

(b) *Required information.* The information described in paragraph (a) of this section must include—

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

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

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

#### § 300.129 Procedural safeguards.

(a) The State must have on file with the Secretary procedural safeguards that ensure that the requirements of §§ 300.500–300.529 are met.

(b) Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

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

#### § 300.130 Least restrictive environment.

(a) *General.* The State must have on file with the Secretary procedures that ensure that the requirements of §§ 300.550–300.556 are met.

(b) *Additional requirement.*

(1) If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism may not result in placements that violate the requirements of paragraph (a) of this section.

(2) If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

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

**Note:** With respect to the LRE requirement of this section, and the continuum of alternative educational placements described in § 300.551, the House Committee Report on Pub. L. 105–17 states:

The committee supports the longstanding policy of a continuum of alternative placements designed to meet the unique needs of each child with a disability. Placement options available include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. For disabled children placed in regular classes, supplementary aids and services and resource room services or itinerant instruction must also be offered as needed. (H. Rep. 105–95, p. 91 (1997))

#### § 300.131 [Reserved]

#### § 300.132 Transition of children from Part C to preschool programs.

The State must have on file with the Secretary policies and procedures to ensure that—

(a) Children participating in early-intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.342(c) and section 636(d) of the Act, an IFSP, has been developed and must be implemented for the child; and

(c) Each LEA will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8) of the Act.

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

#### § 300.133 Private schools.

The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§ 300.400–300.403 and §§ 300.450–300.462 are met.

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

#### § 300.134 [Reserved]

#### § 300.135 Comprehensive system of personnel development.

(a) *General.* The State must have in effect, consistent with the purposes of this part and with section 635(a)(8) of the Act, a comprehensive system of personnel development that —

(1) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and

(2) Meets the requirements for a State improvement plan relating to personnel development in section 653 (b)(2)(B) and (c)(3)(D) of the Act.

(b) *Information.* The State must have on file with the Secretary information that shows that the requirements of paragraph (a) of this section are met.

(Authority: 20 U.S.C. 1412(a)(14))

**Note:** With respect to meeting the CSPD requirement of this section, the House Committee Report on Pub. L. 105–17 states:

Section 612, as [in] current law, requires that a State have in effect a Comprehensive System of Personnel Development (CSPD) that is designed to ensure an adequate supply of qualified personnel, including the establishment of procedures for acquiring and disseminating significant knowledge derived from educational research and for adopting, where appropriate, promising

practices, materials, and technology. (H. Rep. 105–95, p. 93 (1997))

States will be able to use the information provided to meet the requirement in § 300.135(a)(2) as a part of their State Improvement Plan under section 653 of the Act, if they choose to do so.

#### § 300.136 Personnel standards.

(a) As used in this part —

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

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

(ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children and youth with disabilities who are served by State, local, and private agencies (see § 300.2);

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

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

(i) Provides special education and related services to children with disabilities under Part B of the Act;

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

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

(4) *State-approved or -recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) (1) The State must have on file with the Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

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

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

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

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

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

(f) A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of the Act.

(g) In implementing this section, a State may adopt a policy that includes a requirement that LEAs in the State make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law and the steps described in paragraph (c) of this section, within three years.

(Authority: 20 U.S.C. 1412(a)(15))

**Note 1:** The regulations require that the State use its own existing highest requirements to determine the standards appropriate to personnel who provide special education and related services under Part B of the Act. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under Part B of the Act. In some instances, States are required under paragraph (c) of this section to show that they are taking steps to retrain or to hire personnel to meet the standards adopted by the SEA that are based on requirements for practice in a specific profession or discipline that were established by other State agencies. States in this position need not, however, require personnel providing services under Part B of the Act to apply for and obtain the license, registration, or other comparable credential required by other agencies of individuals in that profession or discipline. The regulations permit each State to determine the specific occupational categories required to provide special education and related services and to revise or expand these categories as needed. The professions or disciplines defined by the State need not be limited to traditional occupational categories.

**Note 2:** A State may exercise the option under paragraph (g) of this section even though the State has reached its established date, under paragraph (c) of this section, for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State. As a practical matter, it is essential that a State have a mechanism for serving students if instructional needs exceed available personnel who meet appropriate professional requirements in the State for a specific profession or discipline. A State that continues to have shortages of personnel meeting appropriate professional requirements in the State must address those shortages in its comprehensive system of personnel development under § 300.135.

**Note 3:** If a State has established only one entry-level academic degree for employment of personnel in a specific profession, modification of that standard as necessary to ensure the provision of FAPE to all children in the State would not violate the provisions of § 300.136(b) and (c).

#### § 300.137 Performance goals and indicators.

The State must have on file with the Secretary information to demonstrate that the State—

- (a) Has established goals for the performance of children with disabilities in the State that—
  - (1) Will promote the purposes of this part, as stated in § 300.1; and
  - (2) Are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the State;
- (b) Has established performance indicators that the State will use to assess progress toward achieving those goals that, at a minimum, address the

performance of children with disabilities on assessments, drop-out rates, and graduation rates;

(c) Every two years, will report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section; and

(d) Based on its assessment of that progress, will revise its State improvement plan under subpart 1 of Part D of the Act as may be needed to improve its performance, if the State receives assistance under that subpart. (Authority: 20 U.S.C. 1412(a)(16))

#### § 300.138 Participation in assessments.

The State must have on file with the Secretary information to demonstrate that—

(a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations if necessary;

(b) As appropriate, the State or LEA—
 

- (1) Develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs;
- (2) Develops alternate assessments in accordance with paragraph (b)(1) of this section; and
- (3) Beginning not later than July 1, 2000, conducts the alternate assessments described in paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1412(a)(17)(A))

**Note:** With respect to paragraph (b) of this section, it is assumed that only a small percentage of children with disabilities will need alternative assessments.

#### § 300.139 Reports relating to assessments.

(a) *General.* In implementing the requirements of § 300.138, the SEA shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:

- (1) The number of children with disabilities participating—
  - (i) In regular assessments; and
  - (ii) The number of those children participating in alternate assessments.
- (2) The performance results of the children described in paragraph (a)(1) of this section—
  - (i) On regular assessments (beginning not later than July 1, 1998); and
  - (ii) On alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

(b) *Combined reports.* Reports to the public under paragraph (a) of this section must include—

(1) Aggregated data that include the performance of children with disabilities together with all other children; and

(2) Disaggregated data on the performance of children with disabilities.

(c) *Disaggregation of data.* Data relating to the performance of children described under paragraph (a)(2) of this section must be disaggregated—

(1) For assessments conducted after July 1, 1998; and

(2) For assessments conducted before July 1, 1998, if the State is required to disaggregate the data prior to July 1, 1998.

(Authority: 20 U.S.C. 612(a)(17)(B))

**Note:** Paragraph (b) of this section requires a public agency to report aggregated data that include children with disabilities. However, a public agency is not precluded from also analyzing and reporting data in other ways (such as, maintaining a trendline that was established prior to including children with disabilities in those assessments).

#### § 300.140 [Reserved]

#### § 300.141 SEA responsibility for general supervision.

(a) The State must have on file with the Secretary information that shows that the requirements of § 300.600 are met.

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

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

#### § 300.142 Methods of ensuring services.

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

(1) *Agency financial responsibility.* An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with

disabilities. The financial responsibility of each public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

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

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

(4) *Coordination of services procedures.* Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) *Obligation of noneducational public agencies.*

(1) *General.* If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.22 relating to related services, § 300.26 relating to supplementary aids and services, and § 300.27 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(2) *Reimbursement for services by noneducational public agency.* If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child. The LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency

in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a)(1) of this section, and the agreement described in paragraph (a)(2) of this section.

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

(1) State statute or regulation;

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

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

(d) *Information.* The State must have on file with the Secretary information to demonstrate that the requirements of paragraphs (a) through (c) of this section are met.

(e) *Children with disabilities who are covered by private insurance.*

(1) A public agency may not require parents of children with disabilities, if they would incur a financial cost, to use private insurance proceeds to pay for the services that must be provided to an eligible child under this part.

(2) For the purposes of this section, the term *financial costs* includes —

(i) An out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim, but not including incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim;

(ii) A decrease in available lifetime coverage or any other benefit under an insurance policy; and

(iii) An increase in premiums or the discontinuation of the policy.

(f) *Proceeds from public or private insurance.* Proceeds from public or private insurance may not be treated as program income for purposes of 34 CFR 80.25.

(Authority: 20 U.S.C. 1412(a)(12) (A), (B), and (C); 1401(8))

**Note 1:** The House Committee Report on Pub. L. 105-17 related to methods of ensuring services states:

A provision is added to the Act to strengthen the obligation to ensure that all services necessary to ensure a free appropriate public education are provided through the coordination of public educational and non-educational programs. This subsection is meant to reinforce two important principles: (1) That the State agency or LEA responsible for developing a child's IEP can look to noneducational agencies such as Medicaid to provide those services they (the non-educational agencies) are otherwise responsible for; and (2) that the State agency or LEA remains responsible for

ensuring that children receive all the services described in their IEPs in a timely fashion, regardless of whether another agency will ultimately pay for the services.

The Committee places particular emphasis in the bill on the relationship between schools and the State Medicaid Agency in order to clarify that health services provided to children with disabilities who are Medicaid-eligible and meet the standards applicable to Medicaid, are not disqualified for reimbursement by Medicaid agencies because they are provided services in a school context in accordance with the child's IEP. (H. Rep. 105-95, p. 92 (1997))

**Note 2:** The intent of paragraph (e) of this section is to make clear that services required under Part B of the Act must be provided at no cost to the child's parents, whether they have public or private insurance. The Department, in a Notice of Interpretation published Dec. 30, 1980 at 45 FR 66390 noted that both Part B of the Act and Section 504 of the Rehabilitation Act of 1973 prohibit a public agency from requiring parents, where they would incur a financial cost, to use insurance proceeds to pay for services that are required to be provided to a child with a disability under the FAPE requirements of those statutes. The use of parents' insurance proceeds to pay for services in these circumstances must be voluntary. For example, a family could not be required to access private insurance that is required to enable a child to receive Medicaid services, where that insurance use results in financial costs to the family.

**Note 3:** If the public agency cannot get parent consent to use private insurance, the public agency may use funds under this part to pay for the service. In addition, in order to avoid financial costs to parents who otherwise would consent to use private insurance, the public agency may use funds under this part to pay the costs of accessing the insurance, e.g., deductible or co-pay amounts.

**Note 4:** Paragraph (f) clarifies that, if a public agency receives funds from public or private insurance for services under this part, the public agency is not required to return those funds to the Department or to dedicate those funds for use in this program, although a public agency retains the option of using those funds in this program. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§ 300.154 and 300.231. This is because the expenditure that is reimbursed is considered to be an expenditure of funds from the source that provides the reimbursement.

#### **§ 300.143 SEA implementation of safeguards.**

The State must have on file with the Secretary the procedures that the SEA (and any agency assigned responsibility pursuant to § 300.600(d)) follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with

disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(a)(11); 1415(a))

#### **§ 300.144 Hearing relating to LEA eligibility.**

The State must have on file with the Secretary procedures to ensure that the SEA does not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

(Authority: 20 U.S.C. 1412(a)(13))

#### **§ 300.145 Recovery of funds for misclassified children.**

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

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

#### **§ 300.146 Suspension and expulsion rates.**

The State must have on file with the Secretary information to demonstrate that the following requirements are met:

(a) *General.* The SEA examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

- (1) Among LEAs in the State; or
- (2) Compared to the rates for nondisabled children within the agencies.

(b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(Authority: 20 U.S.C. 612(a)(22))

#### **§ 300.147 Additional information if SEA provides direct services.**

(a) If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency—

(1) Shall comply with any additional requirements of §§ 300.220–300.230(a) and 300.234–300.250 as if the agency were an LEA; and

(2) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children

without regard to § 300.184 (relating to excess costs).

(b) The SEA must have on file with the Secretary information to demonstrate that it meets the requirements of paragraph (a)(1) of this section.

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

#### **§ 300.148 Public participation.**

(a) The State must ensure that, prior to the adoption of any policies and procedures needed to comply with this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities consistent with §§ 300.280–300.284.

(b) The State must have on file with the Secretary information to demonstrate that the requirements of paragraph (a) of this section are met.

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

#### **§ 300.149 [Reserved]**

#### **§ 300.150 State advisory panel.**

The State must have on file with the Secretary information to demonstrate that the State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State in accordance with the requirements of §§ 300.650–300.653.

(Authority: 20 U.S.C. 1412(a)(21)(A))

#### **§ 300.151 [Reserved]**

#### **§ 300.152 Prohibition against commingling.**

The State must have on file with the Secretary an assurance satisfactory to the Secretary that the funds under Part B of the Act are not commingled with State funds.

(Authority: 20 U.S.C. 1412(a)(18)(B))

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

#### **§ 300.153 State-level nonsupplanting.**

(a) *General.* (1) Except as provided in § 300.230, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant these Federal, State, and local funds.

(2) The State must have on file with the Secretary information to demonstrate to the satisfaction of the Secretary that the requirements of paragraph (a)(1) of this section are met.

(b) *Waiver.* If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (a) of this section if the Secretary concurs with the evidence provided by the State under § 300.589.

(Authority: 20 U.S.C. 1412(a)(18)(c))

**§ 300.154 Maintenance of State financial support.**

(a) *General.* The State must have on file with the Secretary information to demonstrate that the State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) *Reduction of funds for failure to maintain support.* The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) *Waivers for exceptional or uncontrollable circumstances.* The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in § 300.589 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) *Subsequent years.* If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 612(a)(19))

**§ 300.155 Policies and procedures for use of Part B funds.**

The State must have on file with the Secretary policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B.

(Authority: 20 U.S.C. 1412(a)(18)(A))

**§ 300.156 Annual description of use of Part B funds.**

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained under § 300.602 will be used to meet the requirements of this part;

(2) How those amounts will be allocated among the activities described in §§ 300.621 and 300.370 to meet State priorities based on input from LEAs; and

(3) The percentage of those amounts, if any, that will be distributed to LEAs by formula.

(b) If a State's plans for use of its funds under §§ 300.370 and 300.620 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(f)(5))

**LEA and State Agency Eligibility—General**

**§ 300.180 Condition of assistance.**

An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in §§ 300.220–300.250.

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

**§ 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.**

If an LEA or State agency described in § 300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act.

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

**§ 300.182 Amendments to LEA policies and procedures.**

(a) *Modification made by an LEA or a State agency.* (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a

State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary.

(2) The provisions of this subpart apply to a modification to an LEA's or State agency's policies and procedures in the same manner and to the same extent that they apply to the LEA's or State agency's original policies and procedures.

(b) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of the Act by Federal or State courts; or

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

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

**§ 300.183 [Reserved]**

**§ 300.184 Excess cost requirement.**

(a) *General.* Amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities.

(b) *Definition.* As used in this part, the term *excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary or secondary school student, as may be appropriate. Excess costs must be computed after deducting—

(1) Amounts received—

(i) Under Part B of the Act;

(ii) Under Part A of title I of the Elementary and Secondary Education Act of 1965; or

(iii) Under Part A of title VII of that Act; and

(2) Any State or local funds expended for programs that would qualify for assistance under any of those parts.

(c) *Limitation on use of Part B funds.*

(1) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (c)(2) of this section.

(2) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled

children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services.

(Authority: 20 U.S.C. 1401(7), 1413(a)(2)(A))

**§ 300.185 Meeting the excess cost requirement.**

(a)(1) *General.* An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in paragraph (a)(1) of this section is determined using the formula in § 300.184(b). This amount may not include capital outlay or debt service.

(b) *Joint establishment of eligibility.* If two or more LEAs jointly establish eligibility in accordance with § 300.190, the minimum average amount is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

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

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

Excess costs are those costs of special education and related services that exceed the minimum amount. Therefore, if an LEA can show that it has (on the average) spent the minimum amount for the education of each of its children with disabilities, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs.

**§§ 300.186–300.189 [Reserved]**

**§ 300.190 Joint establishment of eligibility.**

(a) *General.* An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless it is explicitly permitted to do so under the State's charter school statute.

(c) *Amount of payments.* If an SEA requires the joint establishment of

eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §§ 300.711–300.714 if the agencies were eligible for these payments.

(Authority: 20 U.S.C. 1413(e) (1), and (2))

**§ 300.191 [Reserved]**

**§ 300.192 Requirements for establishing eligibility.**

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.121–300.156; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and

(2) Must be carried out only by that educational service agency.

(c) *Additional requirement.* Notwithstanding any other provision of §§ 300.190–300.192, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by § 300.130.

(Authority: 20 U.S.C. 1413(e) (3), and (4))

**§ 300.193 [Reserved]**

**§ 300.194 State agency eligibility.**

Any State agency that desires to receive a subgrant for any fiscal year under §§ 300.711–300.714 must demonstrate to the satisfaction of the SEA that—

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

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

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

**§ 300.195 [Reserved]**

**§ 300.196 Notification of LEA or State agency in case of ineligibility.**

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, the SEA shall—

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

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

**§ 300.197 LEA and State agency compliance.**

(a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in §§ 300.220–300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.

(b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.507–300.528 that is adverse to the LEA or State agency involved in the decision.

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

**LEA Eligibility—Specific Conditions**

**§ 300.220 Consistency with State policies.**

(a) *General.* The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.121–300.156.

(b) *Policies on file with SEA.* The LEA must have on file with the SEA the policies and procedures described in paragraph (a) of this section.

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

**§ 300.221 LEA and State agency implementation of CSPD.**

The LEA must have on file with the SEA information to demonstrate that—

(a) All personnel necessary to carry out Part B of the Act within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of §§ 300.380–300.382; and

(b) To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the State established under § 300.135.

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

**§ 300.222–300.229 [Reserved]**

**§ 300.230 Use of amounts.**

The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of the Act—

(a) Will be expended in accordance with the applicable provisions of this part;

(b) Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with §§ 300.184–300.185; and

(c) Will be used to supplement State, local, and other Federal funds and not to supplant those funds.

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

**§ 300.231 Maintenance of effort.**

(a) *General.* Except as provided in § 300.232 and § 300.233, funds provided to the LEA under Part B of the Act may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Information.* The LEA must have on file with the SEA information to demonstrate that the requirements of paragraph (a) of this section are met.

