

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

student's need for instruction that will assist the student to *prepare* for transition, § 300.347(b)(2)(ii) requires that by age 16 the IEP include a "coordinated set of activities * * *, designed within an outcome-oriented process, that promotes movement from school to post-school activities. * * *

Section 300.344(b)(3) further requires that, in implementing § 300.347(b)(2)(ii), public agencies invite (in addition to required participants for all IEP meetings), must also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. Thus, § 300.346(a)(7)(ii) requires a broader focus on coordination of services across, and linkages between, agencies beyond the SEA and LEA.

12. Must the IEP for each student with a disability, beginning no later than age 16, include all "needed transition services," as identified by the IEP team and consistent with the definition at § 300.27, even if an agency other than the public agency will provide those services? What is the public agency's responsibility if another agency fails to provide agreed-upon transition services?

Section 300.347(b)(1)(ii) requires that the IEP for each child with a disability, beginning no later than age 16, or younger if determined appropriate by the IEP team, include all "needed transition services," as identified by the IEP team and consistent with the definition at § 300.27, regardless of whether the public agency or some other agency will provide those services. Section 300.346(b)(1)(ii) specifically requires that the statement of needed transition services include, "* * * if appropriate, a statement of the interagency responsibilities or any needed linkages."

Further, the need to include in the IEP transition services to be provided by agencies other than the public agency is contemplated by § 300.348(a), which specifies what the public agency must do if another agency participating in the development of the statement of needed transition services fails to provide a needed transition service that it agreed to provide:

If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

This requirement is consistent with the public agency's ultimate responsibility to ensure that FAPE is available to each eligible child with a disability (see § 300.300). That responsibility includes the planning and coordination of transition services through the IEP. This inter-agency planning and coordination may be supported through a variety of mechanisms, including memoranda of understanding, interagency agreements, assignment of a transition coordinator to work with other participating agencies, or the establishment of guidelines to work with other agencies identified as potential service providers. If an agreed-upon service by another agency is not provided, the public agency responsible for the student must exercise alternative strategies to meet

the student's needs. This requires that the public agency provide the services, or convene an IEP meeting as soon as possible to identify alternative strategies to meet the needs of the transition services needs of the student, and to revise the IEP accordingly. Alternative strategies might include the identification of another funding source, referral to another agency, the public agency's identification of other district-wide or community resources that it can use to meet the student's identified need appropriately, or a combination of these strategies. As emphasized by § 300.348(b), however:

Nothing in [Part B] 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.

However, the fact that an agency other than the LEA does not fulfill its responsibility does not relieve the LEA of its responsibility to ensure that FAPE is available to each student with a disability.

Note: See also § 300.142(b)(2), which requires that if an agency other than the LEA fails to provide or pay for a special education or related service (which could include a transition service), the LEA must provide or pay for the service, and may then claim reimbursement from the agency that failed to provide or pay for the service.

13. Under what circumstances must a public agency invite representatives from other agencies to an IEP meeting at which a child's need for transition services will be considered?

Section 300.344(c)(ii) requires that, "In implementing the requirements of [§ 300.347(b)(1)(ii) requiring a statement of needed transition services], the public agency shall also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services." To meet this requirement, the public agency must establish and implement appropriate procedures to ensure that it identifies all agencies that are "likely to be responsible for providing or paying for transition services" for each student addressed by § 300.347(b)(1)(ii), and invites each of those agencies to the IEP meeting. If, during the course of an IEP meeting, the team identifies additional agencies that are "likely to be responsible for providing or paying for transition services" for the student, the public agency must determine whether it is necessary to invite those agencies to an additional IEP meeting in order to develop an appropriate statement of needed transition services for the student.

IV. Other Questions Regarding the Development and Content of IEPs

14. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?

