related services as defined in section 602(22) of the Act.

Scholar means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under this part.

Scholarship means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, student stipends, and books, and travel in conjunction with training assignments.

Service obligation means a scholar's employment obligation, as described in section 673(h) of the Act and § 304.23(b).

Special education means special education as defined in section 602(25) of the Act.

(Authority: 20 U.S.C. 1473(h))

§ 304.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions That Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(10) Part 97 (Protection of Human Subjects).

(11) Part 98 (Student Rights in Research, Experimental Programs and Testing).

(12) Part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 304.

(Authority: 20 U.S.C. 1473; 20 U.S.C. 3474(a))

Subpart B—What Conditions Must Be Met by the Grantee?

§ 304.20 What are the requirements for directing grant funds?

(a) The Secretary, as appropriate, identifies in a notice published in the **Federal Register**, the percentage (up to 75 percent) of a total award under the program that must be used to support scholarships as defined in § 304.3.

(b) The Secretary may award a grant that uses a percentage for scholarships, as determined by the Secretary, that is lower than that published under paragraph (a) of this section in exceptional circumstances if the Secretary determines that such an exception is necessary to achieve the purposes of the program.

(Authority: 20 U.S.C. 1473(h))

§ 304.21 What are allowable costs?

In addition to the allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable expenditures by projects funded under the program:

(a) Tuition and fees.

(b) Student stipends and books.

(c) Travel in conjunction with training assignments.

(Authority: 20 U.S.C. 1473(h))

§ 304.22 What are the requirements for grantees in disbursing scholarships?

Before disbursement of scholarship assistance to an individual, a grantee must—

(a) Ensure that the scholar—

(1) Is a citizen or national of the United States;

(2) Is a permanent resident of—

(i) Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

(ii) The Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (during the period in which these entities are eligible to receive an award under the program); or

(3) Provides evidence from the U.S. Immigration and Naturalization Service that the individual is—

(i) A lawful permanent resident of the United States; or

(ii) In the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.

(b) Limit scholarship assistance to the amount by which the individual's cost of attendance at the institution exceeds the amount of grant assistance the scholar is to receive for the same academic year under Title IV of the Higher Education Act; and

(c) Obtain a Certification of Eligibility for Federal Assistance from each scholar, as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820-0622)

(Authority: 20 U.S.C. 1473)

§ 304.23 What assurances must be provided by a grantee that intends to provide scholarships?

Before receiving an award, a grantee that intends to grant scholarships under the program must assure that the following requirements will be satisfied:

(a) *Requirement for agreement.* Each scholar who will receive a scholarship must first enter into a written agreement with the grantee that contains the terms and conditions required by this section.

(b) *Terms of the agreement.* Each agreement under paragraph (a) of this section must contain, at a minimum, the following provisions:

(1) Individuals who receive scholarship assistance from projects funded under section 673(b) and (e), and to the extent determined appropriate by the Secretary, section 673(d), of the Act will subsequently maintain employment—

(i) In which the individual provides special education or related services to children with disabilities or early intervention services to infants and toddlers, and their families;

(ii) On a full-time or full-time equivalent basis; and

(iii) For a period of at least two years for every academic year for which assistance was received.

(2) In order to meet the requirements of paragraph (b)(1) of this section, an

individual must be employed in a position in which—

(i) A majority of the persons to whom the individual provides services are receiving from the individual special education, related services, or early intervention services; or

(ii) The individual spends a majority of his or her time providing special education or related services to children with disabilities or early intervention services to infants and toddlers with disabilities.

(3) Individuals who receive scholarship assistance from a leadership preparation project funded under section 673(c) of the Act will subsequently maintain employment—

(i) In which the individual expends a majority of his or her time performing work related to the individual's preparation;

(ii) On a full-time or full-time equivalent basis; and

(iii) For a period of at least two years for every academic year for which assistance was received.

(4) A scholarship recipient must complete the service obligation under paragraph (b)(1)(iii) or (b)(3)(iii) of this section within the period ending not more than the sum of the number of years required in paragraph (b)(1)(iii) or (b)(3)(iii) of this section, as appropriate, plus three additional years, from the date the recipient completes the training for which the scholarship assistance was awarded.

(5) Employment that meets the requirements of paragraph (b) of this section, and is performed by a scholar subsequent to the completion of one academic year of the training for which the scholarship assistance was received, can be used to meet, in part, the period of the scholar's service obligation under paragraph (b)(1)(iii) or (b)(3)(iii) of this section.

(6) The service obligation in paragraph (b) of this section, as applied to a part-time scholar, is based on the accumulated academic years of training for which the scholarship is received.