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

**§ 300.232 Exception to maintenance of effort.**

An LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to—

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff;

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

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

(1) Has left the jurisdiction of the agency;

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

(3) No longer needs the program of special education; or

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

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

**Note:** With respect to the voluntary departure of special education personnel described in paragraph (a) of this section, the House Committee Report on Pub. L. 105–17 (1) clarifies that the intended focus of this exception is on special education personnel who are paid at or near the top of the salary schedule, and (2) sets out guidelines under which this exception may be invoked by an LEA:

This exception is included in recognition that, in some situations, when higher-salaried personnel depart from their positions in special education, they are replaced by qualified, lower-salaried staff. In such situations, as long as certain safeguards are in effect, the LEA should not be required to maintain the level of the higher-salaried personnel. In order for the LEA to invoke this exception, the agency must ensure that such voluntary retirement or resignation and replacement are in full conformity with existing school board policies in the agency, with the applicable collective bargaining agreement in effect at that time, and with applicable State statutes. (H. Rep. 105–95, p. 96 (1997))

**§ 300.233 Treatment of federal funds in certain fiscal years.**

(a)(1) Subject to paragraphs (a)(2) and (b) of this section, for any fiscal year for which amounts appropriated to carry out section 611 of the Act exceeds \$4,100,000,000, an LEA may treat as local funds up to 20 percent of the amount of funds it receives under Part B of the Act that exceeds the amount it received under Part B of the Act for the previous fiscal year.

(2) The requirements of §§ 300.230(c) and 300.231 do not apply with respect to the amount that may be treated as local funds under paragraph (a)(1) of this section.

(b) If an SEA determines that an LEA is not meeting the requirements of this part, the SEA may prohibit the LEA from treating funds received under Part B of the Act as local funds under paragraph (a)(1) of this section for any fiscal year, but only if it is authorized to do so by the State constitution or a State statute.

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

**§ 300.234 Schoolwide programs under title I of the ESEA.**

(a) An LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program

under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any program may not exceed—

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

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

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

(b) The funds described in paragraph (a) of this section may be used without regard to the requirements of § 300.230(a).

(c) The funds described in paragraph (a) of this section must be considered as Federal Part B funds for purposes of the calculations required by §§ 300.230 (b) and (c).

(d) Except as provided in paragraphs (b) and (c) of this section, all other requirements of Part B must be met by an LEA using Part B funds in accordance with paragraph (a) of this section.

**Note:** Although IDEA funds may be combined in a schoolwide project, and thus used for services that are not special education and related services, all other requirements of the IDEA must still be met for children with disabilities in schoolwide project schools that combine IDEA funds in a schoolwide project. Thus, children with disabilities in schoolwide project schools must still receive services in accordance with a properly developed IEP and must still be afforded all of the rights and services guaranteed to children with disabilities under the IDEA.

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

**§ 300.235 Permissive use of funds.**

(a) *General.* Subject to paragraph (b) of this section, funds provided to an LEA under Part B of the Act may be used for the following activities:

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

(2) *Integrated and coordinated services system.* To develop and implement a fully integrated and coordinated services system in accordance with § 300.244.

(b) *Application for certain use of funds.* An LEA does not violate §§ 300.152, 300.230, and 300.231 based on its use of funds provided under Part B of the Act in accordance with

paragraphs (a)(1) and (a)(2) of this section.

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

**§ 300.236–300.239 [Reserved]**

**§ 300.240 Information for SEA.**

(a) The LEA shall provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§ 300.137 and 300.138, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(b) The LEA must have on file with the SEA an assurance satisfactory to the SEA that the LEA will comply with the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(6))

**§ 300.241 Treatment of charter schools and their students.**

The LEA must have on file with the SEA information to demonstrate that in carrying out this part with respect to charter schools that are public schools of the LEA, the LEA will—

(a) Serve children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

(b) Provide funds under Part B of the Act to those schools in the same manner as it provides those funds to its other schools.

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

**Note:** The provisions of this part that apply to other public schools also apply to public charter schools. Therefore, children with disabilities who attend public charter schools and their parents retain all rights under this part. With respect to this provision, the House Committee Report on Pub. L. 105–17 states:

“The Committee expects that charter schools will be in full compliance with Part B.” (H. Rep. 105–95, p. 97 (1997))

**§ 300.242 Public information.**

The LEA must have on file with the SEA information to demonstrate to the satisfaction of the SEA that it will make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(7))

**§ 300.243 [Reserved]**

**§ 300.244 Coordinated services system.**

(a) *General.* An LEA may not use more than 5 percent of the amount the agency receives under Part B of the Act for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop

and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.

(b) *Activities.* In implementing a coordinated services system under this section, an LEA may carry out activities that include—

(1) Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

(2) Service coordination and case management that facilitate the linkage of IEPs under Part B of the Act and IFSPs under Part C of the Act with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);

(3) Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under the Act; and

(4) Interagency personnel development for individuals working on coordinated services.

(c) *Coordination with certain projects under Elementary and Secondary Education Act of 1965.* If an LEA is carrying out a coordinated services project under title XI of the Elementary and Secondary Education Act of 1965 and a coordinated services project under Part B of the Act in the same schools, the agency shall use the amounts under §§ 300.244 in accordance with the requirements of that title.

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

**§ 300.245 School-based improvement plan.**

(a) *General.* Each LEA may, in accordance with paragraph (b) of this section, use funds made available under Part B of the Act to permit a public school within the jurisdiction of the LEA to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) of the Act and that is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with § 300.235 (a) and (b) in that public school.

(b) *Authority.*

(1) *General.* A SEA may grant authority to an LEA to permit a public school described in § 300.245 (through a school-based standing panel established under § 300.247(b)) to design,

implement, and evaluate a school-based improvement plan described in § 300.245 for a period not to exceed 3 years.

(2) *Responsibility of LEA.* If a SEA grants the authority described in paragraph (b)(1) of this section, an LEA that is granted this authority must have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this section.

(Authority: 20 U.S.C. 1413 (g)(1) and (g)(2)).

**§ 300.246 Plan requirements.**

A school-based improvement plan described in § 300.245 must—

(a) Be designed to be consistent with the purposes described in section 651(b) of the Act and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with § 300.235 (a) and (b), who attend the school for which the plan is designed and implemented;

(b) Be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with § 300.247(b);

(c) Include goals and measurable indicators to assess the progress of the public school in meeting these goals; and

(d) Ensure that all children with disabilities receive the services described in their IEPs.

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

**§ 300.247 Responsibilities of the LEA.**

An LEA that is granted authority under § 300.245(b) to permit a public school to design, implement, and evaluate a school-based improvement plan shall—

(a) Select each school under the jurisdiction of the agency that is eligible to design, implement, and evaluate the plan;

(b) Require each school selected under paragraph (a) of this section, in accordance with criteria established by the LEA under paragraph (c) of this section, to establish a school-based standing panel to carry out the duties described in § 300.246(b);

(c) Establish—

(1) Criteria that must be used by the LEA in the selection of an eligible school under paragraph (a) of this section;

(2) Criteria that must be used by a public school selected under paragraph (a) of this section in the establishment of a school-based standing panel to carry out the duties described in

§ 300.246(b) and that ensure that the membership of the panel reflects the diversity of the community in which the public school is located and includes, at a minimum—

(i) Parents of children with disabilities who attend a public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;

(ii) Special education and general education teachers of public schools;

(iii) Special education and general education administrators, or the designee of those administrators, of those public schools; and

(iv) Related services providers who are responsible for providing services to the children with disabilities who attend those public schools; and

(3) Criteria that must be used by the LEA with respect to the distribution of funds under Part B of the Act to carry out this section;

(d) Disseminate the criteria established under paragraph (c) of this section to local school district personnel and local parent organizations within the jurisdiction of the LEA;

(e) Require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at the time, in the manner and accompanied by the information, that the LEA shall reasonably require; and

(f) Establish procedures for approval by the LEA of a school-based improvement plan designed under Part B of the Act.

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

#### § 300.248 Limitation.

A school-based improvement plan described in § 300.245(a) may be submitted to an LEA for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of the plan is reached by the school-based standing panel that designed the plan.

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

#### § 300.249 Additional requirements.

(a) *Parental involvement.* In carrying out the requirements of §§ 300.245–300.250, an LEA shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, if appropriate, implementation of school-based improvement plans in accordance with this section.

(b) *Plan approval.* An LEA may approve a school-based improvement plan of a public school within the jurisdiction of the agency for a period of 3 years, if—

(1) The approval is consistent with the policies, procedures, and practices established by the LEA and in accordance with §§ 300.245–300.250; and

(2) A majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel that designed the plan, agree in writing to the plan.

(Authority: 20 U.S.C. 1413(g)(6))

#### § 300.250 Extension of plan.

If a public school within the jurisdiction of an LEA meets the applicable requirements and criteria described in §§ 300.246 and 300.247 at the expiration of the 3-year approval period described in § 300.249(b), the agency may approve a school-based improvement plan of the school for an additional 3-year period.

(Authority: 20 U.S.C. 1413(g)(7))

#### Secretary of the Interior— Eligibility

##### § 300.260 Submission of information.

The Secretary may provide the Secretary of the Interior amounts under § 300.715 for a fiscal year only if the Secretary of the Interior submits to the Secretary information that—

(a) Meets the requirements of section 612(a)(1), (3)–(9), (10) (B), (C), (11)–(12), (14)–(17), (20), (21) and (22) of the Act (including monitoring and evaluation activities);

(b) Meets the requirements of section 612(b) and (e) of the Act;

(c) Meets the requirements of section 613(a) (1), (2)(A)(i), (6) and (7) of the Act;

(d) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a)–(c) of this section;

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

(f) Includes an assurance that there are public hearings, adequate notice of the hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in paragraph (a) of this section;

(g) Includes an assurance that the Secretary of the Interior will provide the information that the Secretary may require to comply with section 618 of the Act, including data on the number of children and youth with disabilities

served and the types and amounts of services provided and needed;

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

(i) Includes an assurance that the Department of the Interior will cooperate with the Department in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under Part B of the Act, and will fulfill its duties under Part B of the Act. Section 616(a) of the Act applies to the information described in this section.

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

##### § 300.261 Public participation.

In fulfilling the requirements of § 300.260 the Secretary of the Interior shall provide for public participation consistent with §§ 300.280–300.284.

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

##### § 300.262 Use of Part B funds.

(a) The Department of the Interior may use five percent of its payment under § 300.715 in any fiscal year, or \$500,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

(b) Payments to the Secretary of the Interior under § 300.716 must be used in accordance with that section.

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

##### § 300.263 Plan for coordination of services.

(a) The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under Part B of the Act.

(b) The plan must provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies.

(c) In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties.

(d) The plan must be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities.

(e) The plan also must be distributed upon request to States, State and LEAs, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

(Authority: 20 U.S.C. 1411(i)(4))

**§ 300.264 Definitions.**

(a) *Indian*. As used in this part, the term *Indian* means an individual who is a member of an Indian tribe.

(b) *Indian tribe*. As used in this part, the term *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

(Authority: 20 U.S.C. 1401(9) and (10))

**§ 300.265 Establishment of advisory board.**

(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary of the Interior shall establish, not later than December 4, 1997 under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of the children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 of the Act in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson must be selected by the Secretary of the Interior.

(b) The advisory board shall—

(1) Assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(2) Advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in section 611(i) of the Act;

(3) Develop and recommend policies concerning effective inter- and intra-agency collaboration, including

modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(4) Provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

(5) Provide assistance in the preparation of information required under § 300.260(g).

(Authority: 20 U.S.C. 1411(i)(5))

**§ 300.266 Annual reports.**

The advisory board established under § 300.265 shall prepare and submit to the Secretary of the Interior and to the Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(Authority: 20 U.S.C. 1411(i)(6)(A))

**§ 300.267 Applicable regulations.**

The Secretary of the Interior shall comply with the requirements of §§ 300.301–300.303, 300.305–300.309, 300.340–300.348, 300.351, 300.360–300.382, 300.400–300.402, 300.500–300.586, 300.600–300.621, and 300.660–300.662.

(Authority: 20 U.S.C. 1411(i)(2)(A))  
Public Participation

**§ 300.280 Public hearings before adopting State policies and procedures.**

Prior to its adoption of State policies and procedures related to this part, the SEA shall—

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

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

**§ 300.281 Notice.**

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

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

(1) The purpose and scope of the State policies and procedures and their relation to Part B of the Act;

(2) The availability of the State policies and procedures;

(3) The date, time, and location of each public hearing;

(4) The procedures for submitting written comments about the policies and procedures; and

(5) The timetable for submitting the policies and procedures to the Secretary for approval.

(c) The notice must be published or announced—

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

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

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

**§ 300.282 Opportunity to participate; comment period.**

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

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

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

**§ 300.283 Review of public comments before adopting policies and procedures.**

Before adopting the policies and procedures, the SEA shall—

(a) Review and consider all public comments; and

(b) Make any necessary modifications in those policies and procedures.

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

**§ 300.284 Publication and availability of approved policies and procedures.**

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

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

**Subpart C—Services**

Free Appropriate Public Education.

**§ 300.300 Provision of FAPE.**

(a) *General*. Subject to paragraphs (b) and (c) of this section and § 300.311, each State receiving assistance under this part shall ensure that FAPE is available to all children with disabilities, aged 3 through 21, residing in the State, including children with disabilities who have been suspended or expelled from school.

(b) *Exception for age ranges 3–5 and 18–21*. (1) This paragraph provides the rules for applying the requirements in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20 and 21 within the State:

(2) If State law or a court order requires the State to provide education

for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

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

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

(5) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

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

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

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

(c) *Children aged 3 through 21 on Indian reservations.* With the exception of children identified in § 300.715(b) and (c), the SEA shall ensure that all of the requirements of Part B are implemented for all children aged 3 through 21 on reservations.

(Authority: 20 U.S.C. 1412(a)(1), 1411(i)(1)(C), S. Rep. No. 94-168, p. 19 (1975))

**Note 1:** The requirement to make FAPE available applies to all children with disabilities within the State who are in the age ranges required under § 300.300 and who need special education and related services. This includes children with disabilities already in school and children with less severe disabilities.

**Note 2:** In order to be in compliance with § 300.300, each State must ensure that the requirement to identify, locate, and evaluate all children with disabilities is fully implemented by public agencies throughout the State.

**Note 3:** Under the Act, the age range for the child find requirement (birth through 21) is greater than the mandated age range for providing FAPE. One reason for the broader

age requirement under “child find” is to enable States to be aware of and plan for younger children who will require special education and related services, especially in any case in which infants and toddlers with disabilities are not participating in the early intervention program under Part C of the Act. It also ties in with the full educational opportunity goal requirement that has the same age range as child find. Moreover, while a State is not required to provide FAPE to children with disabilities below the age ranges mandated under § 300.300, the State may, at its discretion, extend services to those children. (See note 3 following § 300.125 regarding the relationship between the child find requirements under Part B of the Act and those under Part C of the Act.)

#### § 300.301 FAPE—methods and payments.

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

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

(Authority: 20 U.S.C. 1401(8), 1412(a)(1))

#### § 300.302 Residential placement.

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

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))

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

#### § 300.303 Proper functioning of hearing aids.

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

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

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

In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the

Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services. H. R. Rep. No. 95-381, p. 67 (1977)

#### § 300.304 Full educational opportunity goal.

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

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

**Note:** In meeting the full educational opportunity goal, the Congress also encouraged LEAs to include artistic and cultural activities in programs supported under Part B of the Act. This point is addressed in the following statements from the Senate Report on Pub. L. 94-142:

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

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges LEAs to include museums in programs for the handicapped funded under this Act. (S. Rep. No. 94-168, p. 13 (1975))

#### § 300.305 Program options.

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

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

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

#### § 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and

extracurricular services and activities in the manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

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

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

### § 300.307 Physical education.

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

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

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

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

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

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

(Authority: 20 U.S.C. 1412(a)(25), 1412(a)(5)(A))

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

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

\* \* \* \* \*

The Committee expects the Commissioner of Education to take whatever action is

necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child. (H.R. Rep. No. 94-332, p. 9 (1975))

### § 300.308 Assistive technology.

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

(a) Special education under § 300.24;

(b) Related services under § 300.22; or

(c) Supplementary aids and services under §§ 300.26 and 300.550(b)(2).

(Authority: 20 U.S.C. 1412(a)(12)(B)(i))

### § 300.309 Extended school year services.

(a) *General.* (1) Subject to paragraph (a)(2) of this section, each public agency shall ensure that extended school year services are available to each child with a disability to the extent necessary to ensure that FAPE is available to the child.

(2) The determination of whether a child with a disability needs extended school year services must be made on an individual basis by the child's IEP team, in accordance with §§ 300.340-300.351.

(b) *Definition.* As used in this section, the term *extended school year services* means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

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

**Note 1:** In implementing the requirements of this section, an LEA may not limit extended school year services to particular categories of disability or unilaterally limit the duration of services. Imposing those limitations would violate the individually-oriented focus of Part B of the Act. However, with respect to paragraph (b) of this section, nothing in this part requires that every child with a disability is entitled to, or must receive, extended school year services.

**Note 2:** States may establish standards for use in determining on an individual basis, whether a child with a disability needs extended school year services so long as those standards are not inconsistent with the requirements of Part B of the Act. Factors that States may wish to consider include: likelihood of regression, slow recoupment,

and predictive data based on the opinion of professionals.

### § 300.310 [Reserved]

### § 300.311 FAPE requirements for students with disabilities in adult prisons.

(a) *Exception to FAPE for certain students.* The obligation to make FAPE available to all children with disabilities does not apply with respect to students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

(1) Were not actually identified as being a child with a disability under § 300.7; and

(2) Did not have an IEP under Part B of the Act.

(b) *Requirements that do not apply.* The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(1) The requirements contained in § 300.138 and § 300.347(a)(5)(i) (relating to participation of children with disabilities in general assessments).

(2) The requirements in § 300.347(b) (relating to transition planning and transition services), with respect to the students whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(c) *Modifications of IEP or placement.*

(1) Subject to paragraph (c)(2) of this section, the IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements of §§ 300.340(a), 300.347(a) relating to IEPs, and 300.550(b) relating to LRE, do not apply with respect to the modifications described in paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1414(d)(6))

### Evaluations and Reevaluations

#### § 300.320 Initial evaluations.

(a) Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services under Part B of the Act—

(1) To determine if the child is a "child with a disability" under § 300.7; and

(2) To determine the educational needs of the child.

(b) In implementing the requirements of paragraph (a) of this section, the public agency shall ensure that—

(1) The evaluation is conducted in accordance with the procedures described in §§ 300.530–300.535; and

(2) The results of the evaluation are used by the child's IEP team in meeting the requirements of §§ 300.340–300.351.

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

#### § 300.321 Reevaluations.

Each public agency shall ensure that—

(a) A reevaluation of each child with a disability is conducted in accordance with the requirements of §§ 300.530–330.536; and

(b) The results of any reevaluations are used by the child's IEP team under §§ 300.340–300.350 in reviewing and, as appropriate, revising the child's IEP.

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

#### § 300.322–300.324 [Reserved]

Individualized Education Programs

#### § 300.340 Definitions.

(a) As used in this part, the term *individualized education program* means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.341–300.351.

