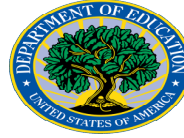


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“a brighter future for children with disabilities”

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712 Professional Plaza, Greeneville, TN 37745
(423) 639-0125
(800) 280-7837

Karen Harrison, Executive Director

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**Support & Training for Exceptional Parents, Inc.
712 Professional Plaza, Greeneville TN 37745
www.tnstep.org**

STEP is a family-to-family program designed to inform and assist parents and students regarding disability issues, including the education rights of students in special education.

For assistance, to attend, or to schedule a parent training workshop, contact the STEP training coordinator in your region.

**East Tennessee
(423) 639-0125**

**Middle Tennessee
(615) 463-2310**

**West Tennessee
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**Statewide Outreach
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**Parent Information Line: 1 (800) 280-STEP & information@tnstep.org
(423) 636-8217 (TDD/TTY/Text)**

**Karen Harrison, Executive Director
(423) 639-2464**

STEP is governed by a volunteer board of directors composed of a majority of parents of children with disabilities.

Support & Training for Exceptional Parents, Inc.

The Parent Manual is intended to provide you with information on special education laws and procedures, and your rights as the parent of a child with disabilities. STEP encourages you to use this manual and to explore other materials that will assist you in becoming the best possible advocate for your child.

Many people have assisted with this manual as it has evolved. Their thoughtful perspective and input is appreciated.

One STEP at a Time

A hill is not too hard to climb
Taken one STEP at a time,

One STEP is not too much to take;
One try is not too much to make,

One STEP, one try, one song, one smile
Will shortly stretch into a mile,

And everything worthwhile was done
By small STEPs taken one by one,

To reach the goal you started for,
Take one STEP more... Take one STEP more.

James Dillet Freeman

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Section 1

FEDERAL LAWS AND REGULATIONS

Federal laws are usually designated by letters and numbers, such as P.L. 94-142. P. L. means Public Law; the first two numbers (94) indicate the number of the Congress during which the law was passed. The last three numbers indicate the piece of legislation passed during that Congress. For example: P.L. 94-142 was the 142nd piece of legislation passed by the 94th Congress. P.L. 98- 199 was the 199th piece of legislation passed by the 98th Congress. The Congressional number lasts for a two year period and changes every even year. For example: the 105th Congress was 1996-1997.

The Individuals with Disabilities Education Act (IDEA)

Previously known as Public Law 94-142 or
The Education for All Handicapped Children Act

IDEA (then Public Law 94-142) was enacted by Congress in 1975. The regulations implementing this law were published in 1977. The law and the regulations required that a free appropriate public education would be available for all children with disabilities ages 3 through 21, **no later than September 1, 1980**. (An exception was made for children ages 3, 4, and 5 if that is inconsistent with state law.) Tennessee serves children ages three through 21.

In 1983, those programs under the Education of the Handicapped Act (EHA) were amended by P.L. 98-199. The law was reauthorized and amended in 1986 by P.L. 99-457, and in 1990 by P.L. 100-476, and again in 1997 by Public Law 105-17. The name of the Act was changed in 1990 to the Individuals with Disabilities Education Act (IDEA).

Key Provisions of the Law:

- 1) **Identification:** the state and local education agencies must actively seek out and identify children who have special education needs (Child Find).
- 2) **Evaluation:** A child must be evaluated appropriately prior to placement. All methods used for testing and evaluation must be racially and culturally non-discriminatory and must be in the primary language or "mode of communication" of the child. No one test may be the determining factor for placement.
- 3) **Individualized Education Program (IEP):** An IEP must be prepared for each child based on his or her individual educational needs.
- 4) **Parents:** are equal participants in the decision-making process. Students may also be participants in their IEP development.
- 5) **Related Services:** shall be provided on an individualized basis to assist the child to benefit from special education.
- 6) **Least Restrictive Environment (LRE):** Each child shall be educated to the maximum extent appropriate with children who are not disabled and children should be educated in more restrictive (different) settings **only** when less restrictive alternatives are not appropriate.

7) **Private School:** When children are placed in private schools by state or local education agencies in order to receive an appropriate education, this must be done at no cost to parents; private school programs must meet standards set by law.

8) **Pre-school:** The law encourages establishment of pre-school programs by creating a special incentive grant for ages 0-5 years. P.L. 99-457 governs pre-school programs after 1987-88.

9) **Due Process:** Rights of parents and children must be guaranteed by state and localities, including notice, mediation, right to hearing, and appeal procedures.

10) **Advisory Board:** Each state must set up an Advisory Board, including individuals with disabilities, teachers and parents of children with special needs.

11) **Funds:** IDEA provides flow through funds based on a child count each year to **supplement** state and local program efforts. Funds may be withheld for non-compliance. Payments by the state to the local education agency (LEA) may also be suspended for non-compliance.

12) **Records:** Parents have access to their child's educational records and can request that they be amended.

Public Law 98-199 "EHA Amendments of 1983"

This law requires that there be an Office of Special Education under the Office of Special Education and Rehabilitative Services (OSERS), headed by an Assistant Secretary. It also sets up a 15 member National Advisory Committee on the Education of Handicapped Children and Youth to review the activities of this Act. It sets up Regional Resource Centers to provide technical assistance to State Education Agencies (SEA) and Local Education Agencies (LEA). It provides technical assistance support to SEA's and transition programs for deaf-blind youth. P.L. 98-199 authorizes planning, development and implementation grants for experimental pre-school and early education programs. Research, innovation, training and dissemination activities were authorized and post-secondary programs were authorized with specific sums made available for the 4 regional centers for the deaf. Transition grants to coordinate and improve transitional processes and training were authorized.

Parent training and information networks were strengthened by funding grants to:

- ! train parents on the nature and needs of the disabling condition of their child;
- ! provide follow up support for their child's education programs;
- ! teach parents to effectively communicate with professionals;
- ! train parents to participate in the educational decision-making process (including IEP's)
- ! helping parents obtain information about programs, services, resources and the degree to which these are appropriate;
- ! under IDEA and P.L. 98-199, also set up technical assistance for parent programs resulting in a formalization of a technical assistance program.

Pre-service and In-service training were reauthorized. Grants set up a National Clearinghouse on Education of the Handicapped and a clearinghouse on post-secondary education for handicapped individuals. Research and demonstration projects, including projects in physical education and recreation were authorized.

Public Law 99-457

Reauthorization of the Education of the Handicapped Act 1986 Amendments

This law, passed in 1986, reauthorizes P.L. 94-142 and amends it with important provisions for children birth through 5. The major changes fall under Title I, Part H, which addresses infants and toddlers with disabilities, and Title II, Part B, (Section 619), which addresses services for pre-schoolers with disabilities, ages 3 to 5.

Part H (changed to Part C in 1997) establishes grants to states to plan, develop, and implement statewide comprehensive multidisciplinary programs of early intervention services. These programs may serve children from birth through their third birthday who are experiencing developmental delays, or who are at risk for delay. Program plans must include the following components:

- ! multidisciplinary assessment of the needs of children and families
- ! an Individualized Family Service Plan (IFSP) and service coordination (case management) services.
- ! a child find and referral system
- ! a central directory of service resources
- ! a system of personnel development
- ! a timetable for services
- ! a definition of developmental delay
- ! procedural safeguards.