Section 300.342(b)(1) requires that an IEP be "*in effect* before special education and related services are provided to a child." (Italics added.) The appropriate placement

for a particular child with a disability cannot be determined until after decisions have been made about the child's needs and the services that the public agency will provide to meet those needs. These decisions must be made at the IEP meeting, and it would not be permissible first to place the child and then develop the IEP. Therefore, the IEP must be developed before placement. This requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to assist a public agency in determining the appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an *interim* IEP for the child that sets out the specific conditions and timelines for the trial placement. (See paragraph c.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation, finalizing the IEP, and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

15. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer as to which public agency has direct responsibility for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA will vary from State to State, depending upon State law, policy, or practice. The SEA is ultimately responsible for ensuring that all Part B requirements, including the IEP requirements, are met for eligible children within the State, including those children served by a public agency other than an LEA. (See § 300.600 regarding the SEA's general supervisory responsibility for all education programs for children with disabilities, with one exception. The Governor (or another individual pursuant to State law) may, consistent with State law, assign to any public agency in the State the responsibility of ensuring that Part B requirements are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.)

The SEA must ensure that every child with a disability in the State has FAPE available, regardless of which State or local agency is responsible for educating the child. (The only exception to this responsibility is that, as noted, the SEA is not responsible for ensuring that FAPE is made available to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons, if the State has assigned that responsibility to a public agency other than the SEA.) Although the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency

agreements), the SEA must ensure that no eligible child with a disability is denied FAPE due to jurisdictional disputes among agencies.

When an LEA is responsible for the education of a child with a disability, the LEA remains responsible for developing the child's IEP, regardless of the public or private school setting into which it places the child.

16. For a child placed out of State by an educational or non-educational State or local agency, is the placing or receiving State responsible for the child's IEP?

Regardless of the reason for the placement, the "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, the SEA in the placing State is responsible for ensuring that the child has FAPE available.

17. If a disabled child has been receiving special education from one public agency and transfers to another public agency in the same State, must the new public agency develop an IEP before the child can be placed in a special education program?

If a child with a disability changes school districts in the same State, the State and its public agencies have an ongoing responsibility to ensure that the child receives FAPE, and the new public agency is responsible for ensuring that the child receives special education and related services in conformity with an IEP. The new public agency must ensure that the child has an IEP in effect before the agency can provide special education and related services. The new public agency may meet this responsibility by either adopting the IEP the former public agency developed for the child or by developing a new IEP for the child. Before the child's IEP is finalized, the new public agency may provide interim services agreed upon by both the parents and the new public agency. If the parents and the new public agency are unable to agree on an interim IEP and placement, the new public agency must implement the old IEP to the extent possible until a new IEP is developed and implemented.

In general, while the new public agency must conduct an IEP meeting, it would not be necessary if: (1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new public agency determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the new public agency or the parent believes that it is not appropriate, the new public agency must conduct an IEP meeting within a short time after the child enrolls in the new public agency (normally, within one week).

18. What timelines apply to the development and implementation of an initial IEP for a child with a disability?

Section 300.343(b) requires a public agency to: (1) 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; and (2) in meeting that timeline, conduct a meeting to develop the IEP within 30-calendar days of a determination that the child needs special education and related services. Section 300.342(b)(2) requires that an IEP be implemented as soon as possible following the meeting in which the IEP is developed.

19. Must a public agency hold separate meetings to determine a child's eligibility for special education and related services, develop the child's IEP, and determine the child's placement, or may the agency meet all of these requirements in a single meeting?

A public agency may, after a child is determined by "a team of qualified professionals and the parent" (see § 300.534(a)(1)) to be a child with a disability who needs special education services, continue in the same meeting to develop an IEP for the child and to determine the child's placement. However, the public agency must ensure that it: (1) Meets all of the Part B requirements regarding meetings to develop IEPs, including providing appropriate notification to the parents, consistent with the requirements of § 300.345, and including the required team participants, consistent with the requirements of § 300.344; and (2) the requirements of § 300.533 regarding eligibility decisions.

20. How frequently must a public agency conduct meetings to review, and if appropriate revise, the IEP for each child with a disability?

A public agency must initiate and conduct meetings periodically, but at least once every twelve months, to determine whether the annual goals for the child are being achieved, and to revise the IEP as appropriate to address: (a) Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate; (b) the results of any reevaluation; (c) information about the child provided to, or by, the parents; (d) the child's anticipated needs; or (e) other matters (§ 300.343(c)).