(b) As used in §§ 300.347 and 300.348, *participating agency* means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(11))

#### § 300.341 State educational agency responsibility.

(a) *Public agencies.* The SEA shall ensure that each public agency develops and implements an IEP for each child with a disability served by that agency.

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

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

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

(Authority: 20 U.S.C. 1412(a)(4), (a) (10) (A) and (B))

**Note:** This section applies to all public agencies, including other State agencies (e.g.,

departments of mental health and welfare) that provide special education to a child with a disability either directly, by contract, or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a child with a disability, that agency would be responsible for ensuring that an IEP is developed for the child.

#### § 300.342 When IEPs must be in effect.

(a) At the beginning of each school year, each LEA, SEA, or other State agency, shall have in effect, for each child with a disability within its jurisdiction, an individualized education program, as defined in § 300.340.

(b) An IEP must—

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

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

(c)(1) In the case of a child with a disability aged 3 through 5 (or, at the discretion of the SEA a 2-year-old child with a disability who will turn age 3 during the school year), an IFSP that contains the material described in section 636 of the Act, and that is developed in accordance with §§ 300.340–300.346 and 300.349–300.351, may serve as the IEP of the child if using that plan as the IEP is—

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall—

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(d)(1) All IEPs in effect on July 1, 1998 must meet the requirements of §§ 300.340–300.351.

(2) The provisions of §§ 300.340–300.350 that were in effect on June 3, 1997 remain in effect until July 1, 1998.

(Authority: 20 U.S.C. 1414(d)(2) (A) and (B), Pub. L. 105–17, sec. 201(a)(1)(C))

**Note 1:** It is expected that the IEP of a child with a disability will be implemented immediately following the meetings under § 300.343. Exceptions to this would be if (1) the meetings occur during the summer or a vacation period, unless the child requires services during that period, or (2) there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

**Note 2:** Certain requirements regarding IEPs for students who are incarcerated in adult prisons apply as of June 4, 1997.

**Note 3:** At the time that a child with a disability moves from an early intervention program under Part C of the Act to a preschool program under this part, the parent, if the agency agrees, has the option, under paragraph (c) of this section, to allow the child to continue receiving early intervention services under an IFSP, or to begin receiving special education and related services in accordance with an IEP. Because of the importance of the IEP as the statutory vehicle for ensuring FAPE to a child with a disability, paragraph (c)(2) of this section provides that the parents' agreement to use an IFSP for the child instead of an IEP requires written informed consent by the parents that is based on an explanation of the differences between an IFSP and an IEP.

#### § 300.343 IEP meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with State policy and at the discretion of the LEA, and with the concurrence of the parents, an IFSP described in section 636 of the Act for each child with a disability, aged 3 through 5).

(b) *Timelines.* (1) Each public agency shall ensure that an offer of services in accordance with an IEP is made to parents within a reasonable period of time from the agency's receipt of parent consent to an initial evaluation.

(2) In meeting the timeline in paragraph (b)(1) of this section, a meeting to develop an IEP for the child must be conducted within 30-days of a determination that the child needs special education and related services.

(c) *Review and revision of IEP.* Each public agency shall ensure that the IEP team—

(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP as appropriate to address—

(i) Any lack of expected progress toward the annual goals described in § 300.347(a), and in the general curriculum, if appropriate;

(ii) The results of any reevaluation conducted under this section;

(iii) Information about the child provided to, or by, the parents, as described in § 300.533(a)(1);

(iv) The child's anticipated needs; or

(v) Other matters.

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

**Note:** For most children, it would be reasonable to expect that a public agency offer services in accordance with an IEP within 60 days of receipt of parent consent to initial evaluation.

**§ 300.344 IEP team.**

(a) *General.* The public agency shall ensure that the IEP team for each child with a disability includes—

- (1) The parents of the child;
- (2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) At least one special education teacher, or if appropriate, at least one special education provider of the child;
- (4) A representative of the LEA who—
  - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (ii) Is knowledgeable about the general curriculum; and
  - (iii) Is knowledgeable about the availability of resources of the LEA;
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a) (2) through (6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) If appropriate, the child.

**(b) Transition services participants.**

(1) Under paragraph (a)(7) of this section, the public agency shall invite a student with a disability of any age if a purpose of the meeting will be the consideration of the statement of transition services needs or statement of needed transition services for the student under § 300.347(b)(1).

(2) If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

(3)(i) In implementing the requirements of paragraph (b)(1) of this section, the public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

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

**Note:** The regular education teacher participating in a child's IEP meeting should be the teacher who is, or may be, responsible for implementing the IEP, so that the teacher can participate in discussions about how best to teach the child.

If the child has more than one teacher, the LEA may designate which teacher or teachers

will participate. In a situation in which all of the child's teachers do not participate in the IEP meeting, the LEA is encouraged to seek input from teachers who will not be attending, and should ensure that any teacher not attending the meeting is informed about the results of the meeting (including receiving a copy of the IEP). In the case of a child whose behavior impedes the learning of the child or others, the LEA is encouraged to have a person knowledgeable about positive behavior strategies at the IEP meeting.

Similarly, the special education teacher or provider participating in a child's IEP meeting should be the person who is, or will be, responsible for implementing the IEP. If, for example, the child's disability is a speech impairment, the teacher could be the speech-language pathologist.

**§ 300.345 Parent participation.**

(a) Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b)(1) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance.

(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also—

(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in § 300.347(b)(1)(i); and

(ii) Indicate that the agency will invite the student.

(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must—

(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in § 300.347(b)(1)(ii);

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

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

**Note:** The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting consistent with § 300.344(a)(6). As indicated in paragraph (d) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

**§ 300.346 Development, review, and revision of IEP.****(a) Development of IEP.**

(1) *General.* In developing each child's IEP, the IEP team, shall consider—

(i) The strengths of the child and the concerns of the parents for enhancing the education of their child; and

(ii) The results of the initial or most recent evaluation of the child.

**(2) Consideration of special factors.**

The IEP team also shall—

(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as these needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and

communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child requires assistive technology devices and services.

(b) *Review and Revision of IEP.* In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section.

(c) *Statement in IEP.* If, in considering the special factors described in paragraph (a) (1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

(d) *Requirement with respect to regular education teacher.* The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in—

(1) The determination of appropriate positive behavioral interventions and strategies for the child; and

(2) The determination of supplementary aids and services, program modifications, and supports for school personnel, consistent with § 300.347(a)(3).

(e) *Construction.* Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(Authority: 20 U.S.C. 1414 (d) (3) and (4)(B) and (e))

**Note 1:** The requirements of paragraph (a)(2) of this section (relating to consideration of special factors) were added by Pub. L. 105-17. These considerations are essential in assisting the IEP team to develop meaningful goals and other components of a child's IEP, if the considerations point to factors that could impede learning. The results of considering these special factors must, if appropriate, be reflected in the IEP goals, services, and provider responsibilities. As appropriate, consideration of these factors must include a review of valid evaluation data and the observed needs of the child resulting from the evaluation process.

**Note 2:** With respect to paragraph (a)(2)(iv) of this section (relating to special considerations for a child who is deaf or hard

of hearing), the House Committee Report on Pub. L. 105-17 states that the IEP team should implement the provision in a manner consistent with the policy guidance entitled "Deaf Students Education Services," published in the **Federal Register** (57 FR 49274, October 30, 1992) by the Department (H. Rep. No. 105-95, p-104 (1997))

**Note 3:** In developing an IEP for a child with limited English proficiency (LEP), the IEP team must consider how the child's level of English language proficiency affects special education and related services that the child needs in order to receive FAPE. Under Title VI of the Civil Rights Act of 1964, school districts are required to provide LEP students with alternative language services to enable the student to acquire proficiency in English and to provide the student with meaningful access to the content of the educational curriculum that is available to all students, including special education and related services. A LEP student with a disability may require special education and related services for those aspects of the educational program which address the development of English language skills and other aspects of the student's educational program. For a LEP student with a disability, under paragraph (c) of this section, the IEP must address whether the special education and related services that the child needs will be provided in a language other than English.

#### § 300.347 Content of IEP.

(a) *General.* The IEP for each child must include—

(1) A statement of the child's present levels of educational performance, including—

(i) How the child's disability affects the child's involvement and progress in the general curriculum; or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to—

(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

(ii) Meeting each of the child's other educational needs that result from the child's disability;

(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided for the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section;

(5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and

(ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of—

(A) Why that assessment is not appropriate for the child; and

(B) How the child will be assessed;

(6) The projected date for the beginning of the services and modifications described in paragraph (a)(3) of this section, and the anticipated frequency, location, and duration of those services and modifications; and

(7) A statement of—

(i) How the child's progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and

(ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

(A) Their child's progress toward the annual goals; and

(B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(b) *Transition services.* (1) The IEP must include—

(i) For each student beginning at age 14 and younger if appropriate, and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program); and

(ii) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in § 300.27(c)(1) through (c)(4), the IEP must include a

statement to that effect and the basis upon which the determination was made.

(c) *Transfer of rights.* Beginning at least one year before a student reaches the age of majority under State law, the student's IEP must include a statement that the student has been informed of his or her rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority, consistent with § 300.517.

(d) *Students with disabilities convicted as adults and incarcerated in adult prisons.* Special rules concerning the content of IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in § 300.311(b) and (c).

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)(A)(ii))

**Note 1:** Although the statute does not mandate transition services for all students below the age of 16, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16.

**Note 2:** The IEP provisions added by Pub. L. 105-17 are intended to provide greater access by children with disabilities to the general curriculum and to educational reforms, as an effective means of ensuring better results for these children in preparing them for employment and independent living.

With respect to increased emphasis on the general curriculum, the House Committee Report on Pub. L. 105-17 includes the following statement:

The Committee wishes to emphasize that, once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the general education curriculum should be strengthened. The majority of children identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the general education curriculum, not separate from it. (H. Rep. No. 105-95, p-99 (1997))

**Note 3:** With respect to the impact on States and LEAs in implementing the new IEP provisions relating to accessing the general curriculum, the House Committee Report on Pub. L. 105-17 includes the following statement:

The new emphasis on participation in the general education curriculum is not intended by the Committee to result in major expansions in the size of the IEP of dozens of pages of detailed goals and benchmarks or objectives in every curricular content standard skill. The new focus is intended to

produce attention to the accommodations and adjustments necessary for disabled children to access the general education curriculum and the special services which may be necessary for the appropriate participation in particular areas of the curriculum due to the nature of the disability.

**Note 4:** With respect to paragraph (a) of this section, the House Committee Report on Pub. L. 105-17 includes the following statement:

The Committee intends that, while teaching and related services methodologies or approaches are an appropriate topic for discussion and consideration by the IEP team during IEP development or annual review, they are not expected to be written into the IEP. Furthermore, the Committee does not intend that changing particular methods or approaches necessitates an additional meeting of the IEP team.

Specific day to day adjustments in instructional methods and approaches that are made by either a regular or special education teacher to assist a disabled child to achieve his or her annual goals would not normally require action by the child's IEP team. However, if changes are contemplated in the child's measurable annual goals, benchmarks, or short-term objectives, or in any of the services or program modifications, or other components described in the child's IEP, the LEA must ensure that the child's IEP team is reconvened in a timely manner to address those changes. (H. Rep. No. 105-95, pp-100-101 (1997))

**Note 5:** The provision in paragraph (a)(7)(ii) of this section concerning regularly informing parents of their child's progress toward annual goals and the extent to which this progress is sufficient to enable the child to achieve the goals by the end of the year is intended to be in addition to, rather than in place of, regular reporting to the parents (as for nondisabled children) of the child's progress in subjects or curricular areas for which the child is not receiving special education.

**Note 6:** With respect to paragraph (b)(1) of this section (relating to transition service needs beginning at age 14), the House Committee report on Pub. L. 105-17 includes the following statement:

The purpose of this requirement is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school. This provision is designed to augment, and not replace, the separate transition services requirement, under which children with disabilities beginning no later than age sixteen receive transition services, including instruction, community experiences, the development of employment and other post-school objectives, and, when appropriate, independent living skills and functional vocational evaluation. For example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation. (H. Rep. No. 105-95, p. 101 (1997))

**Note 7:** Each State must, at a minimum, ensure compliance with the transition

services requirements in paragraph (b) of this section. However, it would not be a violation of this part for a public agency to begin planning for transition services needs and needed transition services for students younger than age 14 and age 16, respectively.

#### § 300.348 Agency responsibilities for transition services.

(a) If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with § 300.347(b)(1)(ii), the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1414(d)(5); 1414(d)(1)(A)(vii))

#### § 300.349 Private school placements by public agencies.

(a) *Developing individualized education programs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with § 300.347.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) *Reviewing and revising individualized education programs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative—

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(B))

**§ 300.350 Children with disabilities in religiously-affiliated or other private schools.**

If a child with a disability is enrolled in a religiously-affiliated or other private school and receives special education or related services from a public agency, the public agency shall—

(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child, in accordance with § 300.347; and

(b) Ensure that a representative of the religiously-affiliated or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

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

**§ 300.351 Individualized education program—accountability.**

Each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives.

(Authority: 20 U.S.C. 1414(d); Cong. Rec. at H7152 (daily ed., July 21, 1975))

**Note:** This section is intended to relieve concerns that the IEP constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the goals and objectives or benchmarks listed in the IEP. Part B is premised on children receiving the instruction, services and modifications that they need to enable them to make progress in their education. Further, the section does not limit a parent's right to complain and ask for revisions of the child's IEP, or to invoke due process procedures (§ 300.507), if the parent feels that these efforts are not being made. This section does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school or agency performance.

**Direct Service by the SEA****§ 300.360 Use of LEA allocation for direct services.**

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

(1) Has not provided the information needed to establish the eligibility of the agency under Part B of the Act;

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

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

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

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

(c) The excess cost requirements of §§ 300.184 and 300.185 do not apply to the SEA.

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

**Note:** The SEA, as a recipient of Part B funds, is responsible for ensuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If an LEA elects not to apply for its Part B allotment, the State would be required to use those funds to ensure that FAPE is made available to children residing in the area served by that local agency. However, if the local allotment is not sufficient for this purpose, additional State or local funds would have to be expended in order to ensure that FAPE and the other requirements of the Act are met.

Moreover, if the LEA is the recipient of any other Federal funds, it would have to be in compliance with 34 CFR 104.31–104.39 of the regulations implementing Section 504 of the Rehabilitation Act of 1973. It should be noted that the term "FAPE" has different meanings under Part B and Section 504. For example, under Part B, FAPE is a statutory term that requires special education and related services to be provided in accordance with an IEP. However, under Section 504, each recipient must provide an education that includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met \* \* \*". (34 CFR 104.33(b)). Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the FAPE requirement under section 504.

**§ 300.361 Nature and location of services.**

The SEA may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate (including regional and State centers). However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions of §§ 300.550–300.556).

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

**§§ 300.362–300.369 [Reserved]****§ 300.370 Use of State agency allocations.**

(a) Each State shall use any funds it retains under § 300.602 and does not use for administration under § 300.620 for any of the following:

(1) Support and direct services, including technical assistance and personnel development and training.

(2) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.

(3) To establish and implement the mediation process required by § 300.506, including providing for the costs of mediators and support personnel.

(4) To assist LEAs in meeting personnel shortages.

(5) To develop a State Improvement Plan under subpart 1 of Part D of the Act.

(6) Activities at the State and local levels to meet the performance goals established by the State under § 300.137 and to support implementation of the State Improvement Plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.

(7) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 611 of the Act. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under Part C of the Act.

(8) For subgrants to LEAs for the purposes described in § 300.622.

(b) For the purposes of paragraph (a) of this section—

(1) *Direct services* means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and

(2) *Support services* includes implementing the comprehensive system of personnel development under §§ 300.380–300.382, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to FAPE for children with disabilities.

(Authority: 20 U.S.C. 1411(f)(3))

**§ 300.371 [Reserved]****§ 300.372 Applicability of nonsupplanting requirement.**

A State may use funds it retains under § 300.602 without regard to—

(a) The prohibition on commingling of funds in § 300.152; and

(b) The prohibition on supplanting other funds in § 300.153.

(Authority: 20 U.S.C. 1411(f)(1)(C))

### **Comprehensive System of Personnel Development**

#### **§ 300.380 General.**

(a) Each State shall develop and implement a comprehensive system of personnel development that—

(1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act;

(2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel;

(3) Meets the requirements of §§ 300.381 and 300.382; and

(4) Is updated at least every five years.

(b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(14))

#### **§ 300.381 Adequate supply of qualified personnel.**

Each State must include, at least, an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum—

(a) The number of personnel providing special education and related services; and

(b) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (a) of this section with temporary certification), and on the extent of certification or retraining necessary to eliminate these shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs.

(Authority: 20 U.S.C. 1453(b)(2)(B))

#### **§ 300.382 Improvement strategies.**

Each State must describe the strategies the State will use to address the needs identified under § 300.381. These strategies must include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities. The plan must include a description of how—

(a) The State will prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities including how the State will work with other States on common certification criteria;

(b) The State will prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(c) The State will work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(d) The State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

(e) The State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel;

(f) The State will enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(g) The State will acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, if appropriate, adopt promising practices, materials, and technology;

(h) The State will recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under-represented in the fields of regular education, special education, and related services;

(i) The plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(j) The State will provide for the joint training of parents and special

education, related services, and general education personnel.

(Authority: 20 U.S.C. 1453 (c)(3)(D))

#### **§ 300.383—300.387 [Reserved]**

### **Subpart D—Children in Private Schools**

Children With Disabilities in Private Schools Placed or Referred by Public Agencies

#### **§ 300.400 Applicability of §§ 300.400—300.402.**

Sections §§ 300.401—300.402 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1412(a)(10)(B))

#### **§ 300.401 Responsibility of SEA.**

Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.340—300.350;

(2) At no cost to the parents; and

(3) At a school or facility that meets the standards that apply to the SEA and LEAs (including the requirements of this part); and

(b) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1412(a)(10)(B))

#### **§ 300.402 Implementation by SEA.**

##### **In implementing § 300.401, the SEA shall—**

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1412(a)(10)(B))

#### **§ 300.403 Placement of children by parents if FAPE is at issue.**

(a) *General.* Subject to § 300.451, this part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made

FAPE available to the child and the parents elected to place the child in a private school or facility.

(b) *Disagreements about FAPE.* Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§ 300.500–300.515.

(c) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment.

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

(1) If—

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

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

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

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

(e) *Exception.* Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if—

(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

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

#### **Children With Disabilities Enrolled by Their Parents in Private Schools**

##### **§ 300.450 Definition of “private school children with disabilities.”**

As used in this part, *private school children with disabilities* means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§ 300.400–300.402.

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

##### **§ 300.451 Child find for private school children with disabilities.**

Each public agency must locate, identify and evaluate all private school children, including religiously-affiliated school children, who have disabilities residing in the jurisdiction of the agency in accordance with §§ 300.125 and 300.220.