The IFSP is similar in function to an **IEP** for school-aged children but with a focus on the family as a unit. The plan is developed by a multidisciplinary team with the parents as members. It includes an assessment of present level of development, and family strengths and needs for enhancing that development, the goals expected to be achieved by the child/family, a timeline for determining progress, and identification of the type of services best suited to the child's and family's needs. Dates for initiation and duration of services must be listed and a service coordinator (case manager) must be designated. A plan for a smooth transition into a preschool program must also be included. Evaluations must be carried out once a year and the **IFSP** must be reviewed every six months.

Under P.L. 99-457 there is a subtle shift in focus for service delivery. The child is still a key figure in the system, but the family becomes a channel through which the child receives many of these services. The family becomes a focus of assessment in terms of its own strengths and weaknesses and the service system comes to be a support for the family as well as the individual child.

In Tennessee, the Department of Education (DOE), has been designated as the lead agency to coordinate services. The Governor's Interagency Coordinating Council has been established to assist **DOE** with implementation of its plan.

Part B (Section 619) creates an incentive for state education agencies to serve all 3,4, and 5-year old children with disabilities by school year 1990-91. This would extend the rights previously held by school-age children under IDEA, including all definitions and requirements. Importantly though, this legislation allows for non-categorical services--that is a child does not have to be labeled in order for the state to receive funding to serve him/her. Another important change, especially for parents, is that parental instruction is an allowable service that can be paid for with federal dollars. Furthermore, the methods of service delivery are flexible so that a pre-schooler can be best served according to his/her and the family's needs. Local education agencies may contract with other agencies and programs to provide a wide range of services.

If a state does not comply with Section 619 it will lose eligibility for all federal preschool funds.

In Tennessee, there has been a state mandate for four-and-five-year-old children with disabilities since the 1970's. In 1989, the State legislature passed a law which lowers the mandated age for all children with disabilities to age three. The law went into effect in the 1991-92 school year.

Public Law 99-457 Part C (formerly Part H) and Section 619 Comparative Chart		
	PART C	SECTION 619
AGES	0 - 2 YEARS	3 - 5 YEARS
PLAN	IFSP	IEP
FOCUS	FAMILY	CHILD
PROGRAM	INTERVENTION	EDUCATION
AGENCY	LEAD AGENCY SELECTED INTERAGENCY APPROACH	STATE AND LOCAL EDUCATION AGENCY
FUNDING	BASED ON CENSUS	BASED ON CHILD COUNT

**Public Law 105-17
Reauthorization of the Education of the Handicapped Act
1997 Amendments**

This law, passed in 1997, reauthorizes P.L. 94-142 again, this time making substantial changes in the law. A stronger emphasis is placed on parent involvement throughout including the addition of parent participation in all eligibility and placement decisions. To aid in parents resolving parent-school controversies, a voluntary mediation system is included. Transition planning has been added for students age 14 in addition to the transition services required by age 16. There is a strong emphasis on all students participating in the general curriculum and participating in statewide and districtwide assessments. The IEP is strengthened and includes increased emphasis on participation in the general education classroom and the general curriculum with appropriate aids and services. It includes changes in the way reevaluations are conducted, and finally, significant changes have been made regarding school safety and school discipline.

Public Law 93-112 The Rehabilitation Act of 1973

This law is a civil rights piece of legislation designed to ensure non-discrimination on the grounds of disabling conditions and to promote affirmative action employment of individuals with disabilities. It was amended in 1974, 1978, 1984, 1986, and in 1998 and is usually referred to by specific sections which address different issues:

- ! Section 501-Employment of Handicapped Individuals
- ! Section 502-Architectural and Transportation Board Compliance
- ! Section 503-Employment under Federal Contracts
- ! Section 504-Non-discrimination under Federal Grants

Section 504

Section 504 reads as follows:

"No otherwise qualified handicapped individual...shall, solely by reason of handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

This means that any program which receives federal funds, such as public schools, may not discriminate against an individual on the grounds of a disabling condition. Therefore, a student with a disability may not be denied access to an education which is comparable to the education provided a non-disabled peer. For example, a 5th grade student with a physical disability must be allowed an opportunity to participate in field trips if other 5th graders are given this opportunity. Students with special needs must be provided the necessary services to benefit from their education on an equal basis with non-disabled students.

The Office for Civil Rights monitors and enforces Section 504 regulations.

Section 504 and IDEA Comparative-Chart	
<p>Section 504 has a broad definition of disability to include both actual and perceived disabilities, as well as some conditions not typically considered as disabling conditions (i.e. some addictions). This definition also includes persons who may have amputations, have temporary disabilities, or have documented medical conditions that do not necessarily require special education services.</p>	<p>IDEA defines specific disabilities, focusing on educational and medical conditions that have been identified and evaluated.</p>
<p>Section 504 covers individuals with disabilities from birth throughout life.</p>	<p>IDEA specifies that states must provide a free appropriate public education to all students with disabilities from the ages of 3 through 21.</p>
<p>Section 504 is enforced as a civil rights statute by the Office for Civil Rights of the U.S. Department of Education.</p>	<p>IDEA is administered as an education statute by the Office of Special Education and Rehabilitative Services (OSERS) of the U.S. Department of Education and by each state department of education.</p>

Requirements of Section 504 that are similar to IDEA

Children with disabilities must be provided with a free appropriate public education. They must also be provided with:

- Identification
- Evaluation
- Programs designed to meet unique needs
- Procedural Safeguards
- Education with non-disabled children:

Children must be educated in the "most normal setting possible."

Elements of Section 504 that are different from IDEA

Definition

The definition of disability is broader under Section 504. It recognizes disabilities for any person who has "a physical or mental impairment which substantially limits one or more major life activities, a record of such an impairment, or is regarded as having such impairment."

Major life activities include:

- | | |
|---------------------------|-------------|
| ! Caring for one's self | ! Speaking |
| ! Performing manual tasks | ! Breathing |
| ! Walking | ! Learning |
| ! Seeing | ! Working |
| ! Hearing | |

Program Accessibility

Under Section 504, all programs receiving federal funds must make reasonable accommodations to be accessible to people with disabilities. For example:

- | | |
|---|-----------|
| ! Barrier-free environments and buildings | ! Braille |
| ! Interpreters | ! TDD |
| ! Reader Services | |

Public Law 101-336 The Americans with Disabilities Act

The Americans with Disabilities Act, P.L. 101-336, became law in July 1990. Often called the ADA, it bans discrimination based on disability in the private and public sector. It gives individuals with disabilities civil rights protections like those provided to individuals on the basis of race, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services and telecommunications relay services. The ADA uses the same definition of disability as Section 504.

Rehabilitation Act Amendments of 1998

This Act continues to extend Vocational Rehabilitation programs and gave new shape to rehabilitation services for individuals with severe disabilities. In addition to funds appropriated for supported employment and defining the term "Supported Employment" to mean paid competitive employment in an integrated work setting with a range of on-going support services provided to an individual with a severe disability. Title VI of the Act authorizes funds to assist public agencies and private non-profit organizations in creating services which lead to supported employment of eligible individuals, Section 110 of this legislation authorizes the use of funds allocated to state and federal rehabilitation agencies for supported employment services. This allows for clear authorizations of the supported employment model in the rehabilitation system for the first time. Previously, individuals with more severe disabling conditions were not traditionally served by rehabilitation agencies. The 1998 Amendments add a system of impartial mediation.