A public agency must also ensure that an IEP is in effect for each child at the beginning of each school year (§ 300.342(a)). It may conduct IEP meetings at any time during the year. However, if the agency conducts the IEP meeting prior to the beginning of the next school year, it must ensure that the IEP contains the necessary special education and related services and supplementary aids and services to ensure that the student's IEP can be appropriately implemented during the next school year. Otherwise, it would be necessary for the public agency to conduct another IEP meeting.

Although the public agency is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. For example, if the parents believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. If a child's teachers feels that the child's placement or IEP services are not appropriate to the child, the teachers should follow agency procedures with respect to (1) calling or meeting with the parents or (2) requesting the agency to hold

another IEP meeting to review the child's IEP. The legislative history of Public Law 94-142 makes it clear that there should be as many meetings a year as any one child may need (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford)).

In general, if either a parent or a public agency believes that a required component of the student's IEP should be changed, the public agency must conduct an IEP meeting if it believes that the question of whether the student's IEP needs to be revised to ensure the provision of FAPE to the student is a matter that must be considered by the IEP team. If a parent requests an IEP meeting because the parent believes that a change in the provision of FAPE to the child or the educational placement of the child, and the agency refuses to convene an IEP meeting to determine whether such a change is needed, the agency must provide written notice to the parents of the refusal, including an explanation of why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any proposal or refusal regarding the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

21. May IEP meetings be audio or videotape-recorded?

Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, an SEA or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. If a public agency has a policy prohibiting the use of these devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. Any recording of an IEP meeting that is maintained by the public agency is an "education record," within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and Part B (§§ 300.560-300.575).

Parents wishing to use audio or video recording devices at IEP meetings should consult State or local policies for further guidance.

22. Who can serve as the representative of the public agency at an IEP meeting?

The IEP team must include a representative of the local educational agency who: (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) is knowledgeable about the general curriculum; and (c) is knowledgeable about the availability of resources of the local educational agency (§ 300.344(a)(4)). Each State or local agency may determine which specific staff member will serve as the agency representative in a particular IEP meeting, so long as the individual meets these

requirements. It is, however, important that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

Note: IEP meetings for continuing placements may in some instances be more routine than those for initial placements, and, thus, may not require the participation of a key administrator.

23. For a child with a disability being considered for initial placement in special education, which teacher or teachers should attend the IEP meeting?

A child's IEP team must include at least one of the student's regular education teachers (if the child is, or may be participating in the regular education environment) and at least one special education teacher, or, if appropriate, at least one of the child's special education providers (§ 300.344(a)(2) and (3)). Each IEP must include a statement of present levels of educational performance, including a statement of how the child's disability affects the child's involvement and progress in the general curriculum (§ 300.347(a)(1)). The regular education teacher is a required participant on the IEP team of a child who is, or may be, participating in the regular educational environment, regardless of the extent of that participation.

The child's special education teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) another special education provider such as a speech pathologist, physical or occupational therapist, etc., if the related service consists of specially designed instruction and is considered special education under the applicable State standard.

Note: Sometimes more than one meeting is necessary in order to finalize a child's IEP. In this process, if the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. If this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

24. If a child with a disability attends several regular classes, must all of the child's regular education teachers attend the IEP meeting?

No. The IEP team need not include more than one regular education teacher of the child. If the participation of more than one regular education teacher is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of enhancing the child's participation in the general curriculum), it would be appropriate for them to attend the meeting.

25. For a child whose primary disability is a speech impairment, may a public agency meet its responsibility under § 300.344(a)(3) to ensure that the IEP team includes "at least one special education teacher, or, if appropriate, at least one special education provider of the child" by including a speech-language pathologist in the IEP team?

Yes, if speech is considered special education under State standards. As with other children with disabilities, the IEP team must also include at least one of the child's *regular education* teachers if the child is, or may be, participating in the regular education environment.

26. Do public agencies and parents have the option of bringing any individual of their choice to a student's IEP meeting? Would it be permissible for other individuals to attend IEP meetings at the discretion of the parents or the agency?

The IEP team may, at the discretion of the parent or the agency, include "other individuals *who have knowledge or special expertise regarding the child* * * *" (§ 300.344(a)(6), italics added). This is a change from prior law, which had provided, without qualification, that parents or agencies could bring other individuals to IEP meetings at the discretion of the parents or agency. However, the legislative history of Public Law 94-142 made it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).)