(c) *Repayment.* (1) Subject to the provisions in § 304.31 regarding a deferral or exception, a scholar who does not fulfill the requirements in paragraph (b)(1) or (b)(3) of this section, as appropriate, must repay all or part of any scholarship received, plus interest.

(2) The amount of the scholarship that has not been retired through eligible service will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar in accordance with § 304.32; and

(ii) May be collected by the Secretary in accordance with 34 CFR part 30, in

the case of the scholar's failure to meet the obligation of § 304.32.

(d) *Standards for satisfactory progress.* The grantee must establish, notify students of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study;

(e) *Compliance.* The grantee must establish policies and procedures to determine compliance of scholars with the terms of the written agreement developed under this section;

(f) *Exit certification.* The grantee must establish policies and procedures for receiving written certification from scholars at the time of exit from the program that identifies—

(1) The number of years the scholar needs to work to satisfy the work requirements in paragraph (b) of this section.

(2) The total amount of scholarship assistance received subject to the work-or-repay provision in paragraph (b) of this section.

(3) The time period, consistent with paragraph (b)(1)(iii) or (b)(3)(iii) of this section, during which the scholar must satisfy the work requirements in paragraph (b) of this section.

(4) All other obligations of the scholar under this section.

(g) *Information.* The grantee must provide, upon request of the Secretary, information, including records maintained under paragraphs (e) and (f) of this section, that is necessary to carry out the Secretary's functions under this part.

(h) *Records.* The grantee must maintain the information under this section related to a scholar for a period of time equal to the time required to fulfill the obligation under paragraph (b) of this section.

(i) *Notification.* The grantee must inform the Secretary if a scholar fails to fulfill or chooses not to fulfill the obligation under paragraph (b)(1) or (b)(3) of this section.

(Approved by the Office of Management and Budget under control number 1820-0622) (Authority: 20 U.S.C. 1473(h))

Subpart C—What Conditions Must Be Met by the Scholar?

§ 304.30 What are the requirements for scholars?

A scholar must—

(a) Be enrolled in a course of study leading to a degree, certificate, endorsement, or license related to special education, related services, or early intervention services in order to be eligible to receive a scholarship under the program;

(b) Enter into a written agreement with the grantee that meets the terms

and conditions of § 304.23 of this part before starting training;

(c) Receive the training at the educational institution or agency designated in the scholarship;

(d) Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under this part;

(e) Maintain satisfactory progress toward the degree, certificate, endorsement, or license as determined by the grantee;

(f) Provide the grantee all requested information necessary to determine the scholar's progress in meeting the service obligation under § 304.23(b); and

(g) Notify the grantee of changes in address, employment setting, or employment status during the period of the scholar's service obligation under § 304.23(b).

(Approved by the Office of Management and Budget under control number 1820-0622) (Authority: 20 U.S.C. 1473(h))

§ 304.31 What are the requirements for obtaining a deferral or exception to performance or repayment under an agreement?

(a) An exception to the repayment requirement in § 304.23(c) may be granted, in whole or part, if the scholar—

(1) Is unable to continue the course of study or perform the service obligation because of a disability that is expected to continue indefinitely; or

(2) Has died.

(b) Deferral of the repayment requirement in § 304.23(c) may be granted during the time the scholar—

(1) Is engaging in a full-time course of study at an institution of higher education;

(2) Is serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Is serving as a volunteer under the Peace Corps Act;

(4) Is serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Has a disability which prevents the individual from working, for a period not to exceed three years; or

(6) Is unable to secure employment as required by the agreement by reason of the care provided to a disabled family member for a period not to exceed 12 months.

(c) Deferrals or exceptions to performance or repayment may be provided by grantees based upon sufficient evidence to substantiate the grounds for an exception under paragraph (a) of this section or a deferral under paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1820-0622)

(Authority: 20 U.S.C. 1473(h))

§ 304.32 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

If a scholar fails to meet the terms and conditions of a scholarship agreement under § 304.23(b) or to obtain a deferral or an exception as provided in § 304.31, the scholar must repay all or part of the scholarship assistance to the Secretary as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the service obligation not completed.

(b) *Interest Rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date

the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 304.31.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the grantee that he or she does not plan to fulfill the service obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the service obligation within the number of years required in § 304.23(b).

(3) Any date on which the scholar discontinues enrollment in the course of study under § 304.30(a).

(f) *Amounts and frequency of payment.* The scholar must make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Approved by the Office of Management and Budget under control number 1820-0622)

(Authority: 20 U.S.C. 1473(h))

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