Family Educational Rights and Privacy Act of 1974 (FERPA)

This law provides for confidentiality of all education records. A child's records are private; only the parents, the student over 18, and school or institutional personnel who have "legitimate education interests" in seeing the information may have access to the file. In the case of divorced or separated parents, both parents may have access to their child's records unless there is a legally binding document revoking the rights of one parent.

Parents can have access to all of their child's educational records by submitting a written request to the principal or special education director. Usually it is possible to obtain copies of the file; however, the school legally must provide a parent copies only "if failure to do so would effectively prevent the parent from exercising the right to inspect and review the records." This means that a school must not deny a parent **access** to the records. The school system should allow the parents access within a "reasonable period of time, but in no case more than 45 days after it has received the request."

If you have a complaint regarding your child's records, you should contact the State Department of Education. You may also file a written complaint with specific allegations of violations of **FERPA** with the U.S. Department of Education. The address is:

**Student and Family Education Rights and Privacy Office
U.S. Department of Education, Room 3021
400 Maryland Ave. S.W.
Washington, D.C. 20202
(202) 732-2058**

A Guide to Locate Specific Citations in the IDEA 2004 Regulations

Example: 300.154 (d) (2) (ii) (B)

To locate a specific citation within the regulations, follow the pattern outlined below.

1. You will always start with a lower case letter.
In this example locate the lower case letter (d) first.
2. Next will always be a Numeral.
In the example locate the numeral (2).
3. Following the numeral will be a lower case Roman numeral. In the example, look for (ii).
4. Next, identify and locate the upper case letter.
In the example, look for the upper case letter (B).

If you followed these steps for the example given, you should have found:

300.154 Methods of ensuring services.

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

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

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but...

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

Each step in the sequence needs to be read to give meaning to the citation.

- Some citations may be shorter. Such as
- 300.34 (a) is the definition of Related Services
- 300.34 (c) (6) (ii) explains Occupational Therapy

**Law:
Individuals with Disabilities Education
Improvement Act (IDEA 2004)
beginning July 1, 2005**

and

Regulations (current):

34 CFR, PART 300 and 301

Effective date: October 13, 2006

The IDEA was amended after public comment. These changes to 34 CFR Part 300 go into effect December 31, 2008.

Please note, these revisions may be additions to the existing language or replacement of previous language. Revisions begin on page 124.

Originally known as P.L. 94-142 and passed in 1975, IDEA was one of the first Federal laws to require the education of children with disabilities by local public schools across the nation. It was the first law to recognize parents as equal partners in making educational decisions for children with disabilities.

IDEA 2004

SECTION 1. SHORT TITLE.

This Act may be cited as the "Individuals with Disabilities Education Improvement Act of 2004".

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

TITLE I--AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

TITLE II--NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

TITLE III--MISCELLANEOUS PROVISIONS

TITLE I--AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

"PART A--GENERAL PROVISIONS

"SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

"(a) **SHORT TITLE.**--This title may be cited as the 'Individuals with Disabilities Education Act'.

"(b) **TABLE OF CONTENTS.**--The table of contents for this title is as follows:

"Part A--General Provisions "Sec..601..Short title; table of contents; findings; purposes. "Sec..602..Definitions. "Sec..603..Office of Special Education Programs. "Sec..604..Abrogation of State sovereign immunity. "Sec..605..Acquisition of equipment; construction or alteration of facilities. "Sec..606..Employment of individuals with disabilities. "Sec..607..Requirements for prescribing regulations. "Sec..608..State administration. "Sec..609..Paperwork reduction. "Sec..610..Freely associated states.

"Part B--Assistance for Education of All Children With Disabilities "Sec..611..Authorization; allotment; use of funds; authorization of appropriations. "Sec..612..State eligibility. "Sec..613..Local educational agency eligibility. "Sec..614..Evaluations, eligibility determinations, individualized education programs, and educational placements. "Sec..615..Procedural safeguards. "Sec..616..Monitoring, technical assistance, and enforcement. "Sec..617..Administration. "Sec..618..Program information. "Sec..619..Preschool grants.

"Part C--Infants and Toddlers With Disabilities "Sec..631..Findings and policy. "Sec..632..Definitions. "Sec..633..General authority. "Sec..634..Eligibility. "Sec..635..Requirements for statewide system. "Sec..636..Individualized family service plan. "Sec..637..State application and assurances. "Sec..638..Uses of funds. "Sec..639..Procedural safeguards. "Sec..640..Payor of last resort. "Sec..641..State interagency coordinating council. "Sec..642..Federal administration. "Sec..643..Allocation of funds. "Sec..644..Authorization of appropriations.

"Part D--National Activities To Improve Education of Children With Disabilities "Sec..650..Findings.

"SUBPART 1--STATE PERSONNEL DEVELOPMENT GRANTS "Sec..651..Purpose; definition of personnel; program

authority. "Sec..652..Eligibility and collaborative process. "Sec..653..Applications. "Sec..654..Use of funds. "Sec..655..Authorization of appropriations.

"SUBPART 2--PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, MODEL DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION "Sec..661..Purpose; definition of eligible entity. "Sec..662..Personnel development to improve services and results for children with disabilities. "Sec..663..Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research. "Sec..664..Studies and evaluations. "Sec..665..Interim alternative educational settings, behavioral supports, and systemic school interventions. "Sec..667..Authorization of appropriations.

"SUBPART 3--SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES "Sec..670..Purposes. "Sec..671..Parent training and information centers. "Sec..672..Community parent resource centers. "Sec..673..Technical assistance for parent training and information centers. "Sec..674..Technology development, demonstration, and utilization; and media services. "Sec..675..Authorization of appropriations.

"SUBPART 4--GENERAL PROVISIONS "Sec..681..Comprehensive plan for subparts 2 and 3. "Sec..682..Administrative provisions.

"(c) **FINDINGS.**--Congress finds the following:

"(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

"(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met because--

"(A) the children did not receive appropriate educational services;

"(B) the children were excluded entirely from the public school system and from being educated with their peers;

"(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

"(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

"(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this title has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

"(4) However, the implementation of this title has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

"(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by--

"(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to--

"(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

“(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

“(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

“(C) coordinating this title with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

“(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

“(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

“(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;

[Page: H9896]

“(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

“(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

“(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

“(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

“(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

“(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

“(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

“(B) America's ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

“(C) Minority children comprise an increasing percentage of public school students.

“(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to

provide appropriate role models with sufficient knowledge to address the special education needs of these students.

“(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

“(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

“(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation's students from non-English language backgrounds.

“(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

“(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

“(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.

“(D) In the 1998-1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

“(E) Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.

“(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

“(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this title, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

“(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

“(d) **PURPOSES.**--The purposes of this title are--

“(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

“(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

“(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

“(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

“(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance,

dissemination, and support; and technology development and media services; and

“(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

“**SEC. 602. DEFINITIONS.**

“Except as otherwise provided, in this title:

“(1) **ASSISTIVE TECHNOLOGY DEVICE.--**

“(A) **IN GENERAL.--**The term ‘assistive technology device’ means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

“(B) **EXCEPTION.--**The term does not include a medical device that is surgically implanted, or the replacement of such device.