Part B does not provide for the participation of individuals such as representatives of teacher organizations or attorneys at IEP meetings. For example, since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, and generally would not possess knowledge or expertise regarding the child, it generally would be inappropriate for such an official to attend an IEP meeting. While either the parent or public agency may consider inviting their attorneys to an IEP meeting, parents and public agencies need to ensure that their attorneys possess knowledge and expertise regarding the child to warrant their participation. However, the participation of attorneys at IEP meetings should be discouraged if their participation would have the potential for creating an adversarial atmosphere which would not necessarily be in the best interests of the child. Further, as provided in Section 615(i)(3)(D)(ii) of the Act, "Attorneys" fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation * * * conducted prior to the [request for a due process hearing]."

27. Must related services personnel attend IEP meetings?

Although Part B does not expressly require that the IEP team include related services personnel as part of the IEP team (§ 300.344(a)), it is appropriate for those persons to be included if a particular related service is to be discussed as part of the IEP meeting. Section 300.344(a)(6) provides that the IEP team also includes "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* * * *." (Italics added.)

Further, § 300.344(a)(3) requires that the IEP team for each child with a disability include "at least one special education

teacher, or, if appropriate, at least one special education provider of the child * * *" This requirement can be met by the participation of either (1) a special education teacher of the child, or (2) another special education provider such as a speech pathologist, physical or occupational therapist, etc., if the related service consists of specially designed instruction and is considered special education under the applicable State standard.

If a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. As explained in the House Report on the IDEA Amendments of 1997, "Related services personnel should be included on the team when a particular related service will be discussed at the request of the child's parents or the school." (House Report 105-95, p. 103 (1997).) For example, if the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, special transportation services, school social work services, school health services, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child. This written recommendation could be a part of the evaluation report.

28. Must the public agency ensure that all services specified in a child's IEP are provided?

Yes. The public agency must ensure that all services set forth in the child's IEP are provided, consistent with the child's needs as identified in the IEP. It may provide each of those services directly, through its own staff resources; indirectly, by contracting with another public or private agency; or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)), but the services must be at no cost to the parents, and the public agency remains responsible for ensuring that the IEP services are provided in a manner that appropriately meets the student's needs as specified in the IEP. The SEA and responsible public agency may not allow the failure of another agency to provide services described in the child's IEP to deny or delay the provision of FAPE to a child.

29. Is it permissible for an agency to have the IEP completed before the IEP meeting begins?

No. Agency staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. Agencies that use this approach must ensure that there is a full discussion with the parents of the child's needs and the services to be provided to meet those needs before the child's IEP is finalized.

30. Must a public agency include transportation in a child's IEP as a related service?

A public agency must provide transportation as a related service if it is required to assist the disabled child to benefit from special education. (This includes transporting a preschool-aged child to the site at which the public agency provides special education and related services to the child, if that site is different from the site at which the child receives other preschool or daycare services.) In determining whether to include transportation in a child's IEP, the IEP team must consider how the child's disability affects the child's need for transportation, including determining whether the child's disability prevents the child from using the same transportation provided to nondisabled children, or from getting to school in the same manner as nondisabled children. The public agency must ensure that any transportation service included in a child's IEP as a related service is provided at public expense and at no cost

to the parents, and that the child's IEP describes the transportation arrangement.

Even if a child's IEP team determines that the child does not require transportation as a related service, Section 504 of the Rehabilitation Act of 1973 requires that the child receive the same transportation provided to nondisabled children. If a public agency transports nondisabled children, it must transport disabled children under the same terms and conditions. However, if a child's IEP team determines that a student does not need transportation as a related service, and the public agency transports only those children whose IEPs specify transportation as a related service, and does not transport nondisabled children, the public agency would not be required to provide transportation to a disabled child.

31. Must a public agency provide related services that are required to assist a child with a disability to benefit from special education, whether or not those services are included in the list of related services in § 300.16?