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

##### **§ 300.452 Basic requirement—services.**

To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with §§ 300.453–300.462.

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

##### **§ 300.453 Expenditures.**

To meet the requirement of § 300.452, each LEA must spend on providing special education and related services to private school children with disabilities—

(a) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under sections 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and

(b) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section

619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

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

**Note:** SEAs and LEAs are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.

##### **§ 300.454 Services determined.**

(a) *No individual right to special education and related services.* No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities under §§ 300.452–300.462, must be made in accordance with paragraphs (b), (c) and (d) of this section.

(b) *Consultation with representatives of private school children with disabilities.* Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under § 300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide—

(1) Which children will receive services under § 300.452;

(2) What services will be provided;

(3) How the services will be provided; and

(4) How the services provided will be evaluated.

(c) *Genuine opportunity.* Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(d) *Timing.* The consultation required by paragraph (b) of this section must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under §§ 300.452–300.462.

(e) *Decisions.* The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

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

##### **§ 300.455 Services provided.**

(a) *Comparable services.* The services provided private school children with disabilities must be comparable in

quality to services provided to children with disabilities enrolled in public schools.

(b) *Services provided in accordance with an IEP.* The IEP for each private school child with a disability who receives services under § 300.452 must address the services that the LEA has determined that it will provide the child in light of the services that the LEA has determined, through the process described in §§ 300.453–300.454, it will make available to private school children with disabilities.

(c) *Definition.* As used in this section, *comparable in quality*—

(1) Means that services provided private school children with disabilities must be provided by similarly qualified personnel;

(2) Does not require the same amount of service for private school children with disabilities as for children with disabilities in public schools; and

(3) Does not require that any particular child receive service or receive the same amount of service the child would receive in a public school.

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

#### § 300.456 Location of services.

(a) *On-site.* Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religiously-affiliated school, to the extent consistent with law.

(b) *Transportation.* (1) Transportation of private school children with disabilities to a site other than a child's private school must be provided if necessary for a child to benefit from or participate in the other services offered.

(2) The cost of that transportation may be included in calculating whether the LEA has met the requirement of § 300.453.

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

**Note 1:** The decisions of the Supreme Court in *Zobrest v. Catalina Foothills School Dist.* (1993) and *Agostini v. Felton* (1997) make clear that LEAs may provide special education and related services on-site at religiously-affiliated private schools in a manner that does not violate the Establishment Clause of the First Amendment to the U. S. Constitution.

**Note 2:** With regard to transportation services, school districts are not required to provide transportation from the student's home to the private school, but only to the site where the services are offered, and either return the student to the private school or to the student's home, depending on the timing of the services.

#### § 300.457 Complaints.

(a) *Due process inapplicable.* The procedures in §§ 300.504–300.515 do not apply to complaints that an LEA has

failed to meet the requirements of §§ 300.452–300.462, including the provision of services indicated on the child's IEP.

(b) *State complaints.* Complaints that an SEA or LEA has failed to meet requirements of §§ 300.451–300.462 may be filed under the procedures in §§ 300.660–300.662.

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

#### § 300.458 Separate classes prohibited.

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

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

(b) The classes include students enrolled in public schools and students enrolled in private schools.

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

#### § 300.459 Requirement that funds not benefit a private school.

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

(b) The LEA shall use funds provided under Part B of the Act to meet the special educational needs of students enrolled in private schools, but not for—

(1) The needs of a private school; or

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

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

#### § 300.460 Use of public school personnel.

An LEA may use funds available under sections 611 and 619 of the Act to make public personnel available in other than public facilities—

(a) To the extent necessary to provide services under §§ 300.450–300.462 for private school children with disabilities; and

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

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

#### § 300.461 Use of private school personnel.

An LEA may use funds available under sections 611 or 619 of the Act to pay for the services of an employee of a private school if—

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

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

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

#### § 300.462 Requirements concerning property, equipment and supplies for the benefit of private school children with disabilities.

(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.

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

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

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

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

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

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

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

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

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

#### Procedures for By-Pass

##### § 300.480 By-pass—general.

(a) The Secretary implements a by-pass if an SEA is, and was on December 2, 1983, prohibited by law from providing for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act, as required by section 612(a)(10)(A) of the Act and by §§ 300.452–300.462.

(b) The Secretary waives the requirement of section 612(a)(10)(A) of the Act and of §§ 300.452–300.462 if the Secretary implements a by-pass.

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

##### § 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State to consider matters such as—

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

(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school children with disabilities receive services consistent with the requirements of section 612(a)(10)(A) of the Act and §§ 300.452–300.462.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and §§ 300.452–300.462 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount that may not exceed the amount per child provided by the Secretary under Part B of the Act for all children with disabilities in the State for the preceding fiscal year; by

(2) The number of private school children with disabilities (as defined by §§ 300.7(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State's allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

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

#### Due Process Procedures

##### § 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA to respond; and

(2) Advises the SEA that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.

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

##### § 300.483 Request to show cause.

An SEA seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

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

##### § 300.484 Show cause hearing.

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

(1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and

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

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

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

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

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

##### § 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

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

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

##### § 300.486 Filing requirements.

(a) Any written submission under §§ 300.482–300.485 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

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

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

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

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

##### § 300.487 Judicial review.

If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3)(B)–(D) of the Act.

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

#### Subpart E—Procedural Safeguards

##### Due Process Procedures for Parents and Children

##### § 300.500 General responsibility of public agencies; definitions.

(a) *Responsibility of SEA and other public agencies.* Each SEA shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500–§ 300.529.

(b) *Definitions of "consent," "evaluation," and "personally identifiable."* As used in this part—

(1) *Consent* means that—

(i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(iii) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(2) *Evaluation* means procedures used in accordance with §§ 300.530–300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class; and

(3) *Personally identifiable* means that information includes—

(i) The name of the child, the child's parent, or other family member;

(ii) The address of the child;

(iii) A personal identifier, such as the child's social security number or student number; or

(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

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

**Note:** With respect to paragraph (b)(1)(iii) of this section, the parent's ability to revoke consent, if invoked, is not retroactive, *i.e.*, it does not negate an action that has occurred after the consent was given and before it was revoked.

**§ 300.501 Opportunity to examine records; parent participation in meetings.**

(a) *General.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.562–300.569, an opportunity to—

(1) Inspect and review all education records with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child; and

(2) Participate in all meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(b) *Parent participation in meetings.*

(1) Each public agency shall provide notice consistent with § 300.345 (a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section.

(2) For purposes of this section, the term "meetings" means a prearranged event in which public agency personnel come together at the same time and place to discuss any matter described in paragraph (a)(2) of this section relating to an individual child with a disability. The term does not include informal or

unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. The term also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) *Parent involvement in placement decisions.* (1) Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall use procedures consistent with the procedures described in § 300.345 (a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of § 300.345(d).

(5) The public agency shall take whatever action is necessary to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

(Authority: 20 U.S.C. 1414(f), 1415(b)(1))

**§ 300.502 Independent educational evaluation.**

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part—

(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency

responsible for the education of the child in question; and

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a hearing under § 300.507 to show that its evaluation is appropriate, or insure an independent educational evaluation is provided at public expense unless the agency demonstrates in a hearing under § 300.507 that the evaluation obtained by the parent did not meet agency criteria. If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1))

**Note 1:** If a parent requests an independent educational evaluation at public expense, there is no requirement under Part B of the Act that the parent specify areas of disagreement with the public agency's evaluation as a prior condition to obtaining

the independent educational evaluation. Thus, unless a public agency chooses to initiate a due process hearing in accordance with paragraph (b) of this section, the agency must respond to the parent's request by insuring an independent educational evaluation is provided at public expense in a timely manner. A public agency may not impose conditions on obtaining an independent educational evaluation, other than the agency criteria described in paragraph (e) of this section.

**Note 2:** This section requires public agencies to provide parents with information on how and where an independent educational evaluation of their child at public expense can be obtained. Public agencies are encouraged to make this information widely available to parents in a manner that is readily understandable to the general public so that if parents disagree with an agency evaluation they will have access to the criteria the agency will apply to an IEE.

A public agency may not require that evaluations obtained by parents meet all agency criteria, if doing so would be inconsistent with the parents' right to an IEE. For example, the agency could not require a parent to meet a criterion that required the IEE to be conducted by an agency employee.

**§ 300.503 Prior notice by the public agency; content of notice.**

(a) *Notice.* (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—

(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under § 300.505, the agency may give notice at the same time it requests parent consent.

(b) *Content of notice.* The notice required under paragraph (a) of this section must include—

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) A description of any other options that the agency considered and the reasons why those options were rejected;
- (4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;
- (5) A description of any other factors that are relevant to the agency's proposal or refusal;

(6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(7) Sources for parents to contact to obtain assistance in understanding the provisions of this part; and

(8) A statement informing the parents about the State complaint procedures under §§ 300.660–300.662, including a description of how to file a complaint and the timelines under those procedures.

(c) *Notice in understandable language.* (1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415 (b) (3), (4) and (c), 1414(b)(1))

**§ 300.504 Procedural safeguards notice.**

(a) *General.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum—

(1) Upon initial referral for evaluation;

(2) Upon each notification of an IEP meeting;

(3) Upon reevaluation of the child; and

(4) Upon receipt of a request for due process under § 300.507.

(b) *Contents.* The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §§ 300.403, 300.500–300.529, and 300.560–300.577 relating to—

(1) Independent educational evaluation;

(2) Prior written notice;

(3) Parental consent;

(4) Access to educational records;

(5) Opportunity to present complaints;

(6) The child's placement during pendency of due process proceedings;

(7) Procedures for students who are subject to placement in an interim alternative educational setting;

(8) Requirements for unilateral placement by parents of children in private schools at public expense;

(9) Mediation;

(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in that State);

(12) Civil actions; and

(13) Attorneys' fees.

(c) *Notice in understandable language.* (1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met.

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

**§ 300.505 Parental consent.**

(a)(1) Parental consent must be obtained before—

(i) Conducting an initial evaluation;

(ii) Initial provision of special education and related services to a child with a disability in a program providing special education and related services; and

(iii) Except as provided in paragraph (c) of this section, before conducting any new test as a part of a reevaluation of an eligible child under Part B of the Act.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.

(b) *Refusal.* If the parents of the child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under §§ 300.507–300.509, or the mediation procedures under § 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.

(c) *Failure to respond to request for reevaluation.*

(1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.

(2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the public agency must use procedures consistent with those in §§ 300.345(d).

(d) *Additional State consent requirements.* In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(e) *Limitation.* A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(b)(3); 1414(a)(1)(C) and (c)(3))

**Note 1:** Paragraph (b) of this section means that if the parents of a child with a disability refuse consent for an initial evaluation or any reevaluation, and the agency wishes to pursue the evaluation or reevaluation, it may do so by using the due process or mediation procedures under Part B of the Act unless doing so would be inconsistent with State law relating to parent consent. For example, if State law provides that parents' right to consent to an initial evaluation cannot be overridden, the agency under Part B would not be able to take any action regarding that initial evaluation once parents had refused consent. If State law provided a mechanism different than due process or mediation under Part B as the means to override a parent refusal of consent, the agency would use that State mechanism if it wished to pursue the evaluation.

**Note 2:** If a State adopts a consent requirement in addition to those described in paragraph (a) of this section and consent is refused, paragraph (e) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (d) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the

agency from reconsidering its proposal if it believes that circumstances warrant.

**Note 3:** If parents refuse consent to a reevaluation that the agency needs to provide appropriate services to the child consistent with § 300.536, the agency must either take appropriate measures, consistent with paragraph (b) of this section to override the parents' refusal of consent, or, if State law prohibits override of parent consent for reevaluation, the agency may cease providing services to the child under Part B of the Act.

#### § 300.506 Mediation.

(a) *General.* Each public agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in § 300.503(a)(1) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under §§ 300.507 or 300.520–300.528.

(b) *Requirements.* The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a due process hearing under § 300.506, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) *Impartiality of mediator.* An individual who serves as a mediator under this part—

(1) May not be an employee of—

(i) Any LEA or any State agency described under § 300.194; or

(ii) An SEA that is providing direct services to a child who is the subject of the mediation process; and

(2) Must not have a personal or professional conflict of interest.

(d) *Meeting to encourage mediation.*

(1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—

(i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A public agency may not deny or delay a parent's right to a due process hearing under § 300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section.

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

**Note 1:** With respect to paragraph (b)(2) of this section, the House Committee Report on Pub. L. 105–17 includes the following statement:

\* \* \* the bill provides that the State shall maintain a list of individuals who are qualified mediators. The Committee intends that whenever such a mediator is not selected on a random basis from that list, both the parents and the agency are involved in selecting the mediator, and are in agreement with the individual who is selected. (H. Rep. No. 105–95, p. 106 (1997))

**Note 2:** With regard to the provision in paragraph (b)(6) that mediation discussions must be confidential and may not be used in any subsequent due process hearings or civil proceedings, the House Committee Report on Pub. L. 105–17 notes that “nothing in this bill shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties.” (H. Rep. No. 105–95, p. 107 (1997)). The Report also includes an example of a confidentiality pledge, which makes clear that the intent of this provision is to protect discussions that occur in the mediation process from use in subsequent due process hearings and civil proceedings under the Act, and not to exempt from discovery, because it was disclosed during mediation, information that otherwise would be subject to discovery.

#### § 300.507 Impartial due process hearing; parent notice; disclosure.

(a) *General.* (1) A parent or a public agency may initiate a hearing on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) When a hearing is initiated under paragraph (a)(1) of this section, the public agency shall inform the parents of the availability of mediation described in § 300.506.

(3) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—

(i) The parent requests the information; or

(ii) The parent or the agency initiates a hearing under this section.

(b) *Agency responsible for conducting hearing.* The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) *Parent notice to the public agency.*

(1) *General.* The public agency must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the public agency in a request for a hearing under paragraph (a)(1) of this section.

(2) *Content of parent notice.* The notice required in paragraph (c)(1) of this section must include—

(i) The name of the child;

(ii) The address of the residence of the child;

(iii) The name of the school the child is attending;

(iv) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) *Model form to assist parents.* Each SEA shall develop a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section.

(4) *Right to due process hearing.* A public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraphs (c)(1) and (2) of this section.

(Authority: 20 U.S.C. 1415(b)(5), (b)(6), (b)(7), (b)(8), (e)(1) and (f)(1))

**Note 1:** Part B of the Act and the regulations under Part B of the Act do not provide any authority for a public agency to deny a parent's request for an impartial due process hearing, even if the agency believes that the parent's issues are not new. Thus, the determination of whether or not a parent's request for a hearing is based on new issues can only be made by an impartial hearing officer.

**Note 2:** The House Committee Report on Pub. L. 105-17 notes that attorneys' fees to prevailing parents may be reduced if the attorney representing the parents did not provide the public agency with specific information about the child and the basis of the dispute described in paragraphs (c)(1) and (2) of this section. With respect to the intent of the new notice provision, the House report includes the following statement:

\* \* \* The Committee believes that the addition of this provision will facilitate an early opportunity for schools and parents to develop a common frame of reference about problems and potential problems that may remove the need to proceed to due process and instead foster a partnership to resolve problems. (H. Rep. 105-95, p. 105 (1997))

#### § 300.508 Impartial hearing officer.

(a) A hearing may not be conducted—

(1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1415(f)(3))

#### § 300.509 Hearing rights.

(a) *General.* Any party to a hearing conducted pursuant to §§ 300.507 or 300.520—300.528, or an appeal conducted pursuant to § 300.510, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) *Additional disclosure of information requirement.* (1) At least 5 business days prior to a hearing conducted pursuant to § 300.507(a), each party shall disclose to all other

parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) *Parental rights at hearings.* (1) Parents involved in hearings must be given the right to—

(i) Have the child who is the subject of the hearing present; and

(ii) Open the hearing to the public.

(2) The record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section must be provided at no cost to parents.

(d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (a)(5) of this section to the State advisory panel established under § 300.650; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(2) and (h))

#### § 300.510 Finality of decision; appeal; impartial review.

(a) *Finality of decision.* A decision made in a hearing conducted pursuant to §§ 300.507 or 300.520—300.528 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 300.512.

(Authority: 20 U.S.C. 1415(i)(1)(A))

(b) *Appeal of decisions; impartial review.*

(1) *General.* If the hearing required by § 300.507 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) *SEA responsibility for review.* If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall—

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.508 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of written findings and the decision to the parties.

(c) *Findings and decision to advisory panel and general public.* The SEA, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under § 300.650; and

(2) Make those findings and decisions available to the public.

(d) *Finality of review decision.* The decision made by the reviewing official is final unless a party brings a civil action under § 300.511.

(Authority: 20 U.S.C. 1415(g); H. R. Rep. No. 94—664, at p. 49 (1975))

**Note 1:** The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

**Note 2:** All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.509 relating to hearings also apply.

#### § 300.511 Timelines and convenience of hearings and reviews.

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

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

#### § 300.512 Civil action.

(a) *General.* Any party aggrieved by the findings and decision made under §§ 300.507 or 300.520–300.528 who does not have the right to an appeal under § 300.510(b)(2), and any party aggrieved by the findings and decision under § 300.510(e), has the right to bring a civil action with respect to the

complaint presented pursuant to § 300.507. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) *Additional requirements.* In any action brought under paragraph (a) of this section, the court—

(1) Shall receive the records of the administrative proceedings;

(2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(c) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(d) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

(Authority: 20 U.S.C. 1415 (i)(2), (i)(3)(A), and 1415(l))

#### § 300.513 Attorneys' fees.

(a) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(b) Funds under Part B of the Act may not be used to pay attorney's fees.

(Authority: 20 U.S.C. 1415(i)(3)(B))

**Note:** There is nothing in this part that prohibits a State from enacting a law that permits hearing officers to award attorneys' fees to parents who are prevailing parties under Part B of the Act.

#### § 300.514 Child's status during proceedings.

(a) Except as provided in § 300.526, during the pendency of any administrative or judicial proceeding regarding a complaint, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the decision of a hearing officer in a due process hearing or a review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

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

**Note:** This section does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

#### § 300.515 Surrogate parents.

(a) *General.* Each public agency shall ensure that the rights of a child are protected if—

(1) No parent (as defined in § 300.19) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.*

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no interest that conflicts with the interest of the child he or she represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under

paragraphs (c) and (d)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(2))

### § 300.516 [Reserved]

### § 300.517 Transfer of parental rights at age of majority.

(a) *General.* A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1)(i) The public agency shall provide any notice required by this part to both the individual and the parents; and

(ii) All other rights accorded to parents under Part B of the Act transfer to the child; and

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State, or local correctional institution.

(3) Whenever a State transfers rights under this part pursuant to paragraph (a) (1) or (2), the agency shall notify the individual and the parents of the transfer of rights.