“(2) **ASSISTIVE TECHNOLOGY SERVICE.--**The term ‘assistive technology service’ means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--

“(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child’s customary environment;

“(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

“(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

“(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

“(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

“(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

“(3) **CHILD WITH A DISABILITY.--**

“(A) **IN GENERAL.--**The term ‘child with a disability’ means a child--

“(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

“(ii) who, by reason thereof, needs special education and related services.

“(B) **CHILD AGED 3 THROUGH 9.--**The term ‘child with a disability’ for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child--

“(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

“(ii) who, by reason thereof, needs special education and related services.

“(4) **CORE ACADEMIC SUBJECTS.--**The term ‘core academic subjects’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

“(5) **EDUCATIONAL SERVICE AGENCY.--**The term ‘educational service agency’--

“(A) means a regional public multiservice agency--

“(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

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

“(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

“(6) **ELEMENTARY SCHOOL.--**The term ‘elementary school’ means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

“(7) **EQUIPMENT.--**The term ‘equipment’ includes--

“(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

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

“(8) **EXCESS COSTS.--**The term ‘excess costs’ means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting--

“(A) amounts received--

“(i) under part B;

“(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

“(iii) under parts A and B of title III of that Act; and

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

“(9) **FREE APPROPRIATE PUBLIC EDUCATION.--**The term ‘free appropriate public education’ means special education and related services that--

“(A) have been provided at public expense, under public supervision and direction, and without charge;

“(B) meet the standards of the State educational agency;

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“(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

“(D) are provided in conformity with the individualized education program required under section 614(d).

“(10) **HIGHLY QUALIFIED.**--

“(A) **IN GENERAL.**--For any special education teacher, the term ‘highly qualified’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also--

“(i) includes the requirements described in subparagraph (B); and

“(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

“(B) **REQUIREMENTS FOR SPECIAL EDUCATION**

TEACHERS.--When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

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

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

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

“(C) **SPECIAL EDUCATION TEACHERS TEACHING TO**

ALTERNATE ACHIEVEMENT STANDARDS.--When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either--

“(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

“(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

“(D) **SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE**

SUBJECTS.--When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

“(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

“(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

“(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

“(E) **RULE OF CONSTRUCTION.**--Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

“(F) **DEFINITION FOR PURPOSES OF THE ESEA.**--A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

“(11) **HOMELESS CHILDREN.**--The term ‘homeless children’ has the meaning given the term ‘homeless children and youths’ in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

“(12) **INDIAN.**--The term ‘Indian’ means an individual who is a member of an Indian tribe.

“(13) **INDIAN TRIBE.**--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 (43 U.S.C. 1601 et seq.)).

“(14) **INDIVIDUALIZED EDUCATION PROGRAM; IEP.**--The term ‘individualized education program’ or ‘IEP’ means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

“(15) **INDIVIDUALIZED FAMILY SERVICE PLAN.**--The term ‘individualized family service plan’ has the meaning given the term in section 636.

“(16) **INFANT OR TODDLER WITH A DISABILITY.**--The term ‘infant or toddler with a disability’ has the meaning given the term in section 632.

“(17) **INSTITUTION OF HIGHER EDUCATION.**--The term ‘institution of higher education’--

“(A) has the meaning given the term in section 101 of the Higher Education Act of 1965; and

“(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.

“(18) **LIMITED ENGLISH PROFICIENT.**--The term ‘limited English proficient’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

“(19) **LOCAL EDUCATIONAL AGENCY.**--

“(A) **IN GENERAL.**--The term ‘local educational agency’ means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

“(B) **EDUCATIONAL SERVICE AGENCIES AND OTHER PUBLIC INSTITUTIONS OR AGENCIES.**--The term includes--

“(i) an educational service agency; and

“(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

“(C) **BIA FUNDED SCHOOLS.**--The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this title with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

“(20) **NATIVE LANGUAGE.**--The term ‘native language’, when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

“(21) **NONPROFIT.**--The term ‘nonprofit’, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

“(22) **OUTLYING AREA.**--The term ‘outlying area’ means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(23) **PARENT.**--The term ‘parent’ means--

“(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

“(B) a guardian (but not the State if the child is a ward of the State);

“(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or

“(D) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent.

“(24) **PARENT ORGANIZATION.**--The term ‘parent organization’ has the meaning given the term in section 671(g).

“(25) **PARENT TRAINING AND INFORMATION CENTER.**--The term ‘parent training and information center’ means a center assisted under section 671 or 672.

“(26) **RELATED SERVICES.**--

“(A) **IN GENERAL.**--The term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

“(B) **EXCEPTION.**--The term does not include a medical device

that is surgically implanted, or the replacement of such device.

“(27) **SECONDARY SCHOOL.**--The term ‘secondary school’ means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

“(28) **SECRETARY.**--The term ‘Secretary’ means the Secretary of Education.

“(29) **SPECIAL EDUCATION.**--The term ‘special education’ means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

“(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

“(B) instruction in physical education.

“(30) **SPECIFIC LEARNING DISABILITY.**--

“(A) **IN GENERAL.**--The term ‘specific learning disability’ means a disorder in 1 or more of the

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basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

“(B) **DISORDERS INCLUDED.**--Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

“(C) **DISORDERS NOT INCLUDED.**--Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

“(31) **STATE.**--The term ‘State’ means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

“(32) **STATE EDUCATIONAL AGENCY.**--The term ‘State educational agency’ means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

“(33) **SUPPLEMENTARY AIDS AND SERVICES.**--The term ‘supplementary aids and services’ means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

“(34) **TRANSITION SERVICES.**--The term ‘transition services’ means a coordinated set of activities for a child with a disability that--

“(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

“(B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

“(C) includes instruction, related services, community experiences, the development of employment and other post-

school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

“(35) **UNIVERSAL DESIGN.**--The term ‘universal design’ has the meaning given the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

“(36) **WARD OF THE STATE.**--

“(A) **IN GENERAL.**--The term ‘ward of the State’ means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

“(B) **EXCEPTION.**--The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

“**SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

“(a) **ESTABLISHMENT.**--There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in the Department for administering and carrying out this title and other programs and activities concerning the education of children with disabilities.

“(b) **DIRECTOR.**--The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

“(c) **VOLUNTARY AND UNCOMPENSATED SERVICES.**--Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this title.

“**SEC. 604. ABRIGATION OF STATE SOVEREIGN IMMUNITY.**

“(a) **IN GENERAL.**--A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this title.

“(b) **REMEDIES.**--In a suit against a State for a violation of this title, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

“(c) **EFFECTIVE DATE.**--Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

“**SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.**

“(a) **IN GENERAL.**--If the Secretary determines that a program authorized under this title will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

“(b) **COMPLIANCE WITH CERTAIN REGULATIONS.**--Any construction of new facilities or alteration of existing facilities under subsection (a) shall 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 subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the ‘Uniform Federal Accessibility Standards’).

“**SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.**

“The Secretary shall ensure that each recipient of assistance under this title makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this title.

“**SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.**

“(a) **IN GENERAL.**--In carrying out the provisions of this title, the Secretary shall issue regulations under this title only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this title.

“(b) **PROTECTIONS PROVIDED TO CHILDREN.**--The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this title that--

“(1) violates or contradicts any provision of this title; or

“(2) procedurally or substantively lessens the protections provided to children with disabilities under this title, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

“(c) **PUBLIC COMMENT PERIOD.**--The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under part B or part C on which an opportunity for public comment is otherwise required by law.