The Note following § 300.16 clarifies that "[T]he list of related services is not exhaustive and may include other developmental, corrective, or supportive services * * *), if they are required to assist a child with a disability to benefit from special education." This could, depending upon the unique needs of a child, include such services as nutritional services or service coordination.

32. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION ¹

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

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
		Subpart A—General
		Purpose Applicability, and Regulations That Apply to This Program
300.1	300.1	Purpose.
300.2	300.2	Applicability to State, local, and private agencies.
300.3	300.3	Regulations that apply.
		Definitions
300.4	300.4	Act.
300.5	300.5	Assistive technology device.
300.6	300.6	Assistive technology service.
300.7	300.7	Children with disabilities. (Retitled "Child with a disability.")
300.8	300.11	Free appropriate public education.
300.9	300.13	Include.
300.10	300.9	Intermediate educational unit. (Replaced by new definition from Pub. L. 105-17, entitled, "Educational service agency.")
300.11	300.17	Local educational agency.
300.12	300.18	Native language.
300.13	300.19	Parent.
300.14	300.20	Public agency.
300.15	300.21	Qualified.
300.16	300.22	Related service.
300.17	300.24	Special education.
300.18	300.27	Transition services.
		Subpart B—State Plans and [LEA] Applications (Retitled "State and Local Eligibility")
		State Plans—General (Retitled "State Eligibility—General")
300.110	300.110	Condition of assistance.
300.111 .....	.....	Contents of plans.
		State Plans—Contents (Retitled "State Eligibility—Specific Conditions")
300.121	300.121	Right to a free appropriate public education. (Retitled "Free appropriate public education" (FAPE).)
300.122	300.122	Timelines and ages for free appropriate public education. (Retitled "Exception to FAPE for certain ages.")
300.123	300.123	Full educational opportunity goal (FEOG).
300.124 .....	.....	[Reserved].
300.125	300.124	FEOG—Timetable.
300.126 .....	.....	FEOG—Facilities, personnel, and services.
300.127 .....	.....	Priorities.
300.128	300.125	Identification, location, and evaluation of children with disabilities.
300.129	300.127	(Retitled "child find.") Confidentiality of personally identifiable information.

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION¹—Continued

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

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.130	300.128	Individualized education programs.
300.131	300.129	Procedural safeguards.
300.132	300.130	Least restrictive environment.
300.133	300.126	Protection in evaluation procedures. (Retitled "Procedures for evaluation and determination of eligibility.")
300.134	300.141	Responsibility of [SEA] for all educational programs. (Retitled "SEA Responsibility for general supervision.")
300.135 .....	.....	[Reserved].
300.136	300.143	Implementation procedures—SEA. (Retitled "SEA implementation of procedural safeguards.")
300.137	300.148	Procedures for consultation. (Retitled "Public participation.")
300.138	300.151	Other Federal programs.
300.139	300.135	Comprehensive system of personnel development.
300.140	300.133	Private schools.
300.141	300.145	Recovery of funds for misclassified children.
300.142–143 .....	.....	[Reserved].
300.144	300.144	Hearing on application. (Retitled "Hearings relating to LEA eligibility.")
300.145	300.152	Prohibition of commingling.
300.146	300.137	Annual evaluation. (Replaced by new section from P.L. 105–17, entitled, "Performance goals and indicators.")
300.147	300.150	State advisory panel.
300.148	300.155	Policies and procedures for use of Part B funds.
300.149	300.156	Description of use of Part B funds. (Retitled "Annual description of use of Part B funds.")
300.150	300.153	State-level nonsupplanting.
300.151	300.147	Additional information if [SEA] provides direct services.
300.152	300.142	Interagency agreements. (Retitled "Methods of ensuring services.")
300.153	300.136	Personnel standards.
300.154	300.132	Transition of individuals from Part H to Part B. (Retitled "Transition of children from Part C to preschool programs.")
		LEA Applications—General (Retitled "LEA Eligibility—General")
300.180	300.180	Submission of application. (Retitled "Condition of assistance.")
300.181 .....	.....	[Reserved].
300.182	300.184	The excess cost requirement. (Retitled "Excess cost requirement.")
300.183	300.185	Meeting the excess cost requirement.
300.184 .....	.....	Excess costs—computation of minimum amount.
300.185 .....	.....	Computation of excess costs—consolidated application.
300.186 .....	.....	Excess costs—limitation on use of Part B funds.
300.187–189	300.186–189	[Reserved].
300.190	300.190	Consolidated applications. (Retitled "Joint establishment of eligibility.")
300.191	300.191	[Reserved].
300.192	300.192	State regulation of consolidated applications. (Retitled "Requirements for establishing eligibility.")
300.193	300.197	SEA approval; disapproval. (Retitled "LEA and State agency compliance.")
300.194	300.197	Withholding. (Retitled "LEA and State agency compliance.")
		LEA Applications—Contents (Retitled "LEA Eligibility—Specific Conditions")
300.220	300.220	Child identification. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.221	300.220	Confidentiality of personally identifiable information. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.222	300.220	Full educational opportunity goal—timetable. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.223 .....	.....	Facilities, personnel, and services.
300.224	300.221	Personnel development.
300.225 .....	.....	Priorities.
300.226 .....	.....	Parent involvement.
300.227	300.220	Participation in regular education programs. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.228 .....	.....	[Reserved].
300.229	300.230	Excess cost. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Use of amounts.")
300.230	300.230	Nonsupplanting. (Amended by P.L. 105–17, and incorporated into a new requirement, entitled, "Use of amounts.")
300.231 .....	.....	Comparable services.
300.232–234 .....	.....	[Reserved].
300.235	300.220	[IEPs]. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION ¹—Continued