(b) *Special rule.* If, under State law, a child with a disability, described in paragraph (a) of this section, is determined not to have the ability to provide informed consent with respect to the educational program of the student, the State shall establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the Act.

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

### Discipline Procedures

#### § 300.520 Authority of school personnel.

(a) School personnel may order—

(1) The removal of a child with a disability from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, including a suspension without the provision of educational services, for not more than 10 school days (to the extent the alternatives would be applied to children without disabilities); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if—

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b) Except as provided in paragraph (c) of this section, either before or not later than 10 business days after taking the action described in paragraph (a) of this section—

(1) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the suspension described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan and appropriate behavioral interventions to address that behavior; or

(2) If the child already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior.

(c) If the child with a disability is removed from the child's current educational placement for 10 school days or fewer under paragraph (a)(1) of this section in a given school year, and no further removal or disciplinary action is contemplated, the activities in paragraph (b) of this section need not be conducted.

(d) For purposes of this section, the following definitions apply:

(1) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) *Illegal drug*—

(i) Means a controlled substance; but

(ii) Does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) *Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k) (1), (10))

**Note 1:** Removing a child with disabilities from the child's current educational placement for not more than 10 school days does not constitute a change of placement under the Part B regulation. A series of removals from a child's current educational placement in a school year each of which is less than 10 school days but cumulate to more than 10 school days in a school year may constitute a change in placement, if, in any given case, factors such as the length of each removal, the total amount of time that the child is removed, and the proximity of the removals to one another, lead to the conclusion that the child has been excluded from the current placement to such an extent that there has been a change of placement.

**Note 2:** Although paragraph (c) of this section provides that public agencies need not conduct the review described in paragraph (b) if a child is removed from the regular placement for 10 school days or fewer and no further removal or disciplinary action is contemplated, public agencies are strongly encouraged to review as soon as possible the circumstances surrounding the behavior that led to the child's removal and consider whether the child was being provided services in accordance with the IEP, and whether the behavior could be addressed through minor classroom or program adjustments or whether the child's IEP team should be reconvened to address possible changes in that document.

#### § 300.521 Authority of hearing officer.

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing—

(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting meets the requirements of § 300.522.

(e) As used in this section, the term *substantial evidence* means beyond a preponderance of the evidence.

(Authority: 20 U.S.C. 1415(k) (2), (10))

#### § 300.522 Determination of setting.

(a) *General.* The alternative educational setting referred to in §§ 300.520 and 300.521 must be determined by the IEP team.

(b) *Additional requirements.* Any interim alternative educational setting in which a child is placed under § 300.520 or 300.521 must—

(1) Be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications designed to address the behavior described in § 300.520 or 300.521, or any other behavior that results in the child being removed from the child's current educational placement for more than 10 school days in a school year, so that it does not recur.

(Authority: 20 U.S.C. 1415(k)(3))

**§ 300.523 Manifestation determination review.**

(a) *General.* If an action is contemplated as described in § 300.520 or 300.521, or if an action involving a removal of a child from the child's current educational placement for more than 10 school days in a given school year is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children—

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and of all procedural safeguards accorded under this section; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) *Exception.* If, under § 300.520(a)(1), the child with disabilities is removed from the child's current educational placement for 10 school days or fewer in a given school year, and no further disciplinary action is contemplated, the review in paragraph (a) of this section need not be conducted.

(c) *Individuals to carry out review.* A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel.

(d) *Conduct of review.* In carrying out a review described in paragraph (a) of this section, the IEP team may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team—

(1) First considers, in terms of the behavior subject to disciplinary action, all relevant information, including—

(i) Evaluation and diagnostic results, including the results or other relevant

information supplied by the parents of the child;

(ii) Observations of the child; and  
(iii) The child's IEP and placement; and

(2) Then determines that—

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(e) *Decision.* If the IEP team determines that any of the standards in (d)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(f) *Meeting.* The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under § 300.520(b).

(Authority: 20 U.S.C. 1415(k)(4))

**Note 1:** The House Committee Report on Pub. L. No 105-17 states that the determination described in § 300.523(c)(2):

... recognizes that where there is a relationship between a child's behavior and a failure to provide or implement an IEP or placement, the IEP team must conclude that the behavior was a manifestation of the child's disability. Similarly, where the IEP team determines that an appropriate placement and IEP were provided, the IEP team must then determine that the remaining two standards have been satisfied. This section is not intended to require an IEP team to find that a child's behavior was a manifestation of a child's disability based on a technical violation of the IEP or placement requirements that are unrelated to the educational/behavior needs of the child. (House Rep. No. 105-95, pp. 110-111)

**Note 2:** If the result of the manifestation determination is that the behavior is a manifestation of the child's disability, the LEA must take immediate steps to remedy any deficiencies found in the child's IEP or placement, or their implementation. For a child who has been placed in a 45-day placement under § 300.520(a)(2) or 300.521 and for whom the child's behavior subject to discipline is a manifestation of the child's disability, these remedies often should enable the child to return to the child's current educational placement before the expiration of the 45-day period.

**§ 300.524 Determination that behavior was not manifestation of disability.**

(a) *General.* If the result of the review described in § 300.523 is a

determination, consistent with § 300.523(e), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1) of the Act.

(b) *Additional requirement.* If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) *Child's status during due process proceedings.* Section 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in § 300.523, that the behavior of the child was not a manifestation of the child's disability.

(Authority: 20 U.S.C. 1415(k)(5))

**Note:** The provision in paragraph (c) of this section means that during the pendency of any administrative or judicial proceeding to challenge a determination that the child's behavior is not a manifestation of the child's disability, the child remains in the child's current educational placement or the child's placement under § 300.526, whichever applies.

**§ 300.525 Parent appeal.**

(a) *General.*

(1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in this section if requested by a parent.

(b) *Review of decision.*

(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of § 300.523(e).

(2) In reviewing a decision under § 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in § 300.521.

(Authority: 20 U.S.C. 1415(k)(6))

**§ 300.526 Placement during appeals.**

(a) *General.* If a parent requests a hearing regarding a disciplinary action

described in § 300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in § 300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

(b) *Current placement.* If a child is placed in an interim alternative educational setting pursuant to— § 300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) *Expedited hearing.*

(1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in § 300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(Authority: 20 U.S.C. 1415(k)(7))

**Note:** An LEA may seek subsequent expedited hearings under paragraph (c)(1) of this section if, at the expiration of the time period of the placement ordered under paragraph (c) of this section, the LEA maintains that the child is still dangerous and the issue has not been resolved through due process.

**§ 300.527 Protections for children not yet eligible for special education and related services.**

(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§ 300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in

accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) *Basis of knowledge.* An LEA must be deemed to have knowledge that a child is a child with a disability if—

(1) The parent of the child has expressed concern in writing (or orally if the parent is illiterate in English or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services;

(3) The parent of the child has requested an evaluation of the child pursuant to §§ 300.530–300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel of the agency.

(c) *Conditions that apply if no basis of knowledge.*

(1) *General.* If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraph (b) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (c)(2) of this section.

(2) *Limitations.*

(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of §§ 300.520–300.529 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(8))

**§ 300.528 Expedited due process hearings.**

(a) Expedited due process hearings under §§ 300.521–300.526 must—

(1) Result in a decision within 10 business days of the request for the hearing, unless the parents and school officials otherwise agree;

(2) Meet the requirements of § 300.508, except that a State may provide that the time periods identified in § 300.509(a)(3) and § 300.509(b) for purposes of expedited due process hearings under §§ 300.521–300.526 are not less than two business days; and

(3) Be conducted by a due process hearing officer who satisfies the requirements of § 300.508.

(b) A State may establish different procedural rules for expedited hearings under §§ 300.521–300.526 than it has established for due process hearings under § 300.507.

(c) The decisions on expedited due process hearings are appealable under a State's normal due process appeal procedures.

(Authority: 20 U.S.C. 1415(k)(2), (6), (7))

**§ 300.529 Referral to and action by law enforcement and judicial authorities.**

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(Authority: 20 U.S.C. 1415(k)(9))

**Procedures for Evaluation and Determination of Eligibility**

**§ 300.530 General.**

Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.530–300.536.

(Authority: 20 U.S.C. 1414(b)(3); 1412(a)(7))

**§ 300.531 Initial evaluation.**

Each public agency shall conduct a full and individual initial evaluation, in accordance with §§ 300.532 and 300.533, before the initial provision of special education and related services to a child with a disability under Part B of the Act.

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

**§ 300.532 Evaluation procedures.**

Each public agency shall ensure, at a minimum, that—

(a) Tests and other evaluation materials used to assess a child under Part B of the Act—

(1) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(2) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, that may assist in determining—

(1) Whether the child is a child with a disability under § 300.7; and

(2) The content of the child's IEP, including information related to enabling the child—

(i) To be involved in and progress in the general curriculum; or

(ii) For a preschool child, to participate in appropriate activities.

(c) Any standardized tests that are given to a child—

(i) Have been validated for the specific purpose for which they are used; and

(ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests;

(d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;

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

(h) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(i) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(Authority: 20 U.S.C. 1414 (a)(6)(B), (b) (2) and (3))

**Note 1:** Under Title VI of the Civil Rights Act of 1964, in order to properly evaluate a child who may be limited English proficient, the public agency must first determine the child's proficiency in English and the child's native language. Under Title VI, an accurate assessment of the child's language proficiency must include objective assessment of reading, writing, speaking, and understanding. Under this section and § 300.534(b), information about the child's language proficiency must be considered in determining how to conduct the evaluation of the child to prevent misclassification. Under both Title VI and Part B of the Act, the public agency has a responsibility to ensure that children with limited English proficiency are not evaluated on the basis of criteria that essentially measure English language skills.

**Note 2:** In some situations, there may be no one on the staff of a public agency who is able to administer a test or other evaluation in a child's native language, as required under paragraph (a)(2) of this section, but an appropriate individual is available in the surrounding area. Ways that a public agency can identify an individual in the surrounding area who is able to administer a test or other evaluation in the child's native language include contacting neighboring school districts, local universities, and professional organizations. For LEP students, in situations where it is clearly not feasible to provide and administer tests in the child's native language or mode of communication, the public agency still needs to obtain and consider accurate and reliable information that will enable the agency to make an informed decision as to whether the child has a disability and the effects of the disability on the child's educational needs.

**Note 3:** 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, needs to be included in the evaluation report. This information is needed so that the team of qualified professionals can evaluate the effects of these variances on the validity and reliability of the information reported and to determine whether additional assessments are needed.

### § 300.533 Determination of needed evaluation data.

(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a team that includes the individuals required by § 300.344, and other qualified professionals, as appropriate, shall—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based assessments and observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) Whether the child has a particular category of disability, as described in § 300.7, or, in case of a reevaluation of a child, whether the child continues to have such a disability;

(ii) The present levels of performance and educational needs of the child;

(iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

(b) *Need for additional data.* The public agency shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section.

(c) *Requirements if additional data are not needed.* (1) If the determination under paragraph (a) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents—

(i) Of that determination and the reasons for it; and

(ii) Of the right of the parents to request an assessment to determine whether the child continues to be a child with a disability.

(2) The public agency is not required to conduct the assessment described in paragraph (c)(1)(ii) of this section unless requested to do so by the child's parents.

(Authority: 20 U.S.C. 1414(c)(1), (2) and (4))

**Note:** The requirement in paragraph (a) of this section and § 300.534(a)(1) that review of evaluation data and eligibility decisions be made by groups that include "qualified professionals," is intended to ensure that the teams making these determinations include individuals with the knowledge and skills necessary to interpret the evaluation data and make an informed determination as to whether the child is a child with a disability under § 300.7, and to determine whether the child needs special education and related services. The composition of the team will

vary depending upon the nature of the child's suspected disability and other relevant factors. For example, if a student is suspected of having a learning disability, a professional whose sole expertise is visual impairments would be an inappropriate choice. If a student is limited English proficient, it will be important to include a person on the team of qualified professionals who is knowledgeable about the identification, assessment, and education of limited English proficient students.

**§ 300.534 Determination of eligibility**

(a) Upon completing the administration of tests and other evaluation materials—

(1) A team of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in § 300.7; and

(2) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(b) A child may not be determined to be a child with a disability if the determinant factor for that determination is—

(1) Lack of instruction in reading or math; or

(2) Limited English proficiency.

(c) A public agency must evaluate a child with a disability in accordance with §§ 300.532 and 300.533 before determining that the child is no longer a child with a disability.

(Authority: 20 U.S.C. 1414(b)(4) and (5), (c)(5))

**§ 300.535 Procedures for determining eligibility and placement.**

(a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.7, and the educational needs of the child, each public agency shall—

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.340–300.350.

(Authority: 20 U.S.C. 1412(a)(6), 1414(b)(4))

**Note:** Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in determining whether a child is a child with a disability, as defined in § 300.7. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than

one source is used in interpreting evaluation data and in making these determinations. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

**§ 300.536 Reevaluation.**

Each public agency shall ensure—

(a) That the IEP of each child with a disability is reviewed in accordance with §§ 300.340–300.350; and

(b) That a reevaluation of each child, in accordance with §§ 300.530(b), 300.532, and 300.533, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years.

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

**Additional Procedures for Evaluating Children With Specific Learning Disabilities**

**§ 300.540 Additional team members.**

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.7, must be made by the child's parents and a team of qualified professionals which must include—

(a)(1) The child's regular teacher; or  
(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

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

**§ 300.541 Criteria for determining the existence of a specific learning disability.**

(a) A team may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression.

(ii) Listening comprehension.  
(iii) Written expression.  
(iv) Basic reading skill.  
(v) Reading comprehension.  
(vi) Mathematics calculation.  
(vii) Mathematics reasoning.  
(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—

(1) A visual, hearing, or motor impairment;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

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

**§ 300.542 Observation.**

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

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

**§ 300.543 Written report.**

(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by § 300.534(a)(2), must include a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

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

**Least Restrictive Environment**

**§ 300.550 General.**

(a) A State shall demonstrate to the satisfaction of the Secretary that the

State has in effect policies and procedures to ensure that it meets the requirements of §§ 300.550–300.556.

(b) Each public agency shall ensure—

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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

### § 300.551 Continuum of alternative placements.

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

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

**Note:** Home instruction is usually appropriate for only a limited number of children, such as children who are medically fragile and are not able to participate in a school setting with other children.

### § 300.552 Placements.

In determining the educational placement of a child with a disability, each public agency shall ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.550–300.554;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other

arrangement, the child is educated in the school that he or she would attend if nondisabled; and

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

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

**Note 1:** With respect to paragraph (a)(1) of this section, nothing in this part would prohibit a public agency from allowing the group of persons that makes the placement decision also to serve as the child's IEP team, so long as all individuals described in § 300.344 are included.

**Note 2:** Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can be educated with children who are not disabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs.

The requirements of § 300.552, as well as the other requirements of §§ 300.550–300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for nondisabled preschool children are not required to initiate those programs solely to satisfy the requirements regarding placement in the LRE embodied in §§ 300.550–300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550–300.556 include—

(1) Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);

(2) Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and nondisabled children; and

(3) Locating classes for preschool children with disabilities in regular elementary schools.

In each case the public agency must ensure that each child's placement is in the LRE in which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of §§ 300.340–300.351 and §§ 300.550–300.556.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR part 104—Appendix, Paragraph 24) includes several points regarding educational placements of children with disabilities that are pertinent to this section:

1. With respect to determining proper placements, the analysis states: “\* \* \* it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the

handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs \* \* \*.”

2. With respect to placing a child with a disability in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home, and this issue may be raised by the parent under the due process provisions of this subpart.

**Note 3:** If IEP teams appropriately consider positive behavioral interventions and supplementary aids and services and if necessary include those services in IEPs, many children who otherwise would be disruptive will be able to participate in regular education classrooms.

### § 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

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

**Note:** Section 300.553 is taken from a requirement in the regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 regulations includes the following statement: “[This paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.” (34 CFR part 104—Appendix, Paragraph 24.)

### § 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that § 300.550 is effectively implemented.

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

**Note:** The requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA

must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

**§ 300.555 Technical assistance and training activities.**

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

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

**§ 300.556 Monitoring activities.**

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

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

**Confidentiality of Information**

**§ 300.560 Definitions.**

As used in §§ 300.560–300.577—

*Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

*Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

**§ 300.561 Notice to parents.**

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.127, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable

information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.562 Access rights.**

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.563 Record of access.**

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.564 Records on more than one child.**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.565 List of types and locations of information.**

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.566 Fees.**

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.567 Amendment of records at parent's request.**

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.568 Opportunity for a hearing.**

The agency shall, on request, provide an opportunity for a hearing to

challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.569 Result of hearing.**

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.570 Hearing procedures.**

A hearing held under § 300.568 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.571 Consent.**

(a) Parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99.

(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.572 Safeguards.**

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.127 and 34 CFR part 99.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.573 Destruction of information.**

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**Note:** Under § 300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

**§ 300.574 Children's rights.**

The SEA shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**Note 1:** Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

**Note 2:** If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with § 300.517, the rights regarding educational records in §§ 300.562–300.573 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

**§ 300.575 Enforcement.**

The SEA shall provide the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**§ 300.576 Disciplinary information.**

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

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

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

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

**§ 300.577 Department use of personally identifiable information.**

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (the Privacy Act of 1974), the Secretary applies the requirements of 5 U.S.C. 552a (b)(1)–(2), (4)–(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5)–(10); (h); (m); and (n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

**Department Procedures**

**§ 300.580 Determination by the Secretary that a State is eligible.**

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

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

**§ 300.581 Notice and hearing before determining that a State is not eligible.**

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

- (i) With reasonable notice; and
- (ii) With an opportunity for a hearing.

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

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

- (1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;
- (2) May describe possible options for resolving the issues;
- (3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of the proposed final determination that the State is not eligible; and
- (4) Provides information about the procedures followed for a hearing.

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

**§ 300.582 Hearing official or panel.**

(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

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

**§ 300.583 Hearing procedures.**

(a) As used in §§ 300.581–300.586 the term *party* or *parties* means the following:

- (1) An SEA that requests a hearing regarding the proposed disapproval of its State plan under this part.
- (2) The Department official who administers the program of financial assistance under this part.
- (3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Panel.
- (b) Within 15 days after receiving a request for a hearing, the Secretary

designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

- (1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.
- (2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.
- (3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.
- (4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

- (i) Narrowing and clarifying issues;
- (ii) Assisting the parties in reaching agreements and stipulations;
- (iii) Clarifying the positions of the parties;
- (iv) Determining whether an evidentiary hearing or oral argument should be held; and
- (v) Setting dates for—

- (A) The exchange of written documents;
- (B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;
- (C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);
- (D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or
- (E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions

and to provide all or part of the evidence in writing.