“(d) **POLICY LETTERS AND STATEMENTS.**--The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that--

“(1) violate or contradict any provision of this title; or

“(2) establish a rule that is required for compliance with, and eligibility under, this title without following the requirements of section 553 of title 5, United States Code.

“(e) **EXPLANATION AND ASSURANCES.**--Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B shall include an explanation in the written response that--

“(1) such response is provided as informal guidance and is not legally binding;

“(2) when required, such response is issued in compliance with the requirements of section 553 of title 5, United States Code; and

“(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

“(f) **CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS TITLE.**--

“(1) **IN GENERAL.**--The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this title or the regulations implemented pursuant to this title.

“(2) **ADDITIONAL INFORMATION.**--For each item of correspondence published in a list under paragraph (1), the Secretary shall--

“(A) identify the topic addressed by the correspondence and shall

include such other summary information as the Secretary determines to be appropriate; and

“(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5, United States Code.

“**SEC. 608. STATE ADMINISTRATION.**

“(a) **RULEMAKING.**--Each State that receives funds under this title shall--

“(1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;

“(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and

“(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

“(b) **SUPPORT AND FACILITATION.**--State rules, regulations, and policies under this title shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

“**SEC. 609. PAPERWORK REDUCTION.**

“(a) **PILOT PROGRAM.**--

“(1) **PURPOSE.**--The purpose of this section is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this title, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

“(2) **AUTHORIZATION.**--

“(A) **IN GENERAL.**--In order to carry out the purpose of this section, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, part B for a period of time not to exceed 4 years with respect to not more than 15 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

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“(B) **EXCEPTION.**--The Secretary shall not waive under this section any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

“(C) **RULE OF CONSTRUCTION.**--Nothing in this section shall be construed to--

“(i) affect the right of a child with a disability to receive a free appropriate public education under part B; and

“(ii) permit a State or local educational agency to waive procedural safeguards under section 615.

“(3) **PROPOSAL.**--

“(A) **IN GENERAL.**--A State desiring to participate in the program under this section shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

“(B) **CONTENT.**--The proposal shall include--

“(i) a list of any statutory requirements of, or regulatory requirements relating to, part B that the State desires the Secretary to waive, in whole or in part; and

“(ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

“(4) **TERMINATION OF WAIVER.**--The Secretary shall terminate a State's waiver under this section if the Secretary determines that the State--

“(A) needs assistance under section 616(d)(2)(A)(ii) and that the waiver has contributed to or caused such need for assistance;

“(B) needs intervention under section 616(d)(2)(A)(iii) or needs substantial intervention under section 616(d)(2)(A)(iv); or

“(C) failed to appropriately implement its waiver.

“(b) **REPORT.**--Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall include in the annual report to Congress submitted pursuant to section 426 of the Department of Education Organization Act information related to the effectiveness of waivers granted under subsection (a), including any specific recommendations for broader implementation of such waivers, in-

“(1) reducing--

“(A) the paperwork burden on teachers, principals, administrators, and related service providers; and

“(B) noninstructional time spent by teachers in complying with part B;

“(2) enhancing longer-term educational planning;

“(3) improving positive outcomes for children with disabilities;

“(4) promoting collaboration between IEP Team members; and

“(5) ensuring satisfaction of family members.

“**SEC. 610. FREELY ASSOCIATED STATES.**

“The Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall continue to be eligible for competitive grants administered by the Secretary under this title to the extent that such grants continue to be available to States and local educational agencies under this title.

“**PART B--ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES**

“**SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.**

“(a) **GRANTS TO STATES.**--

“(1) **PURPOSE OF GRANTS.**--The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

“(2) **MAXIMUM AMOUNT.**--The maximum amount of the grant a State may receive under this section--

“(A) for fiscal years 2005 and 2006 is--

“(i) 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; and

“(II) aged 6 through 21; multiplied by

“(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

“(B) for fiscal year 2007 and subsequent fiscal years is--

“(i) the number of children with disabilities in the 2004-2005 school year in the State who received special education and related services--

“(I) aged 3 through 5 if the State is eligible for a grant under section 619; and

“(II) aged 6 through 21; multiplied by

“(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

“(iii) the rate of annual change in the sum of--

“(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and

“(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III).

“(b) **OUTLYING AREAS AND FREELY ASSOCIATED STATES; SECRETARY OF THE INTERIOR.--**

“(1) **OUTLYING AREAS AND FREELY ASSOCIATED STATES.-**

“(A) **FUNDS RESERVED.--**From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used--

“(i) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

“(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

“(B) **SPECIAL RULE.--**The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

“(C) **DEFINITION.--**In this paragraph, the term `freely associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

“(2) **SECRETARY OF THE INTERIOR.--**From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (h).

“(c) **TECHNICAL ASSISTANCE.--**

“(1) **IN GENERAL.--**The Secretary may reserve not more than 1/2 of 1 percent of the amounts appropriated under this part for each fiscal year to provide technical assistance activities authorized under section 616(i).

“(2) **MAXIMUM AMOUNT.--**The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is

\$25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

“(d) **ALLOCATIONS TO STATES.--**

“(1) **IN GENERAL.--**After reserving funds for technical assistance, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

“(2) **SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.--**If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

“(3) **INCREASE IN FUNDS.--**If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

“(A) **ALLOCATION OF INCREASE.--**

“(i) **IN GENERAL.--**Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year--

“(I) to each State the amount the State received under this section for fiscal year 1999;

“(II) 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

“(III) 15 percent of those remaining funds to States on the basis of the States' relative populations of children described in subclause (II) who are living in poverty.

“(ii) **DATA.--**For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

“(B) **LIMITATIONS.--**Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

“(i) **PRECEDING YEAR ALLOCATION.--**No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

“(ii) **MINIMUM.--**No State's allocation shall be less than the greatest of--

“(I) the sum of--

“(aa) the amount the State received under this section for fiscal year 1999; and

“(bb) 1/3 of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

“(II) the sum of--

“(aa) the amount the State received under this section for the preceding fiscal year; and

“(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

“(III) the sum of--

“(aa) the amount the State received under this section for the preceding fiscal year; and

“(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

“(iii) **MAXIMUM.**--Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of--

“(I) the amount the State received under this section for the preceding fiscal year; and

“(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

“(C) **RATABLE REDUCTION.**--If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

“(4) **DECREASE IN FUNDS.**--If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

“(A) **AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.**--If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of--

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“(i) the amount the State received under this section for fiscal year 1999; and

“(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

“(B) **AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.**--

“(i) **IN GENERAL.**--If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

“(ii) **RATABLE REDUCTION.**--If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

“(e) **STATE-LEVEL ACTIVITIES.**--

“(1) **STATE ADMINISTRATION.**--

“(A) **IN GENERAL.**--For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities--

“(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or \$800,000 (adjusted in accordance with subparagraph (B)), whichever is

greater; and

“(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) for the fiscal year of \$35,000, whichever is greater.

“(B) **CUMULATIVE ANNUAL ADJUSTMENTS.**--For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust--

“(i) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and

“(ii) \$800,000,

by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

“(C) **CERTIFICATION.**--Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.

“(D) **PART C.**--Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under such part.