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

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.236 .....	.....	[Reserved].
300.237	300.220	Procedural safeguards. (Incorporated into a new requirement added by P.L. 105–17, entitled, “Consistency with State policies.”)
300.238 .....	.....	Use of Part B funds.
300.239 .....	.....	[Reserved].
300.240	300.240	Other requirements. (Comparable to a provision added by P.L. 105–17, entitled, “Information for SEA.”)
		Application From Secretary of the Interior (Retitled “Secretary of the Interior—Eligibility”)
300.260	300.260	Submission of application; approval. (Retitled, “Submission of information.”)
300.261	300.261	Public participation.
300.262	300.262	Use of Part B funds.
300.263	300.267	Applicable regulations.
		Public Participation
300.280	300.280	Public hearings before adopting a State plan. (Retitled “Public hearings before adopting State policies and procedures.”)
300.281	300.281	Notice.
300.282	300.282	Opportunity to participate; comment period.
300.283	300.283	Review of public comments before adopting plan. (Retitled “Review public comments before adopting policies and procedures.”)
300.284	300.284	Publication and availability of approved plan. (Retitled “Publication and availability of approved policies and procedures.”)
		Subpart C—Services
		Free Appropriate Public Education
300.300	300.300	Timelines for [FAPE]. (Retitled “Provision of FAPE.”)
300.301	300.301	FAPE—methods and payments.
300.302	300.302	Residential placement.
300.303	300.303	Proper functioning of hearing aids.
300.304	300.304	Full educational opportunity goal.
300.305	300.305	Program options.
300.306	300.306	Nonacademic services.
300.307	300.307	Physical education.
300.308	300.308	Assistive technology.
		Priorities in the Use of Part B Funds
300.320 .....	.....	Definitions of “first priority children” and “second priority children.”
300.321 .....	.....	Priorities.
300.322 .....	.....	[Reserved].
300.323 .....	.....	Services to other children.
300.324 .....	.....	Application of local educational agency to use funds for the second priority.
		Individualized Education Programs
300.340	300.340	Definitions.
300.341	300.341	State educational agency responsibility.
300.342	300.342	When individualized education programs must be in effect.
300.343	300.343	Meetings.
300.344	300.344	Participants in meetings. (Retitled “IEP Team.”)
300.345	300.345	Parent participant.
300.346	300.347	Content of individualized education program.
300.347	300.348	Agency responsibilities for transition services.
300.348	300.349	Private school placements by public agencies.
300.349	300.350	Children with disabilities in parochial or other private schools. (Retitled “Children with disabilities in religious affiliated or other private schools.”)
300.350	300.351	Individualized education program—accountability.
		Direct Service by the SEA
300.360	300.360	Use of [LEA] allocation for direct services.
300.361	300.361	Nature and location of services.
300.370	300.370	Use of State agency allocations.
300.371 .....	.....	State matching.
300.372	300.372	Applicability of nonsupplanting requirement.
		Comprehensive System of Personnel Development
300.380	300.380	General.
300.381	300.381	Adequate supply of qualified personnel.
300.382 .....	.....	Personnel preparation and continuing education.
300.383 .....	.....	Data system on personnel and personnel development.