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

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

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

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

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

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

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

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

(m)(1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

- (1) An opportunity to present witnesses on the party's behalf; and
- (2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Panel—

- (i) Arranges for the preparation of a transcript of each hearing;
- (ii) Retains the original transcript as part of the record of the hearing; and
- (iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

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

**§ 300.584 Initial decision; final decision.**

(a) The Hearing Official or Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.581.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

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

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 days after notifying the Hearing Official or Panel that the

initial decision is being further reviewed.

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

**§ 300.585 Filing requirements.**

(a) Any written submission under §§ 300.581–300.585 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

- (1) Hand-delivered;
- (2) Mailed; or
- (3) Sent by facsimile transmission.

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

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

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

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

**§ 300.586 Judicial review.**

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

(Authority: 20 U.S.C. 1416(b))

**§ 300.587 Enforcement.**

(a) *General.* The Secretary initiates an action described in paragraph (b) of this section if the Secretary finds—

(1) That there has been a failure by the State to comply substantially with any provision of Part B of the Act, this part, or 34 CFR part 301; or

(2) That there is a failure to comply with any condition of an LEA's or SEA's eligibility under Part B of the Act, this part or 34 CFR part 301, including the terms of any agreement to achieve compliance with Part B of the Act, this part, or Part 301 within the timelines specified in the agreement.

(b) *Types of action.* The Secretary, after notifying the SEA (and any LEA or State agency affected by a failure described in paragraph (a)(2) of this section)—

(1) Withholds in whole or in part any further payments to the State under Part B of the Act;

(2) Refers the matter to the Department of Justice for enforcement; or

(3) Takes any other enforcement action authorized by law.

(c) *Nature of withholding.* (1) If the Secretary determines that it is appropriate to withhold further payments under paragraph (b)(1) of this section, the Secretary may determine that the withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the SEA shall not make further payments under Part B of the Act to specified LEA or State agencies affected by the failure.

(2) Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of Part B of the Act, this part, or 34 CFR part 301, as specified in paragraph (a) of this section, payments to the State under Part B of the Act are withheld in whole or in part, or payments by the SEA under Part B of the Act are limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be.

(3) Any SEA, LEA, or other State agency that has received notice under paragraph (a) of this section shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of that agency.

(4) Before withholding under paragraph (b)(1) of this section, the Secretary provides notice and a hearing pursuant to the procedures in §§ 300.581–300.586.

(d) *Referral for appropriate enforcement.* (1) Before the Secretary makes a referral under paragraph (b)(2) of this section for enforcement, or takes any other enforcement action authorized by law under paragraph (b)(3), the Secretary provides the State—

- (i) With reasonable notice; and
- (ii) With an opportunity for a hearing.

(2) The hearing described in paragraph (d)(1)(ii) of this section consists of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make such a referral for enforcement.

(e) *Divided State agency responsibility.* For purposes of this part, if responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to § 300.600(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act or this part are related to a failure by the public agency, the Secretary takes one of the enforcement actions described in paragraph (b) of this section to ensure compliance with Part B of the Act and this part, except—

(1) Any reduction or withholding of payments to the State under paragraph (b)(1) of this section is proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) Any withholding of funds under paragraph (e)(1) of this section is limited to the specific agency responsible for the failure to comply with Part B of the Act or this part.

(Authority: 20 U.S.C. 1416)

**Note:** Other enforcement actions authorized by law include issuance of a complaint to compel compliance through a cease and desist order under 20 U.S.C. 1234e and entering into a compliance agreement to bring a recipient into compliance under 20 U.S.C. 1234f.

#### §§ 300.588 [Reserved]

#### § 300.589 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§ 300.232–300.235, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under § 300.602 without regard to the prohibition on supplanting other funds (See § 300.372).

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the

requirement under § 300.153 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes—

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail—

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include—

(A) The State's procedures under § 300.125 for ensuring that all eligible children are identified, located and evaluated;

(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;

(C) The State's complaint procedures under §§ 300.660–300.662; and

(D) The State's hearing procedures under §§ 300.507–300.511 and 300.520–300.528;

(3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§ 300.660–300.662) and hearing decisions (see §§ 300.507–300.511 and 300.520–300.528), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under § 300.650, the State's Parent Training and Information Center or Centers, the State's Protection and Advocacy organization, and other organizations representing the interests of children with disabilities and their parents, and

a summary of the input of these organizations.

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

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

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

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

(f) A State may receive a waiver of the requirement of section 612(a)(19)(A) and § 300.154(a) if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g)(1) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

(Authority: 20 U.S.C. 1412(a)(18)(C), (19)(C)(ii) and (E))

#### Subpart F—State Administration; General

#### § 300.600 Responsibility for all educational programs.

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency—

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

(ii) Meets the education standards of the SEA (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law), may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

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

**Note:** The requirement in § 300.600(a) reflects the desire of the Congress for a central point of responsibility and accountability in the education of children with disabilities within each State. With respect to SEA responsibility, the Senate Report on Pub. L. 94-142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the SEA shall be the responsible agency \* \* \*.

Without this requirement, there is an abdication of responsibility for the education of handicapped children. In many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (S. Rep. No. 94-168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options that may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning SEA standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's office issues an administrative directive establishing the SEA responsibility.

(3) State law, regulation, or policy designates the SEA as responsible for establishing standards for all

educational programs for individuals with disabilities, and includes responsibility for monitoring.

(4) State law mandates that the SEA is responsible for all educational programs.

#### **§ 300.601 Relation of Part B to other Federal programs.**

Part B of the Act may not be construed to permit a State to reduce medical and other assistance available to children with disabilities, or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE.

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

#### **§ 300.602 State-level activities.**

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration in accordance with §§ 300.620 and 300.621 and other State-level activities in accordance with § 300.370.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 611 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(f)(1)(A) and (B))

#### **Use of Funds**

##### **§ 300.620 Use of funds for State administration.**

(a) For the purpose of administering Part B of the Act, including section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities)—

(1) Each State may use not more than twenty percent of the maximum amount it may retain under § 300.602(a) for any fiscal year or \$500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

(2) Each outlying area may use up to five percent of the amount it receives under this section for any fiscal year or \$35,000, whichever is greater.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part.

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

##### **§ 300.621 Allowable costs.**

(a) The SEA may use funds under § 300.620 for—

(1) Administration of State activities under Part B of the Act and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;

(3) Technical assistance to LEAs with respect to the requirements of Part B of the Act;

(4) Leadership services for the program supervision and management of special education activities for children with disabilities; and

(5) Other State leadership activities and consultative services.

(b) The SEA shall use the remainder of its funds under § 300.620 in accordance with § 300.370.

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

##### **§ 300.622 Subgrants to LEAs for capacity-building and improvement.**

In any fiscal year in which the percentage increase in the State's allocation under 611 of the Act exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under 611 of the Act, the amount described in § 300.623 to make subgrants to LEAs, unless that amount is less than \$100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

(a) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

(b) Addressing needs or carrying out improvement strategies identified in the

State's Improvement Plan under subpart 1 of Part D of the Act.

(c) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.

(d) Establishing, expanding, or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to children with disabilities and their families.

(e) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

(Authority: 20 U.S.C. 1411(f)(4)(A))

#### **§ 300.623 Amount required for subgrants to LEAs.**

For each fiscal year, the amount referred to in § 300.622 is—

(a) The maximum amount the State was allowed to retain under § 300.602(a) for the prior fiscal year, or, for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under section 611; multiplied by

(b) The difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(f)(4)(B))

**Note:** The amount required for these subgrants will vary from year to year and is determined by the size of the increase in the State's allocation. Funds used for the required subgrants to LEAs in one year become part of the required flow-through to LEAs under § 300.712 in the next year. In those years in which the State's allocation does not increase over the prior year by at least the rate of inflation, the required set-aside for these grants will be zero. However, States may always use, at their discretion, funds reserved for State-level activities under § 300.602 for these subgrants.

#### **§ 300.624 State discretion in awarding subgrants.**

The State may establish priorities in awarding subgrants under § 300.622 to LEAs competitively or on a targeted basis.

(Authority: 20 U.S.C. 1411(f)(4)(B))

**Note:** The purpose of these subgrants, as distinguished from the formula subgrants to LEAs, is to provide funding that the SEA can direct to address particular needs not readily addressed through formula assistance to school districts such as funding for services to children who have been suspended or expelled. The SEA can also use these funds to promote innovation, capacity-building,

and systemic changes that are needed to improve educational results.

#### **State Advisory Panel**

##### **§ 300.650 Establishment of advisory panels.**

(a) Each State shall establish and maintain, in accordance with §§ 300.650—300.653, a State advisory panel on the education of children with disabilities.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 300.652, the State may modify the existing panel so that it fulfills all of the requirements of §§ 300.650—300.653, instead of establishing a new advisory panel.

(Authority: 20 U.S.C. 1412(a)(21)(A))

**Note:** The advisory panel required by §§ 300.650—300.653 must advise the State regarding the education of all children with disabilities in the State. This includes advising the State on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons, even if, consistent with § 300.600(d), a State assigns general supervision responsibility for those students to a public agency other than an SEA.

##### **§ 300.651 Membership.**

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

- (1) Parents of children with disabilities;
- (2) Individuals with disabilities;
- (3) Teachers;
- (4) Representatives of institutions of higher education that prepare special education and related services personnel;
- (5) State and local education officials;
- (6) Administrators of programs for children with disabilities;
- (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
- (8) Representatives of private schools and public charter schools;
- (9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and
- (10) Representatives from the State juvenile and adult corrections agencies.

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

(Authority: 20 U.S.C. 1412(a)(21)(B) and (C))

##### **§ 300.652 Advisory panel functions.**

The State advisory panel shall—

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

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

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

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

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

(Authority: 20 U.S.C. 1412(a)(21)(D))

##### **§ 300.653 Advisory panel procedures.**

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.

(c) Official minutes must be kept on all panel meetings and must be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 300.620 for this purpose.

(Authority: 20 U.S.C. 1412(a)(21))

#### **State Complaint Procedures**

##### **§ 300.660 Adoption of State complaint procedures.**

Each SEA shall adopt written procedures for—

(a) Resolving any complaint that meets the requirements of § 300.662 by—

(1) Providing for the filing of a complaint with the SEA; and  
(2) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

(b) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 300.660–300.662.

(Authority: 20 U.S.C. 2831(a))

**Note:** In resolving a complaint alleging failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, may award compensatory services as a remedy for the denial of FAPE.

#### § 300.661 Minimum State complaint procedures.

Each SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 300.660(a) to—

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

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

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(Authority: 20 U.S.C. 2831(a))

**Note 1:** If a written complaint is received that is also the subject of a due process hearing under § 300.507, or contains multiple issues, of which one or more may be part of that hearing, the State must set aside any part of the complaint that is being addressed in

the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60 calendar-day timeline using the complaint procedures described in this section.

**Note 2:** If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding, and the SEA would inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process decision, however, would have to be resolved by the SEA.

#### § 300.662 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.660–300.661.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; and

(2) The facts on which the statement is based.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under § 300.660(a).

(Authority: 20 U.S.C. 2831(a))

**Note:** The SEA must resolve any complaint that meets the requirements of this section, even if the complaint is filed by an organization or individual from another State.

#### Subpart G—Allocation of Funds; Reports Allocations

##### § 300.700 Special definition of the term "State".

For the purposes of §§ 300.701, 300.703–300.714, the term *State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

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

##### § 300.701 Grants to States.

(a) *Purpose of grants.* The Secretary makes grants to States and the outlying areas and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act.

(b) *Maximum amounts.* The maximum amount of the grant a State may receive under section 611 of the Act for any fiscal year is—

(1) The number of children with disabilities in the State who are receiving special education and related services—

(i) Aged 3 through 5 if the State is eligible for a grant under section 619 of the Act; and

(ii) Aged 6 through 21; multiplied by—

(2) Forty (40) percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

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

##### § 300.702 Definition.

For the purposes of this section the term *average per-pupil expenditure in public elementary and secondary schools in the United States* means—

(a) Without regard to the source of funds—

(1) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus

(2) Any direct expenditures by the State for the operation of those agencies; divided by

(b) The aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1411(h)(1))

##### § 300.703 Allocations to States.

(a) *General.* After reserving funds for studies and evaluations under section 674(e) of the Act, and for payments to the outlying areas and the Secretary of the Interior under §§ 300.717–300.722 and 300.715, the Secretary allocates the remaining amount among the States in accordance with paragraph (b) of this section and §§ 300.704–300.705 or 300.706–300.709.

(b) *Interim formula.* Except as provided in §§ 300.706–300.709, the Secretary allocates the amount described in paragraph (a) of this section among the States in accordance with section 611(a)(3), (4), (5) and (b)(1), (2) and (3) of the Act, as in effect prior to June 4, 1997, except that the determination of the number of children with disabilities receiving special education and related services under section 611(a)(3) of the Act (as then in effect) may be calculated as of December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated.

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

**§§ 300.704–300.705 [Reserved]****§ 300.706 Permanent formula.**

(a) *Establishment of base year.* The Secretary allocates the amount described in § 300.703(a) among the States in accordance with §§ 300.706–300.709 for each fiscal year beginning with the first fiscal year for which the amount appropriated under 611(j) of the Act is more than \$4,924,672,200.

(b) *Use of base year.*

(1) *Definition.* As used in this section, the term *base year* means the fiscal year preceding the first fiscal year in which this section applies.

(2) *Special rule for use of base year amount.* If a State received any funds under this section for the base year on the basis of children aged 3 through 5, but does not make FAPE available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary computes the State's base year amount, solely for the purpose of calculating the State's allocation in that subsequent year under §§ 300.707–300.709, by subtracting the amount allocated to the State for the base year on the basis of those children.

(Authority: 20 U.S.C. 1411(e)(1) and (2))

**§ 300.707 Increase in funds.**

If the amount available for allocations to States under § 300.706 is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 300.708, the Secretary—

(1) Allocates to each State the amount it received for the base year;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1411(e)(3))

**§ 300.708 Limitation.**

(a) Notwithstanding § 300.707, allocations under this section are subject to the following:

(1) No State's allocation may be less than its allocation for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for the base year; and

(B) One-third of one percent of the amount by which the amount appropriated under section 611(j) of the Act exceeds the amount appropriated under section 611 of the Act for the base year;

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under § 300.707 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocations to States under § 300.307 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1411(e)(3)(B) and (C))

**§ 300.709 Decrease in funds.**

If the amount available for allocations to States under § 300.706 is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State is allocated the sum of—

(1) The amount it received for the base year; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of those increases for all States.

(b)(1) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State is allocated the amount it received for the base year.

(2) If the amount available is insufficient to make the allocations described in paragraph (b)(1) of this section, those allocations are ratably reduced.

(Authority: 20 U.S.C. 1411(e)(4))

**§ 300.710 Allocation for State in which by-pass is implemented for private school children with disabilities.**

In determining the allocation under §§ 300.700–300.709 of a State in which the Secretary will implement a by-pass for private school children with disabilities under §§ 300.451–300.487, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§ 300.7(a) and 300.450) in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.

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

**§ 300.711 Subgrants to LEAs.**

Each State that receives a grant under section 611 of the Act for any fiscal year shall distribute in accordance with § 300.712 any funds it does not retain under § 300.602 and is not required to distribute under §§ 300.622 and 300.623 to LEAs in the State that have established their eligibility under section 613 of the Act, and to State agencies that received funds under section 614A(a) of the Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613 of the Act, for use in accordance with Part B of the Act.

(Authority: 20 U.S.C. 1411(g)(1))

**§ 300.712 Allocations to LEAs.**

(a) *Interim procedure.* For each fiscal year for which funds are allocated to States under § 300.703(b) each State shall allocate funds under § 300.711 in accordance with section 611(d) of the Act, as in effect prior to June 4, 1997.

(b) *Permanent procedure.* For each fiscal year for which funds are allocated to States under §§ 300.706–300.709, each State shall allocate funds under § 300.711 as follows:

(1) *Base payments.* The State first shall award each agency described in § 300.711 the amount that agency would have received under this section for the base year, as defined in § 300.706(b)(1), if the State had distributed 75 percent of its grant for that year under section § 300.703(b).

(2) *Allocation of remaining funds.* The State then shall—

(i) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

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

**Note:** In distributing funds under paragraph (b)(2)(i) of this section, States should use the best data that are available to them on enrollment in public and private schools. If data on enrollment in private schools are not available, States or LEAs are not expected to initiate new data collections to obtain these data. However, States are encouraged to try to obtain enrollment data from private, nonprofit schools that want their students to participate in the program.

In distributing funds under paragraph (b)(2)(ii) of this section, States have discretion in determining what data to use to allocate funds among LEAs on the basis of children living in poverty. States should use the best data available to them that reflect the distribution of children living in poverty. Examples of options include census poverty data, data on children in families receiving assistance under the State program funded under Part A of title IV of the Social Security Act, data on children participating in the free or reduced-price meals program under the National School Lunch Act, and allocations under title I of the Elementary and Secondary Education Act.

#### **§ 300.713 Former Chapter 1 State agencies.**

(a) To the extent necessary, the State—

(1) Shall use funds that are available under § 300.602(a) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994) receives, from the combination of funds under § 300.602(a) and funds provided under § 300.711, an amount equal to—

(i) The number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, subject to the limitation in paragraph (b) of this section; multiplied by

(ii) The per-child amount provided under such subpart for fiscal year 1994; and

(2) May use those funds to ensure that each LEA that received fiscal year 1994

funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under § 300.602(a) and funds provided under § 300.711, an amount for each child, aged 3 through 21 to whom the agency was providing special education and related services on December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

(b) The number of children counted under paragraph (a)(1)(i) of this section may not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994).

(Authority: 20 U.S.C. 1411(g)(3))

#### **§ 300.714 Reallocation of LEA funds.**

If a SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under Part B of the Act that are not needed by that local agency to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

(Authority: 20 U.S.C. 1411(g)(4))

#### **§ 300.715 Payments to the Secretary of the Interior for the education of Indian children.**

(a) *Reserved amounts for Secretary of Interior.* From the amount appropriated for any fiscal year under 611(j) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with this section.

(b) *Provision of amounts for assistance.* The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under paragraph (a) of this section for that fiscal year.

(c) *Calculation of number of children.* In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of

Indian Affairs (BIA) schools and that are required by the States in which these schools are located to attain or maintain State accreditation, and which schools have this accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school may count those children for the purpose of distribution of the funds provided under this section to the Secretary of the Interior.

(d) *Responsibility for meeting the requirements of Part B.* The Secretary of the Interior shall meet all of the requirements of Part B of the Act for the children described in paragraph (b) of this section, in accordance with § 300.260.

(Authority: 20 U.S.C. 1411(c); 1411(i)(1) (A) and (B))

#### **§ 300.716 Payments for education and services for Indian children with disabilities aged 3 through 5.**

(a) *General.* With funds appropriated under 611(j) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under § 300.715(a).