“(2) **OTHER STATE-LEVEL ACTIVITIES.**--

“(A) **STATE-LEVEL ACTIVITIES.**--

“(i) **IN GENERAL.**--Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

“(ii) **SMALL STATE ADJUSTMENT.**--Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than \$850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

“(iii) **EXCEPTION.**--If a State does not reserve funds under paragraph (3) for a fiscal year, then--

“(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting ‘9.0 percent’ for ‘10 percent’; and

“(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting ‘9.5 percent’ for ‘10.5 percent’.

“(B) **REQUIRED ACTIVITIES.**--Funds reserved under subparagraph (A) shall be used to carry out the following activities:

- “(i) For monitoring, enforcement, and complaint investigation.
- “(ii) To establish and implement the mediation process required by section 615(e), including providing for the cost of mediators and support personnel.
- “(C) **AUTHORIZED ACTIVITIES.**--Funds reserved under subparagraph (A) may be used to carry out the following activities:
 - “(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.
 - “(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.
 - “(iii) To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.
 - “(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.
 - “(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.
 - “(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.
 - “(vii) To assist local educational agencies in meeting personnel shortages.
 - “(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.
 - “(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.
 - “(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.
 - “(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or local educational agencies identified for improvement under section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) the Elementary and Secondary Education Act of 1965.
- “(3) **LOCAL EDUCATIONAL AGENCY RISK POOL.**--
- “(A) **IN GENERAL.**--
 - “(i) **RESERVATION OF FUNDS.**--For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with

- disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)--
 - “(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and
 - “(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).
 - “(ii) **DEFINITION OF LOCAL EDUCATIONAL AGENCY.**--In this paragraph the term ‘local educational agency’ includes a charter school that is a local educational agency, or a consortium of local educational agencies.
 - “(B) **LIMITATION ON USES OF FUNDS.**--
 - “(i) **ESTABLISHMENT OF HIGH COST FUND.**--A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.
 - “(ii) **INNOVATIVE AND EFFECTIVE COST SHARING.**--A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i) for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.
 - “(C) **STATE PLAN FOR HIGH COST FUND.**--
 - “(i) **DEFINITION.**--The State educational agency shall establish the State’s definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.
 - “(ii) **STATE PLAN.**--The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall--
 - “(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum--
 - “(aa) addresses the financial impact a high need child with a disability has on the budget of the child’s local educational agency; and
 - “(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act of 1965) in that State;
 - “(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;
 - “(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (I); and
 - “(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.
 - “(iii) **PUBLIC AVAILABILITY.**--The State shall make its final State plan publicly available not
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- less than 30 days before the beginning of the school year,

including dissemination of such information on the State website.

“(D) DISBURSEMENTS FROM THE HIGH COST FUND.--

“(i) IN GENERAL.--Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

“(ii) USE OF DISBURSEMENTS.--Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

“(iii) APPROPRIATE COSTS.--The costs associated with educating a high need child with a disability under subparagraph (C)(i) are only those costs associated with providing direct special education and related services to such child that are identified in such child’s IEP.

“(E) LEGAL FEES.--The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a free appropriate public education for such child.

“(F) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.--Nothing in this paragraph shall be construed--

“(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in the least restrictive environment pursuant to section 612(a)(5); or

“(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

“(G) SPECIAL RULE FOR RISK POOL AND HIGH NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2004.--Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(l).

“(H) MEDICAID SERVICES NOT AFFECTED.--Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under title XIX of the Social Security Act.

“(I) REMAINING FUNDS.--Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) for the succeeding fiscal year.

“(4) INAPPLICABILITY OF CERTAIN PROHIBITIONS.--A State may use funds the State reserves under paragraphs (1) and (2) without regard to--

“(A) the prohibition on commingling of funds in section 612(a)(17)(B); and

“(B) the prohibition on supplanting other funds in section 612(a)(17)(C).

“(5) REPORT ON USE OF FUNDS.--As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe how amounts under this section--

“(A) will be used to meet the requirements of this title; and

“(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

“(6) SPECIAL RULE FOR INCREASED FUNDS.--A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

“(7) FLEXIBILITY IN USING FUNDS FOR PART C.--Any State eligible to receive a grant under section 619 may use funds made available under paragraph (1)(A), subsection (f)(3), or section 619(f)(5) to develop and implement a State policy jointly with the lead agency under part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under section 619 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

“(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.--

“(1) SUBGRANTS REQUIRED.--Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

“(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.--For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

“(A) BASE PAYMENTS.--The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.

“(B) ALLOCATION OF REMAINING FUNDS.--After making allocations under subparagraph (A), the State shall--

“(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency’s jurisdiction; and

“(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

“(3) REALLOCATION OF FUNDS.--If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local educational 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 residing in the areas served by those other local educational agencies.

“(g) DEFINITIONS.--In this section:

“(1) AVERAGE PER-PUPIL EXPENDITURE IN PUBLIC ELEMENTARY SCHOOLS AND SECONDARY SCHOOLS IN THE UNITED STATES.--The term “average per-pupil expenditure in public elementary schools and secondary schools in the United States” means--

“(A) without regard to the source of funds--

“(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

“(ii) 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.

“(2) **STATE.**--The term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(h) **USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.**--

“(1) **PROVISION OF AMOUNTS FOR ASSISTANCE.**--

“(A) **IN GENERAL.**--The Secretary of Education shall provide 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 schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (b)(2) for that fiscal year. Of the amount described in the preceding sentence--

“(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

“(ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

“(B) **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 (referred to in this subsection as the ‘BIA’) schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for those children, in accordance with paragraph (2).

“(C) **ADDITIONAL REQUIREMENT.**--With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

“(2) **SUBMISSION OF INFORMATION.**--The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that--

“(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

“(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

“(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies,

and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in subparagraph (A);

“(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

“(E) 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 of Education, for the coordination of

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services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

“(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education 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 this part, and will fulfill its duties under this part.

“(3) **APPLICABILITY.**--The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under section 616(e)(6).

“(4) **PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.**--

“(A) **IN GENERAL.**--With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2).

“(B) **DISTRIBUTION OF FUNDS.**--The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged 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 paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

“(D) **USE OF FUNDS.**--The funds received by a tribe or tribal organization shall 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, local educational agencies, 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. The tribe or

tribal organization 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 subparagraph (A), 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 2 years following the year 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 of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

“(F) **PROHIBITIONS.**--None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

“(5) **PLAN FOR COORDINATION OF SERVICES.**--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 this title. Such plan shall provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall 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. The plan shall also be distributed upon request to States, State educational agencies and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

“(6) **ESTABLISHMENT OF ADVISORY BOARD.**--To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall-

“(A) 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;

“(B) advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in this subsection;

“(C) 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;

“(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

“(E) provide assistance in the preparation of information required under paragraph (2)(D).

“(7) **ANNUAL REPORTS.**--

“(A) **IN GENERAL.**--The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

“(B) **AVAILABILITY.**--The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

“(i) **AUTHORIZATION OF APPROPRIATIONS.**--For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated--

“(1) \$12,358,376,571 for fiscal year 2005;

“(2) \$14,648,647,143 for fiscal year 2006;

“(3) \$16,938,917,714 for fiscal year 2007;

“(4) \$19,229,188,286 for fiscal year 2008;

“(5) \$21,519,458,857 for fiscal year 2009;

“(6) \$23,809,729,429 for fiscal year 2010;

“(7) \$26,100,000,000 for fiscal year 2011; and

“(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

“SEC. 612. STATE ELIGIBILITY.