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION¹—Continued

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

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.384–387	300.383–387	[Reserved].
		Subpart D—Private Schools
		Children with Disabilities in Private Schools Placed or Referred by Public Agencies
300.400	300.400	Applicability of Secs. 300.400–300.402.
300.401	300.401	Responsibility of State educational agency.
300.402	300.402	Implementation by State educational agency.
300.403	300.403	Placement of children by parents.
		Children With Disabilities Enrolled by Their Parents in Private Schools
300.450	300.450	Definition of “private school children with disabilities.”
300.451	300.452	[SEA] responsibility. (Retired “Basic requirement-services”).
300.452	300.453	[LEA] responsibility. (Revised based on P.L. 105–17, and retitled “Expenditures.”)
		Procedures for By-Pass
300.480	300.480	By-pass—general.
300.481	300.481	Provisions for services under a by-pass.
300.482	300.482	Notice of intent to implement a by-pass.
300.483	300.483	Request to show cause.
300.484	300.484	Show cause hearing.
300.485	300.485	Decision.
300.486	300.486	Filing requirements.
300.487	300.487	Judicial review.
		Subpart E—Procedural Safeguards
		Due Process Procedures for Parents and Children
300.500	3300.500	Definitions of “consent”, “evaluation”, and “personally identifiable”. (Combined §§ 300.500 and 300.501, and retitled “General responsibility of public agencies; definitions.”)
300.501	300.500	General responsibility of public agencies. (Combined §§ 300.500 and 300.501, and retitled “General responsibility of public agencies; definitions.”)
300.502	300.501	Opportunity to examine records.
300.503	300.502	Independent educational evaluation.
300.504	300.503	Prior notice; parent consent. (Retitled “Prior notice by the public agency; content of notice.”)
300.505	300.503	Content of notice. (Retitled “Prior notice by the public agency; content of notice.”)
300.506	300.507	Impartial due process hearing. (Retitled “Impartial due process hearing; parent notice; disclosure.”)
300.507	300.508	Impartial hearing officer.
300.508	300.509	Hearing rights.
300.509	300.510	Hearing decision; appeal. (Combined §§ 300.509 and 300.510, and retitled “Finality of decision; appeal; impartial review.”)
300.510	300.510	Administrative appeal; impartial review. (Combined §§ 300.509 and 300.510, and retitled “Finality of decision; appeal; impartial review.”)
300.511	300.512	Civil action.
300.512	300.511	Timeless and convenience of hearings and reviews.
300.513	300.514	Child’s status during proceedings.
300.514	300.515	Surrogate parents.
300.515	300.513	Attorneys’ fees.
		Protection in Evaluation Procedures (Retitled “Procedures for Evaluation and Determination of Eligibility”)
300.530	300.530	General.
300.531	300.531	Preplacement evaluation. (Retitled “Initial evaluation.”)
300.532	300.532	Evaluation procedures.
300.533	300.534–35	Placement procedures. (Replaced by § 300.534 (“Determination of eligibility”) and § 300.535 (“Procedures for determining eligibility.”)
300.534	300.536	Reevaluation.
		Additional Procedures for Evaluating Children With Specific Learning Disabilities
300.540	300.540	Additional team members.
300.541	300.541	Criteria for determining the existence of a specific learning disability.
300.542	300.542	Observation.
300.543	300.543	Written report.
		Least Restrictive Environment
300.550	300.550	General.
300.551	300.551	Continuum of alternative placements.
300.552	300.552	Placements.
300.553	300.553	Nonacademic settings.
300.554	300.554	Children in public or private institutions.