(b) *Distribution of funds.* The Secretary of the Interior shall distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(c) *Submission of information.* To receive a payment under this section, the tribe or tribal organization shall submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.

(d) *Use of funds.* (1) The funds received by a tribe or tribal organization must be used to assist in child find screening and other procedures for the

early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) *Biennial report.* To be eligible to receive a grant pursuant to paragraph (a) of this section, the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the two years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary required under section 611(i). The Secretary may require any additional information from the Secretary of the Interior.

(f) *Prohibitions.* None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(Authority: 20 U.S.C. 1411(i)(3))

**§ 300.717 Outlying areas and freely associated States.**

From the amount appropriated for any fiscal year under 611(j) of the Act, the Secretary reserves not more than one percent, which must be used—

(a) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(b) For fiscal years 1998 through 2001, to carry out the competition described in § 300.719, except that the amount reserved to carry out that competition may not exceed the amount reserved for fiscal year 1996 for the competition under Part B of the Act described under the heading "SPECIAL EDUCATION" in Public Law 104-134.

(Authority: 20 U.S.C. 1411(b)(1))

**§ 300.718 Outlying area—definition.**

As used in this part, the term *outlying area* means the United States Virgin Islands, Guam, American Samoa, and

the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1402(18))

**§ 300.719 Limitation for freely associated States.**

(a) *Competitive grants.* The Secretary uses funds described in § 300.717(b) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.

(b) *Award basis.* The Secretary awards grants under paragraph (a) of this section on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations must be made by experts in the field of special education and related services.

(c) *Assistance requirements.* Any freely associated State that wishes to receive funds under Part B of the Act shall include, in its application for assistance—

(1) Information demonstrating that it will meet all conditions that apply to States under this part;

(2) An assurance that, notwithstanding any other provision of this part, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;

(3) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and

(4) Such other information and assurances as the Secretary may require.

(d) *Termination of eligibility.* Notwithstanding any other provision of law, the freely associated States may not receive any funds under Part B of the Act for any program year that begins after September 30, 2001.

(e) *Administrative costs.* The Secretary may provide not more than five percent of the amount reserved for grants under this section to pay the administrative costs of the Pacific Region Educational Laboratory under paragraph (b) of this section.

(f) *Eligibility for award.* An outlying area is not eligible for a competitive award under § 300.719 unless it receives assistance under § 300.717(a).

(Authority: 20 U.S.C. 1411(b)(2) and (3))

**§ 300.720 Special rule.**

The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, do not apply to

funds provided to those areas or to the freely associated States under Part B of the Act.

(Authority: 20 U.S.C. 1411(b)(4))

**§ 300.721 [Reserved]**

**§ 300.722 Definition.**

As used in this part, the term *freely associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(Authority: 20 U.S.C. 1411(b)(6))

**Reports**

**§ 300.750 Annual report of children served—report requirement.**

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in the State who are receiving special education and related services.

(b) The SEA shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411(d)(2); 1418(a))

**Note:** It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make FAPE available. For example, while section 611(a)(5) of the Act prior to the Individuals with Disabilities Education Act Amendments of 1997 limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged 3 through 17 (in States that serve all children with disabilities aged 3 through 5) or 5 through 17 (in States that do not serve all children with disabilities aged 3 through 5), a State might find that 13 percent (or some other percentage) of its children have disabilities. In that case, the State must make FAPE available to all of those children with disabilities.

**§ 300.751 Annual report of children served—information required in the report.**

(a) For any year before the total appropriation for section 611 of the Act first exceeds \$4,924,672,200, the SEA shall include in its report a table that shows—

(1) The number of children with disabilities receiving special education and related services on December 1, or at the State's discretion on the last Friday in October, of that school year;

(2) The number of children with disabilities aged 3 through 5 who are receiving FAPE;

(3) The number of those children with disabilities aged 6 through 21 within each disability category, as defined in the definition of "children with disabilities" in § 300.7; and

(4) The number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.).

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1, or, at the State's discretion, the last Friday in October.

(c) The SEA may not report a child aged 6 through 21 under more than one disability category.

(d) If a child with a disability aged 6 through 21 has more than one disability, the SEA shall report that child in accordance with the following procedure:

(1) A child with deaf-blindness must be reported under the category "deaf-blindness."

(2) A child who has more than one disability (other than deaf-blindness) must be reported under the category "multiple disabilities."

(Authority: 20 U.S.C. 1411(d)(2); 1418(a))

**§ 300.752 Annual report of children served—certification.**

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

**§ 300.753 Annual report of children served—criteria for counting children.**

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that either—

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The SEA may not include children with disabilities in its report who—

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education; or

(4) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.184(c)(2).

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

**Note 1:** Under paragraph (a) of this section, the State may count children with disabilities

in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

**Note 2:** Both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Department expects that there would only be limited situations in which special education would be clearly separate from regular education—generally, if speech services are the only special education required by the child. For example, the child's parents may have enrolled the child in a regular program in a private school, but the child might be receiving speech services in a program funded by the LEA. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 612(a)(10)(A) of the Act regarding private schools) to public agencies to provide services to children enrolled by their parents in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that if a public agency places or refers a child with a disability to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If an SEA or LEA is responsible for serving these children, and does provide them special education and related services, they may be counted.

**§ 300.754 Annual report of children served—other responsibilities of the State education agency.**

In addition to meeting the other requirements of §§ 300.750–300.753, the SEA shall—

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an

unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.750–300.753; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

**Note:** States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

**§ 300.755 Disproportionality.**

(a) *General.* Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State or in the schools operated by the Secretary of the Interior with respect to—

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; and

(2) The placement in particular educational settings of these children.

(b) *Review and revision of policies, practices, and procedures.* In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior shall provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the Act.

(Authority: 20 U.S.C. 1418(c))

**§ 300.756 Acquisition of equipment; construction or alteration of facilities.**

(a) *General.* If the Secretary determines that a program authorized under Part B of the Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) *Compliance with certain regulations.* Any construction of new facilities or alteration of existing

facilities paragraph (a) of this section must comply with the requirements of—

(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Guidelines for Buildings and Facilities”); or

(2) Appendix A of part 101–19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).

(Authority: 20 U.S.C. 1405)

#### **Appendices A and B to Part 300 [Reserved]**

2. Part 301 is revised to read as follows:

### **PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES**

#### **Subpart A—General**

Sec.

301.1 Purpose of the Preschool Grants for Children With Disabilities Program.

301.2–301.3 [Reserved]

301.4 Applicable regulations.

301.5 Applicable definitions.

301.6 Applicability of Part C of the Act to two-year-old children with disabilities.

#### **Subpart B—State Eligibility for a Grant.**

301.10 Eligibility of a State to receive a grant.

301.11 [Reserved]

301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

#### **Subpart C—Allocation of Funds to a State.**

301.20 Allocations to States.

301.21 Increase in funds.

301.22 Limitation.

301.23 Decrease in funds.

301.24 State-level activities.

301.25 Use of funds for State administration.

301.26 Use of State agency allocations.

#### **Subpart D—Allocations of Funds to Local Educational Agencies.**

301.30 Subgrants to local educational agencies.

301.31 Allocations to local educational agencies.

301.32 Reallocation of local educational agency funds.

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

#### **Subpart A—General**

##### **§ 301.1 Purpose of the Preschool Grants for Children With Disabilities Program.**

The purpose of the Preschool Grants for Children With Disabilities program (Preschool Grants program) is to provide grants to States to assist them in providing special education and related services—

(a) To children with disabilities aged three through five years; and

(b) At a State’s discretion, to two-year-old children with disabilities who will turn three during the school year.

(Authority: 20 U.S.C. 1419(a))

#### **§§ 301.2–301.3 [Reserved]**

##### **§ 301.4 Applicable regulations.**

The following regulations apply to the Preschool Grants program:

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

(1) Part 76 (State-Administered Programs) except §§ 76.125–76.137 and 76.650–76.662;

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

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

(5) Part 81 (General Education Provision Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying); and

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

(b) The regulations in this part 301.

(c) The regulations in 34 CFR part 300.

(Authority: 20 U.S.C. 1419)

##### **§ 301.5 Applicable definitions.**

(a) *Definitions in the Act.* The following terms used in this part are defined in the Act: Educational service agency Local educational agency State educational agency

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

Applicant  
Application  
Award  
EDGAR  
Fiscal year  
Grant period  
Secretary  
Subgrant

(c) *Other definitions.* The following definitions also apply to this part:

*Act* means the Individuals with Disabilities Education Act, as amended.

*Part B child count* means the child count required by section 611(d)(2) of the Act.

*Preschool* means the age range of 3 through 5 years.

*State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1402, 1419)

##### **§ 301.6 Applicability of Part C of the Act to two-year-old children with disabilities.**

Part C of the Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with part B of the Act, with funds received under the Preschool Grants program.

(Authority: 20 U.S.C. 1419(h))

#### **Subpart B—State Eligibility for a Grant**

##### **§ 301.10 Eligibility of a State to receive a grant.**

A State is eligible to receive a grant if—

(a) The State is eligible under 34 CFR part 300; and

(b) The State demonstrates to the satisfaction of the Secretary that it has in effect policies and procedures that assure the provision of a free appropriate public education—

(1) For all children with disabilities aged three through five years in accordance with the requirements in 34 CFR part 300; and

(2) For any two-year-old children, provided services by the SEA or by an LEA or ESA under section 301.1.

(Authority: 20 U.S.C. 1419 (a), (b))

##### **§ 301.11 [Reserved]**

##### **§ 301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.**

If a State does not meet the requirements in section 619(b) of the Act—

(a) The State is not eligible for a grant under the Preschool Grant program;

(b) The State is not eligible for funds under 34 CFR part 300 for children with disabilities aged 3 through 5 years; and

(c) No SEA, LEA, ESA, or other public institution or agency within the State is eligible for a grant under Subpart 2 of part D of the Act if the grant relates exclusively to programs, projects, and activities pertaining to children with disabilities aged 3 through 5 years.

(Authority: 20 U.S.C. 1411(d)(2) and (e)(2)(B); 1419(b); 1461(j))

#### **Subpart C—Allocation of Funds to States**

##### **§ 301.20 Allocations to States.**

After reserving funds for studies and evaluations under section 674(e) of the Act, the Secretary allocates the remaining amount among the States in accordance with §§ 301.21–301.23.

(Authority: 20 U.S.C. 1419(c)(1))

**§ 301.21 Increase in funds.**

If the amount available for allocation to States under § 301.20 is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 301.22, the Secretary—

(1) Allocates to each State the amount it received for fiscal year 1997;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

**§ 301.22 Limitation.**

(a) Notwithstanding § 301.21, allocations under that section are subject to the following:

(1) No State's allocation may be less than its allocation for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for fiscal year 1997; and

(B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act exceeds the amount appropriated under section 619 of the Act for fiscal year 1997;

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under § 301.21 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocation to States under § 301.21 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, the Secretary ratably reduces those allocations, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1419(c)(2)(B) and (C))

**§ 301.23 Decrease in funds.**

If the amount available for allocations to States under § 301.20 is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—

(1) The amount it received for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of those increases for all States.

(b)(1) If the amount available for allocations is equal to the amount allocated to the States for fiscal year 1997, each State is allocated the amount it received for that year.

(2) If the amount available is less than the amount allocated to States for fiscal year 1997, the Secretary allocates amounts equal to the allocations for fiscal year 1997, ratably reduced.

(Authority: 20 U.S.C. 1419(c)(3))

**§ 301.24 State-level activities.**

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§ 301.25 and 301.26.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1419 (d))

**§ 301.25 Use of funds for State administration.**

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), each State may use not more than twenty percent of the maximum amount it may retain under § 301.24 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part.

(Authority: 20 U.S.C. 1419(e))

**§ 301.26 Use of State agency allocations.**

Each State shall use any funds it retains under § 301.24 and does not use for administration under § 301.25 for any of the following:

(a) Support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5.

(b) Direct services for children eligible for services under section 619 of the Act.

(c) Developing a State improvement plan under subpart 1 of Part D of the Act.

(d) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) of the Act and to support implementation of the State improvement plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.

(e) Supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 619 of the Act for a fiscal year.

(Authority: 20 U.S.C. 1419(f))

**Note:** The Individual with Disabilities Education Act Amendments of 1997 made a number of changes to the Act designed to encourage better coordination of services among programs, including flexibility for States to use State administration funds under section 619(e) to coordinate activities with other programs that provide services to children with disabilities and to fund administrative costs related to part C. Consistent with the intent of these provisions, an example of an authorized activity under paragraph (a) would be to plan

and develop a statewide comprehensive delivery system for children with disabilities aged birth through five.

#### Subpart D—Allocation of funds to local educational agencies.

##### § 301.30 Subgrants to local educational agencies.

Each State that receives a grant under section 619 of the Act for any fiscal year shall distribute any funds it does not retain under § 301.24 to local educational agencies in the State that have established their eligibility under section 613 of the Act.

(Authority: 20 U.S.C. 1419(g)(1))

##### § 301.31 Allocations to local educational agencies.

(a) *Base payments.* The State shall first award each agency described in § 301.27 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

(b) *Allocation of remaining funds.* After making allocations under paragraph (a) of this section, the State shall—

(1) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(Authority: 20 U.S.C. 1419(g)(1))

**Note:** In distributing funds under paragraph (b)(1) of this section, States should use the best data that is available to them on enrollment in public and private schools. If data on enrollment in private schools is not available, States or LEAs are not expected to initiate new data collections to obtain this data. However, States are encouraged to try to obtain enrollment data from private schools that want their students to participate in the program.

In distributing funds under paragraph (b)(2) of this section, States have discretion in determining what data to use to allocate funds among LEAs on the basis of children living in poverty. States should use the best data available to them that reflect the distribution of children living in poverty. Examples of options include census poverty data, data on children in families receiving assistance under the State program funded under Part A of title IV of the Social Security Act, data on children participating in the free or reduced-price meals program under the National School Lunch Act, and allocations under title I of the Elementary and Secondary Education Act.

##### § 301.32 Reallocation of LEA funds.

(a) If a SEA determines that an LEA is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.

(b) If a State provides services to preschool children with disabilities because some or all LEAs and ESAs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or ESAs to provide special education and related services to children with disabilities aged 3 through 5 years, and to two-year-old children with disabilities receiving services consistent with § 301.1 who are residing in the area served by those LEAs and ESAs.

(Authority: 20 U.S.C. 1414(d), 1419(g)(2))

#### PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

3. The authority citation for part 303 is revised to read as follows:

**Authority:** 20 U.S.C. 1431–1445, unless otherwise noted.

4. Section 303.18 is revised to read as follows:

##### § 303.18 Parent.

(a) As used in this part, “parent” means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 303.406. The term does not include the State if the child is a ward of the State.

(b) State law may provide that a foster parent qualifies as a parent under this part if—

(1) The natural parents' authority to make early intervention or educational decisions on the child's behalf has been relinquished under State law;

(2) The foster parent has an ongoing, long-term parental relationship with the child;

(3) The foster parent is willing to participate in making early intervention or educational decisions on the child's behalf; and

(4) The foster parent has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1436)

**Note:** The term “parent” has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare, and, at the discretion of the State, a foster parent meeting the requirements of paragraph (b) of this section. The definition in this section is identical to the definition used in the regulations under Part B of the Act (34 CFR 300.19).

5. Section 303.403 is amended by removing the word “and” at the end of paragraph (b)(2); removing the period at the end of paragraph (b)(3) and adding, in its place, “; and”; by adding a new paragraph (b)(4); and by revising the citation of authority to read as follows:

##### § 303.403 Prior notice; native language.

\* \* \* \* \*

(b) *Content of notice.* The notice must be in sufficient detail to inform the parents about—

\* \* \* \* \*

(4) The State complaint procedures under §§ 303.510–512, including a description of how to file a complaint and the timelines under those procedures.

(Authority: 20 U.S.C. 1439(a)(6) and (7))

6. Section 303.510 is amended by revising paragraph (b); redesignating the existing note as Note 1; adding a new Note 2; and revising the citation of authority to read as follows:

##### § 303.510 Adopting complaint procedures.

\* \* \* \* \*

(b) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 303.510 through 303.512.

(Authority: 20 U.S.C. 1435(a)(10))

**Note 1:** Because of the interagency nature of Part C of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State's early intervention program, or (3) private service providers that receive Part C funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. The lead agency must provide for the filing of a complaint with the lead agency and, at the lead agency's discretion, with a public agency subject to a right of appeal to the lead agency.

**Note 2:** In resolving a complaint alleging failure to provide services in the IFSP, a lead

agency, pursuant to its general supervisory authority under this part, may award compensatory services as a remedy.

7. Section 303.511 is amended by adding a new paragraph (c) and a note; and revising the citation of authority to read as follows:

**§ 303.511 An organization or individual may file a complaint.**

\* \* \* \* \*

(c) The alleged violation must have occurred not more than one year prior to the date that the complaint is received by the public agency unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the public agency.

(Authority: 20 U.S.C. 1435(a)(10))

**Note:** The lead agency must resolve any complaint that meets the requirements of this section, even if the complaint is filed by an organization or individual from another State.

8. Section 303.512 is revised by removing paragraph (d), revising the citation of authority, and adding two notes following the revised citation of authority to read as follows:

**§ 303.512 Minimum State complaint procedures.**

\* \* \* \* \*

(Authority: 20 U.S.C. 1435(a)(10))

**Note 1:** If a written complaint is received that is also the subject of a due process hearing under § 303.420, or contains multiple issues, of which one or more may be part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described in this section.

**Note 2:** If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding, and the lead agency would inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process decision, however, would have to be resolved by the lead agency.

9. Section 303.520 is amended by adding new paragraphs (d) and (e) and three notes; and revising the citation of authority to read as follows:

**§ 303.520 Policies related to payment for services.**

\* \* \* \* \*

(d) *Infants and toddlers with disabilities who are covered by private insurance.*

(1) A lead agency may not require parents of infants and toddlers with disabilities, if they would incur a financial cost, to use private insurance proceeds to pay for the services that must be provided to an eligible infant or toddler under this part.

(2) For the purposes of this section, the term "financial costs" includes—

(i) An out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim, but not including incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim;

(ii) A decrease in available lifetime coverage or any other benefit under an insurance policy; and

(iii) An increase in premiums or the discontinuation of the policy.

(e) *Proceeds from public or private insurance.* Proceeds from public or private insurance may not be treated as program income for purposes of 34 CFR 80.25.

(Authority: 20 U.S.C. 1435(a)(10); 1432(4)(B))

**Note 1:** Under paragraph (d), States are prohibited from requiring that families use private insurance as a condition of receiving services under this part, if that use results in financial cost to the family. The use of parents' insurance proceeds to pay for services in these circumstances must be voluntary. For example, a family could not be required to access private insurance that is required to enable a child to receive Medicaid services, if that insurance use results in financial costs to the family.