“(a) **IN GENERAL.**--A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

“(1) **FREE APPROPRIATE PUBLIC EDUCATION.**--

“(A) **IN GENERAL.**--A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

“(B) **LIMITATION.**--The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children--

“(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

“(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility--

“(I) were not actually identified as being a child with a disability under section 602; or

“(II) did not have an individualized education program under this part.

“(C) **STATE FLEXIBILITY.**--A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education.

“(2) **FULL EDUCATIONAL OPPORTUNITY GOAL.**--The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

“(3) CHILD FIND.--

“(A) IN GENERAL.--All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

“(B) CONSTRUCTION.--Nothing in this title requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

“(4) INDIVIDUALIZED EDUCATION PROGRAM.--An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

“(5) LEAST RESTRICTIVE ENVIRONMENT.--

“(A) IN GENERAL.--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 not disabled, and special classes, separate schooling, or other removal of children with

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disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

“(B) ADDITIONAL REQUIREMENT.--

“(i) IN GENERAL.--A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

“(ii) ASSURANCE.--If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

“(6) PROCEDURAL SAFEGUARDS.--

“(A) IN GENERAL.--Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

“(B) ADDITIONAL PROCEDURAL SAFEGUARDS.--Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

“(7) EVALUATION.--Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

“(8) CONFIDENTIALITY.--Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

“(9) TRANSITION FROM PART C TO PRESCHOOL

PROGRAMS.--Children participating in early intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10).

“(10) CHILDREN IN PRIVATE SCHOOLS.--

“(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.--

“(i) IN GENERAL.--To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

“(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

“(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

“(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

“(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

“(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

“(ii) CHILD FIND REQUIREMENT.--

“(I) IN GENERAL.--The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

“(II) EQUITABLE PARTICIPATION.--The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

“(III) ACTIVITIES.--In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

“(IV) COST.--The cost of carrying out this clause, including individual evaluations, may not be considered in determining

whether a local educational agency has met its obligations under clause (i).

“(V) **COMPLETION PERIOD.**--Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

“(iii) **CONSULTATION.**--To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--

“(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

“(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

“(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

“(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

“(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

“(iv) **WRITTEN AFFIRMATION.**--When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

“(v) **COMPLIANCE.**--

“(I) **IN GENERAL.**--A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

“(II) **PROCEDURE.**--If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

“(vi) **PROVISION OF EQUITABLE SERVICES.**--

“(I) **DIRECTLY OR THROUGH CONTRACTS.**--The provision of services pursuant to this subparagraph shall be provided--

“(aa) by employees of a public agency; or

“(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

“(II) **SECULAR, NEUTRAL, NONIDEOLOGICAL.**--Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

“(vii) **PUBLIC CONTROL OF FUNDS.**--The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.

“(B) **CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.**--

“(i) **IN GENERAL.**--Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

“(ii) **STANDARDS.**--In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

“(C) **PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.**--

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“(i) **IN GENERAL.**--Subject to subparagraph (A), this part does not require a local educational agency 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 a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

“(ii) **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 school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

“(iii) **LIMITATION ON REIMBURSEMENT.**--The cost of reimbursement described in clause (ii) may be reduced or denied--

“(I) if--

“(aa) 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 a free appropriate public education to their child, including stating their concerns and their

intent to enroll their child in a private school at public expense; or

“(bb) 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 item (aa);

“(II) 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 section 615(b)(3), 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 such evaluation; or

“(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

“(iv) **EXCEPTION.**--Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement--

“(I) shall not be reduced or denied for failure to provide such notice if--

“(aa) the school prevented the parent from providing such notice;

“(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); or

“(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

“(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--

“(aa) the parent is illiterate or cannot write in English; or

“(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

“(11) **STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.**--

“(A) **IN GENERAL.**--The State educational agency is responsible for ensuring that--

“(i) the requirements of this part are met;

“(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency--

“(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

“(II) meet the educational standards of the State educational agency; and

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

“(B) **LIMITATION.**--Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

“(C) **EXCEPTION.**--Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of 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.

“(12) **OBLIGATIONS RELATED TO AND METHODS OF**

ENSURING SERVICES.--

“(A) **ESTABLISHING RESPONSIBILITY FOR SERVICES.**--The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

“(i) **AGENCY FINANCIAL RESPONSIBILITY.**--An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

“(ii) **CONDITIONS AND TERMS OF REIMBURSEMENT.**--The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

“(iii) **INTERAGENCY DISPUTES.**--Procedures for resolving interagency disputes (including procedures under which local educational agencies 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.

“(iv) **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 subparagraph (B)(i).

“(B) **OBLIGATION OF PUBLIC AGENCY.**--

“(i) **IN GENERAL.**--If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), 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 section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(26) relating to related services, 602(33) relating to supplementary aids and services, and 602(34) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

“(ii) **REIMBURSEMENT FOR SERVICES BY 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 clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

“(C) **SPECIAL RULE.**--The requirements of subparagraph (A) may be met through--

“(i) State statute or regulation;

“(ii) signed agreements between respective agency officials that

clearly identify the responsibilities of each agency relating to the provision of services; or

“(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

“(13) **PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**--The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

“(14) **PERSONNEL QUALIFICATIONS.**--

“(A) **IN GENERAL.**--The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

“(B) **RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.**--The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that--

“(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

“(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

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

“(C) **POLICY.**--In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

“(D) **RULE OF CONSTRUCTION.**--Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.

“(15) **PERFORMANCE GOALS AND INDICATORS.**--The State--

“(A) has established goals for the performance of children with disabilities in the State that--

“(i) promote the purposes of this title, as stated in section 601(d);

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“(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

“(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and

“(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

“(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and

“(C) will annually 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 subparagraph (A), which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act of 1965.

“(16) **PARTICIPATION IN ASSESSMENTS.**--

“(A) **IN GENERAL.**--All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

“(B) **ACCOMMODATION GUIDELINES.**--The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

“(C) **ALTERNATE ASSESSMENTS.**--

“(i) **IN GENERAL.**--The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

“(ii) **REQUIREMENTS FOR ALTERNATE ASSESSMENTS.**--The guidelines under clause (i) shall provide for alternate assessments that--

“(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

“(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

“(iii) **CONDUCT OF ALTERNATE ASSESSMENTS.**--The State conducts the alternate assessments described in this subparagraph.

“(D) **REPORTS.**--The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

“(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

“(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

“(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

“(iv) The performance of children with disabilities on regular

assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

“(E) **UNIVERSAL DESIGN.**--The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

“(17) **SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.**--

“(A) **EXPENDITURES.**--Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

“(B) **PROHIBITION AGAINST COMMINGLING.**--Funds paid to a State under this part will not be commingled with State funds.

“(C) **PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.**--Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

“(18) **MAINTENANCE OF STATE FINANCIAL SUPPORT.**--

“(A) **IN GENERAL.**--The State does 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 shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) 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 subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that--

“(i) 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

“(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

“(D) **SUBSEQUENT YEARS.**--If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

“(19) **PUBLIC PARTICIPATION.**--Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of

the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

“(20) **RULE OF CONSTRUCTION.**--In complying with paragraphs (17) and (18), a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

“(21) **STATE ADVISORY PANEL.**--

“(A) **IN GENERAL.**--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.