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION ¹—Continued

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

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.555	300.555	Technical assistance and training activities.
300.556	300.556	Monitoring activities.
		Confidentially of Information
300.560	300.560	Definitions.
300.561	300.561	Notice to parents.
300.562	300.562	Access rights.
300.563	300.563	Record of access.
300.564	300.564	Records on more than one child.
300.565	300.565	List of types and location of information.
300.566	300.566	Fees.
300.567	300.567	Amendment of records at parent's request.
300.568	300.568	Opportunity for a hearing.
300.569	300.569	Result of hearing.
300.570	300.570	Hearing procedures.
300.571	300.571	Consent.
300.572	300.572	Safeguards.
300.573	300.573	Destruction of information.
300.574	300.574	Children's rights.
300.575	300.575	Enforcement.
300.576	300.577	Department. (Retitled "Department use of personally identifiable information.")
		Department Procedures
300.580 .....	.....	[Reserved].
300.581	300.581	Disapproval of a State plan. (Combined §§ 300.581 and 300.582, and retitled "Notice and hearing before determining that a State is not eligible.")
300.582	300.581	Content of notice. (Combined §§ 300.581 and 300.582, and retitled "Notice and hearing before determining that a State is not eligible.")
300.583	300.582	Hearing Official or Panel.
300.584	300.583	Hearing procedures.
300.585	300.584	Initial decision; final decision.
300.586	300.585	Filing requirements.
300.587	300.586	Judicial review.
300.588 .....	.....	[Reserved].
300.589	300.589	Waiver of requirement regarding supplementing and supplanting with Part B funds.
		Subpart F—State Administration
		General
300.600	300.600	Responsibility for all educational programs.
300.601	300.601	Relation of Part B to other Federal programs.
		Use of Funds
300.620	300.620	Federal funds for State administration. (Retitled "Use of funds for State administration.")
300.621	300.621	Allowable costs.
		State Advisory Panel
300.650	300.650	Establishment (Retitled "Establishment of advisory panels.")
300.6651	300.651	Membership.
300.652	300.652	Advisory panel functions.
300.653	300.653	Advisory panel procedures.
		State Complaint Procedures
300.660	300.660	Adoption of State complaint procedures.
300.661	300.661	Minimum State complaint procedures.
300.662	300.662	Filing a complaint.
		Subpart G—Allocation of Funds; Reports
		Allocations
300.700	300.700	Special definition of the term State.
300.701	300.701	State entitlement; formula. (Retitled "Grants to States.")
300.702	300.704	[Reserved].
300.703	300.705	[Reserved].
300.704	300.708	Hold harmless provision. (Comparable, in part, to § 300.708 ("Limitations").
300.705	300.710	Allocation for State in which by-pass is implemented for private school children with disabilities.
300.706	300.703	Within-State distribution: Fiscal Year 1979 and after. (Comparable, in part, to § 300.703 ("Allocations to States."), which sets out the formula added by Public Law 105-17).
300.707	300.711-712	Local educational agency entitlement; formula. (Retitled "Subgrants to local educational agencies") (Retitled "Allocation to local educational agencies.")

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION ¹—Continued

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

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.708	300.714	Reallocation of [LEA] funds.
300.709	300.715	Payments to the Secretary of the Interior for the education of Indian children.
300.710	300.716	Payments to the Secretary of the Interior for Indian tribes or tribal organizations. (Retitled "Payments for education and services for Indian children with disabilities aged 3 through 5.")
300.711	300.716	Entitlements to jurisdictions. (Replaced by §§300.717 ("Outlying areas and freely associated States.") and 300.718 ("Outlying area—definition.")
Reports		
300.750	300.750	Annual report of children served—report requirement.
300.751	300.751	Annual report of children served—information required in the report.
300.752	300.752	Annual report of children served—certification.
300.753	300.753	Annual report of children served—criteria for counting children.
300.754	300.754	Annual report of children served—other responsibilities of [SEA].

¹ The purpose of this table is to assist each reader to find where a given section number in the current regulations is located in this NPRM. The table does *not* include (1) any new regulatory provisions that have been added as a result of the IDEA Amendments of 1997, or (2) any other new area on which the Secretary is proposing to regulate.

[FR Doc. 97-28006 Filed 10-22-97; 8:45 am]

BILLING CODE 4000-01-P