**Note 2:** If the State cannot get parental consent to use private insurance, the State may use funds under this part to pay for the service. In addition, in order to avoid financial cost to parents who would otherwise consent to use of private insurance, the lead agency may use funds under this part to pay the costs of accessing the insurance; e.g., deductible or co-pay amounts.

**Note 3:** Paragraph (e) clarifies that, if a State receives funds from public or private insurance for services under this part, the State is not required to return those funds to the Department or to dedicate those funds for use in this program, although a State retains the option of using those funds in this program. If a State spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the nonsupplanting provision in § 303.124. This is because the expenditure that is reimbursed is considered to be an expenditure of funds from the source that provides the reimbursement.

**Appendix C to Part 300—Notice of Interpretation**

**Authority:** Individuals with Disabilities Education Act (20 U.S.C. 1401, *et seq.*), unless otherwise noted.

**Interpretation of Individualized Education Program (IEP) Requirements of the Individuals with Disabilities Education Act (IDEA)**

The IEP requirements of the IDEA emphasize the importance of each child with a disability's involvement and progress in the general curriculum; of the involvement of parents and students, together with regular and special education personnel in making individualized decisions to support each child's educational success; and of preparing students with disabilities for employment and other post-school experiences. This Appendix provides guidance regarding Part B IEP requirements, especially as they relate to these core concepts, as well as other issues regarding the development and content of IEPs.

**I. Involvement and Progress in the General Curriculum**

In enacting the IDEA Amendments of 1997, the Congress found that:

\* \* \* research, demonstration, and practice [over the past 20 years] in special education and related disciplines have demonstrated that an effective educational system now and in the future must—(A) maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals. [§ 651(a)(6)(A) of the Act.]

Accordingly, the evaluation and IEP provisions of Part B place great emphasis on the involvement and progress of children with disabilities in the general curriculum. While the Act and regulations recognize that IEP teams must make individualized decisions about the special education and related services, and supplementary aids and services, provided to each child with a disability, they are driven by IDEA's strong preference that, to the maximum extent appropriate, children with disabilities be educated in regular classes with their nondisabled peers with appropriate supplementary aids and services.

1. What are the major Part B IEP requirements that govern the involvement and progress of children with disabilities in the general curriculum?

*Present Levels of Educational Performance*

Section 300.347(a)(1) requires that the IEP for each child with a disability include "\* \* \* a statement of the child's present levels of educational performance, including—(i) *How the child's disability affects the child's involvement and progress in the general curriculum*; or (ii) *for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities* \* \* \* (Italics added.) ("Appropriate activities" in this context refers to age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved.)

*Measurable Annual Goals, Including Benchmarks or Short-term Objectives*

Measurable annual goals, including benchmarks or short-term objectives, are instrumental to the strategic planning process used to develop and implement the IEP for each child with a disability. Once the IEP team has developed measurable annual goals for a child, the team can (1) develop strategies that will be most effective in realizing those goals and (2) develop measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable families, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the child's instructional needs.

Part B's strong emphasis on linking the educational program of children with disabilities to the general curriculum is reflected in § 300.347(a)(2), which requires that the IEP include:

a statement of measurable annual goals, including benchmarks or short-term objectives, related to—(i) *meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum*; and (ii) meeting each of the child's other educational needs that result from the child's disability. [Italics added.]

*Special Education and Related Services and Supplementary Aids and Services*

The requirements regarding services provided to address a child's present levels of educational performance and to make progress toward the identified goals reinforce the emphasis on progress in the general curriculum, as well as maximizing the extent to which children with disabilities are educated with nondisabled children. Section 300.347(a)(3) requires that the IEP include:

a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—(i) To advance appropriately toward attaining the annual goals; (ii) *to be involved and progress in the general curriculum* \* \* \* and to participate in extracurricular and other nonacademic activities; and (iii) *to be educated and participate with other children with disabilities and nondisabled children in [extracurricular and other nonacademic activities]* \* \* \* [Italics added.]

*Extent to Which Child Will Participate With Nondisabled Children*

Section 300.347(a)(4) requires that each child's IEP include “\* \* \* an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in [extracurricular and other nonacademic] activities” \* \* \* This is consistent with the least restrictive environment provisions at §§ 300.550–300.553, which include requirements that:

(1) Each child with a disability be educated with nondisabled children to the maximum extent appropriate (§ 300.550(b)(1));

(2) Each child with a disability be removed from the regular educational environment

only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (§ 300.550(b)(1)); and

(3) To the maximum extent appropriate to the child's needs, each child with a disability participate with nondisabled children in nonacademic and extracurricular services and activities (§ 300.553).

*Participation in State or Districtwide Assessments of Student Achievement*

Consistent with § 300.138(a), which sets forth a presumption that children with disabilities will be included in general State- and district-wide assessment programs, and provided with appropriate accommodations if necessary, § 300.347(a)(5) requires that the IEP for each student with a disability include: (i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and (ii) if the IEP Team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of—(A) Why that assessment is not appropriate for the child; and (B) How the child will be assessed.

*Regular Education Teacher Participation in the Development, Review, and Revision of IEPs*

Very often, regular education teachers play a central role in the education of children with disabilities (House Report No. 105–95, p. 103 (1997)) and have important expertise regarding the general curriculum and the general education environment. Further, especially with the emphasis on involvement and progress in the general curriculum added by the IDEA Amendments of 1997, regular education teachers have an increasingly critical role in implementing, together with special education and related services personnel, the program of FAPE for most children with disabilities, as described in their IEPs. Accordingly, the IDEA Amendments of 1997 added a requirement that each child's IEP team must include at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment (see § 300.344(a)(2)). (See also §§ 300.346(d) on the role of a regular education teacher in the development, review and revision of IEPs.)

2. Must a child's IEP address his or her involvement in the general curriculum, regardless of the nature and severity of the child's disability and the setting in which the child is educated?

Yes. The IEP for all children with disabilities must address how the child will be involved and progress in the general curriculum, as described. The Part B regulations recognize that some children with disabilities will have some educational needs that result from their disabilities that cannot be fully met by involvement and progress in the general curriculum; accordingly, § 300.347(a)(2) requires that each child's IEP include:

a statement of measurable annual goals, including benchmarks or short-term

objectives, related to—(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and (ii) *meeting each of the child's other educational needs that result from the child's disability*. [Italics added.]

Thus, the IEP team for each child with a disability must make an individualized determination regarding how the child will participate in the general curriculum, and what, if any, educational needs that will not be met through involvement in the general curriculum should be addressed in the IEP. This includes children who are educated in separate classrooms or schools.

3. What must public agencies do to meet the requirements at §§ 300.344(a)(2) and 300.346(d), regarding the participation of a “regular education teacher” in the development and review of the IEP, for children aged 3 through 5 who are receiving preschool special education services?

If a public agency provides “regular education” preschool services to nondisabled children, then the requirements of §§ 300.344(a)(2) and 300.346(d) apply as they do in the case of older children with disabilities. If a public agency makes kindergarten available to nondisabled children, then a regular education kindergarten teacher could appropriately be the regular education teacher who would participate in an IEP meeting for a kindergarten-aged child who is, or may be, participating in the regular education environment. If a public agency does not provide regular preschool education services to nondisabled children, the agency would designate an individual who, under State standards, is qualified to serve nondisabled children of the same age.

4. Must the measurable annual goals in a child's IEP address all areas of the general curriculum, or only those areas in which the child's involvement and progress are affected by the child's disability?

Section 300.347(a)(2) requires that each child's IEP include a “\* \* \* statement of measurable annual goals, including benchmarks or short-term objectives, *related to—(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum*; and (ii) meeting each of the child's other educational needs that result from the child's disability” \* \* \* (Italics added). Thus, a public agency is not required to include in an IEP annual goals that relate to areas of the general curriculum in which the child's disability does not affect the child's ability to be involved in and progress in the general curriculum.

**II. Involvement of Parents and Students**

One of the key purposes of the IDEA Amendments of 1997 is to “Expand and promote opportunities for parents, special education, related services, regular education, and early intervention service providers, and other personnel to work in new partnerships at both the State and local levels (House Report 105–95, p. 82 (1997)). Indeed, the Committee viewed the Amendments as an opportunity to “[strengthen] the role of parents.” (House

Report 105-95, p-82 (1997).) Accordingly, the Amendments require that parents have "an opportunity \* \* \* to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child" (§ 300.501). Parents must now be part of the teams that determine what additional data are needed as part of an evaluation of their child (§ 300.533(a)(1)); their child's eligibility (§ 300.534(a)(1)); and the educational placement of their child (§ 300.501(c)). Parents' concerns, and information that they provide regarding their children, must be considered in developing and reviewing their children's IEPs (§§ 300.343(c)(iii) and 300.346 (a)(1)(i) and (b)).

As explained, the requirements for keeping parents informed about the educational progress of their children, particularly as it relates to their progress in the general curriculum, have been strengthened (§ 300.347(a)(7)).

The IDEA Amendments of 1997 and the 1990 amendments have both included provisions which greatly strengthen involvement of students with disabilities in decisions regarding their own futures, to facilitate movement from school to post-school activities. The IDEA Amendments of 1990 included provisions regarding transition services, which require: (a) A coordinated set of activities within an outcome-oriented process to facilitate movement from school to post-school activities; (b) that the transition services provided to each student be " \* \* \* based on the individual student's needs, taking into account the student's preferences and interests" (§ 300.27(b)), (c) that the public agency invite a student with a disability to any IEP meetings for which a purpose is the consideration of transition services (§ 300.344(b)(1)), and that, if " \* \* \* the student does not attend, the public agency \* \* \* take other steps to ensure that the student's preferences and interests are considered (§ 300.344(b)(2)). States may now transfer most parent rights under Part B to the student when the student reaches the age of majority under State law (§ 300.517), and beginning at least one year before a student reaches the age of majority under State law, the IEP must include a statement that the student has been informed of any rights that will transfer to him or her upon reaching the age of majority (§ 300.347(c)).

5. What is the role of the parents, including surrogate parents, in decisions regarding the educational program of their children?

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information about their child's abilities, interests, performance, and history, (2) participate in the discussion about the child's need for special education and related services and supplementary aids and services, and (2) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

As noted, Part B specifically provides that parents have the right to:

(a) Participate in meetings about their child's identification, evaluation, educational program (including IEP meetings), and educational placement (§§ 300.344(a)(1) and 300.517);

(b) Be part of the teams that determine what additional data are needed as part of an evaluation of their child (§ 300.533(a)(1)), and determine their child's eligibility (§ 300.534(a)(1)) and educational placement (§ 300.501(c));

(c) Have their concerns and information that they provide regarding their child considered in developing and reviewing their child's IEPs (§§ 300.343(c)(iii) and 300.346 (a)(1)(i) and (b)); and

(d) Be regularly informed (by such means as periodic report cards), as specified in their child's IEP, at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals in the IEP and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year (§ 300.347(a)(7)).

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when no parent (as defined at § 300.19) is known, the agency, after reasonable efforts, cannot locate the child's parents, or the child is a ward of the State under the laws of the State. A surrogate parent has all of the rights and responsibilities of a parent under Part B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) examine the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.515, Surrogate parents.)

6. What are the Part B requirements regarding the participation of a child or youth with a disability in an IEP meeting?

If a purpose of an IEP meeting will be the consideration of needed transition services, the public agency must invite the student and, as part of notification to the parent of the IEP meeting, inform the parents that the agency will invite the student to the IEP meeting. If the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered. Section § 300.517 permits States to transfer procedural rights under Part B from the parents to students with disabilities who reach the age of majority under State law, but who have not been determined to be incompetent under State law. If procedural rights under Part B are, consistent with State law and § 300.517, transferred from the parents to the student, the public agency would be required to ensure that the student has the right to participate in IEP meetings set forth for parents in § 300.345. However, at the discretion of the student or the public agency, the parents also could attend IEP meetings as "individuals who have knowledge or special expertise regarding the child \* \* \*" (see § 300.344(a)(6)).

In other circumstances, the child may attend "if appropriate." (§ 300.344(a)(7)) Generally, a child with a disability should

attend the IEP meeting if the parent decides that it is appropriate for the child to do so. If possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP or (2) directly beneficial to the child or both. The agency should inform the parents before each IEP meeting—as part of notification under § 300.345(a)(1)—that they may invite their child to participate.

7. Must the public agency let the parents know who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), italics added.) In addition, if a purpose of the IEP meeting is the consideration of transition services for a student, the notice must also inform the parents that the agency is inviting the student, and identify any other agency that will be invited to send a representative. The public agency should also inform the parents of their right to invite to the meeting "other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate \* \* \*" (§ 300.344(a)(6)). It is also appropriate for the agency to ask the parents what if any individuals they will bring to the meeting.

8. Do parents have the right to a copy of their child's IEP?

Yes. Section 300.345(f) states that the public agency shall give the parent, on request, a copy of the IEP. It is recommended that public agencies provide parents with a copy of the IEP within a reasonable time following the IEP meeting, or inform them at the IEP meeting of their right to request and receive a copy.

9. What is a public agency's responsibility if it is not possible to reach consensus on what services should be included in a child's IEP?

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the child's needs and appropriate goals, the extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and districtwide assessments, and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are to be equal partners with school personnel in making these decisions, and the IEP team must consider parents' concerns and information that they provide regarding their child in developing and reviewing IEPs (§§ 300.343(c)(iii) and 300.346(a)(1) and (b)).

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. If it is not possible to reach consensus in an IEP meeting, the public agency must provide the parents with

prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program and placement, and the parents have the right to seek resolution of any disagreements through mediation or other informal means, or by initiating an impartial due process hearing. Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resort to a due process hearing. However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing.

10. Does Part B require that public agencies inform parents regarding the educational progress of their children with disabilities?

Yes, the Part B statute and regulations include a number of provisions to help ensure that parents are involved in decisions regarding, and informed about, their child's educational progress, including the child's progress in the general curriculum. First, the parents will be informed regarding their child's present levels of educational performance through the development of the IEP. Section 300.347(a)(1) requires that each IEP include:

\* \* \* a statement of the child's present levels of educational performance, including—(i) How the child's disability affects the child's involvement and progress in the general curriculum; or (ii) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities \* \* \*

Further, § 300.347(a)(7) sets forth requirements for regularly informing parents about their child's educational progress. That section requires that the IEP include:

\* \* \* a statement of—(i) How the child's progress toward the annual goals \* \* \* will be measured; and (ii) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents of nondisabled children are informed, of—(A) Their child's progress toward the annual goals \* \* \* ; and (B) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

Finally, the parents will, as part of the IEP team, participate, at least once every 12 months, in a review of their child's educational progress. Part B requires that a public agency initiate and conduct a meeting, at which the IEP team:

\* \* \* (1) Reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and (2) revises the IEP as appropriate to address—(i) Any lack of expected progress toward the annual goals \* \* \* and in the general curriculum, if appropriate; (ii) The results of any reevaluation \* \* \* ; (iii) Information about the child provided to, or by, the parents \* \* \* ; (iv) The child's anticipated needs; or (v) Other matters.

### III. Preparing Students With Disabilities for Employment and Other Post-School Experiences

One of the primary purposes of the IDEA is to \* \* \* ensure that all children with

disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living \* \* \* ( § 300.1(a)).

Similarly, one of the key purposes of the IDEA Amendments of 1997 was to "promote improved educational results for children with disabilities through early intervention, preschool, and educational experiences that prepare them for later educational challenges and employment." (House Report No. 105-95, p. 82 (1997).) Thus, throughout their preschool, elementary, and secondary education, the IEP for each child with a disability must, to the extent appropriate for the individual child, focus on providing instruction and experiences that enable the child to prepare himself or herself for later educational experiences and for post-school activities, including formal education, if appropriate, employment, and independent living.

Although preparation for adult life is, as explained, a key component of a free appropriate public education throughout a child's educational experiences, Part B sets forth specific requirements for transition from secondary education to post-school activities, which must be implemented no later than age 14 and 16, respectively, which require an intensified focus on that preparation as students with disabilities begin and prepare to complete their secondary education.

11. What must the IEP team do to meet the requirements that the IEP include "a statement of \* \* \* transition service needs" beginning at age 14 ( § 300.347(b)(1)(i)), and a statement of needed transition services" no later than age 16 ( § 300.347(b)(1)(ii))?

Section 300.347(b)(1) requires that, beginning no later than age 14, each student's IEP include specific transition-related content, and, beginning no later than age 16, a statement of needed transition services:

*Beginning at age 14*, each student's IEP must include " \* \* \* a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program)" ( § 300.347(b)(1)(i)).

*No later than age 16* (and younger, if determined appropriate by the IEP Team), each student's IEP must include "a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages \* \* \* " ( § 300.347(b)(1)(ii)).

The House Report on the IDEA Amendments of 1997 makes clear that the requirement added to the statute in 1997 that beginning at age 14, or younger if appropriate, the IEP include "a statement of the transition service needs" is " \* \* \* designed to augment, and not replace," the separate, preexisting requirement that the IEP include, " \* \* \* beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services \* \* \* " (House Report No. 105-95, p. 102 (1997).) As clarified by the Report, "The purpose of [the requirement in

§ 300.347(b)(1)(i)] is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school." (House Report No. 105-95, pp. 101-102 (1997).) The report further explains that "[F]or example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation." (House Report No. 105-95, p-102 (1997).) Thus, beginning at age 14, the IEP team, in determining appropriate measurable annual goals (including benchmarks or short-term objectives) and services for a student, must determine what instruction and educational experiences will assist the student to prepare for transition from secondary education to post-secondary life. The statement of transition service needs should relate directly to the student's goals beyond secondary education, and show how planned studies are linked to these goals. For example, a student interested in exploring a career in computer science may have a statement of transition service needs connected to technology course work, while another student's statement of transition needs could describe why public bus transportation training is important for future independence in the community. Though the focus of the transition planning process may shift as the student approaches graduation, the IEP team must discuss specific areas beginning at the age of 14 years and review these areas annually.

This requirement is distinct from the requirement, at § 300.347(b)(1)(ii), that the IEP include:

\* \* \* beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

The term "transition services" is defined at § 300.27 to mean:

\* \* \* a coordinated set of activities for a student with a disability that—(a) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (b) Is based on the individual student's needs, taking into account the student's preferences and interests; and (c) Includes—(1) Instruction; (2) Related services; (3) Community experiences; (4) The development of employment and other post-school adult living objectives; and (5) If appropriate, acquisition of daily living skills and functional vocational evaluation. (Section § 300.347(b)(2) provides, however, that, "If the IEP team determines that services are not needed in one or more of the areas specified in § 300.27(c)(1) through (4), the IEP must include a statement to that effect and the basis upon which the determination was made.)

Thus, while § 300.347(b)(1)(i) requires that the IEP team begin by age 14 to address the