“(B) **MEMBERSHIP.**--Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including--

“(i) parents of children with disabilities (ages birth through 26);

“(ii) individuals with disabilities;

“(iii) teachers;

“(iv) representatives of institutions of higher education that prepare special education and related services personnel;

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

“(vi) administrators of programs for children with disabilities;

“(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

“(viii) representatives of private schools and public charter schools;

“(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

“(x) a representative from the State child welfare agency responsible for foster care; and

“(xi) representatives from the State juvenile and adult corrections agencies.

“(C) **SPECIAL RULE.**--A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

“(D) **DUTIES.**--The advisory panel shall--

“(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

“(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

“(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

“(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

“(v) advise the State educational agency in developing and

implementing policies relating to the coordination of services for children with disabilities.

“(22) SUSPENSION AND EXPULSION RATES.--

“(A) IN GENERAL.--The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities-

“(i) among local educational agencies in the State; or

“(ii) compared to such rates for nondisabled children within such agencies.

“(B) REVIEW AND REVISION OF POLICIES.--If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this title.

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“(23) ACCESS TO INSTRUCTIONAL MATERIALS.--

“(A) IN GENERAL.--The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

“(B) RIGHTS OF STATE EDUCATIONAL AGENCY.--Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

“(C) PREPARATION AND DELIVERY OF FILES.--If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to--

“(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

“(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

“(D) ASSISTIVE TECHNOLOGY.--In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

“(E) DEFINITIONS.--In this paragraph:

“(i) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.--The term ‘National Instructional Materials Access Center’ means the center established pursuant to section 674(e).

“(ii) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.--The term ‘National Instructional Materials Accessibility Standard’ has the meaning given the term in section 674(e)(3)(A).

“(iii) SPECIALIZED FORMATS.--The term ‘specialized formats’ has the meaning given the term in section 674(e)(3)(D).

“(24) OVERIDENTIFICATION AND DISPROPORTIONALITY.--The State has in effect, consistent with the purposes of this title and with section 618(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 602.

“(25) PROHIBITION ON MANDATORY MEDICATION.--

“(A) IN GENERAL.--The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, or receiving services under this title.

“(B) RULE OF CONSTRUCTION.--Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

“(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.--If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency--

“(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

“(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

“(c) EXCEPTION FOR PRIOR STATE PLANS.--

“(1) IN GENERAL.--If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

“(2) MODIFICATIONS MADE BY STATE.--Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

“(3) MODIFICATIONS REQUIRED BY THE SECRETARY.--If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by a Federal court or a State’s highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State’s compliance with this part.

“(d) APPROVAL BY THE SECRETARY.--

“(1) **IN GENERAL.**--If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

“(2) **NOTICE AND HEARING.**--The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State--

“(A) with reasonable notice; and

“(B) with an opportunity for a hearing.

“(e) **ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.**--Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

“(f) **BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.**--

“(1) **IN GENERAL.**--If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements that shall be subject to the requirements of such subsection.

“(2) **PAYMENTS.**--

“(A) **DETERMINATION OF AMOUNTS.**--If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing--

“(i) the total amount received by the State under this part for such fiscal year; by

“(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

“(B) **WITHHOLDING OF CERTAIN AMOUNTS.**--Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

“(C) **PERIOD OF PAYMENTS.**--The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

“(3) **NOTICE AND HEARING.**--

“(A) **IN GENERAL.**--The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

“(B) **REVIEW OF ACTION.**--If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith

transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

“(C) **REVIEW OF FINDINGS OF FACT.**--The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

“(D) **JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.**--Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

“**SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**

“(a) **IN GENERAL.**--A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

“(1) **CONSISTENCY WITH STATE POLICIES.**--The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

“(2) **USE OF AMOUNTS.**--

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“(A) **IN GENERAL.**--Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and--

“(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

“(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

“(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

“(B) **EXCEPTION.**--Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to--

“(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

“(ii) a decrease in the enrollment of children with disabilities;

“(iii) 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 State educational agency, because the child--

“(I) has left the jurisdiction of the agency;

“(II) has reached the age at which the obligation of the agency to

provide a free appropriate public education to the child has terminated; or

“(III) no longer needs such program of special education; or

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

“(C) **ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS.**--

“(i) **AMOUNTS IN EXCESS.**--Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

“(ii) **USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA.**--If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

“(iii) **STATE PROHIBITION.**--Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

“(iv) **SPECIAL RULE.**--The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

“(D) **SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.**--Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part 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 so used in any such program shall not exceed--

“(i) the number of children with disabilities participating in the schoolwide program; multiplied by

“(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

“(II) the number of children with disabilities in the jurisdiction of that agency.

“(3) **PERSONNEL DEVELOPMENT.**--The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of section 612(a)(14) and section 2122 of the Elementary and Secondary Education Act of 1965.

“(4) **PERMISSIVE USE OF FUNDS.**--

“(A) **USES.**--Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

“(i) **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 individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

“(ii) **EARLY INTERVENING SERVICES.**--To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

“(iii) **HIGH COST EDUCATION AND RELATED SERVICES.**--To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

“(B) **ADMINISTRATIVE CASE MANAGEMENT.**--A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

“(5) **TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.**--In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency--

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

“(B) provides funds under this part to those charter schools--

“(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

“(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

“(6) **PURCHASE OF INSTRUCTIONAL MATERIALS.**--

“(A) **IN GENERAL.**--Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 612(a)(23).

“(B) **RIGHTS OF LOCAL EDUCATIONAL AGENCY.**--Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

“(7) **INFORMATION FOR STATE EDUCATIONAL AGENCY.**--The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

“(8) **PUBLIC INFORMATION.**--The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

“(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES.--The local educational agency shall cooperate in the Secretary’s efforts under section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

“(b) EXCEPTION FOR PRIOR LOCAL PLANS.--

“(1) IN GENERAL.--If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

“(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.--Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

“(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.--If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency’s compliance with this part or State law.

“(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.--If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

“(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.--

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“(1) IN GENERAL.--If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

“(2) ADDITIONAL REQUIREMENT.--Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of 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 such agency.

“(3) CONSIDERATION.--In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

“(e) JOINT ESTABLISHMENT OF ELIGIBILITY.--

“(1) JOINT ESTABLISHMENT.--

“(A) IN GENERAL.--A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will 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.--A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State’s charter school law.

“(2) AMOUNT OF PAYMENTS.--If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

“(3) REQUIREMENTS.--Local educational agencies that establish joint eligibility under this subsection shall--

“(A) adopt policies and procedures that are consistent with the State’s policies and procedures under section 612(a); and

“(B) be jointly responsible for implementing programs that receive assistance under this part.

“(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.--

“(A) IN GENERAL.--If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall--

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

“(ii) be carried out only by that educational service agency.

“(B) ADDITIONAL REQUIREMENT.--Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

“(f) EARLY INTERVENING SERVICES.--

“(1) IN GENERAL.--A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

“(2) ACTIVITIES.--In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include--

“(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where

appropriate, instruction on the use of adaptive and instructional software; and

((B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

((3) **CONSTRUCTION.**--Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this part.

((4) **REPORTING.**--Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on--

((A) the number of students served under this subsection; and

((B) the number of students served under this subsection who subsequently receive special education and related services under this title during the preceding 2-year period.

((5) **COORDINATION WITH ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.**--Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

((g) **DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.**--

((1) **IN GENERAL.**--A State educational agency shall use the payments that would otherwise have been available to a local educational agency 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 educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be--

((A) has not provided the information needed to establish the eligibility of such local educational agency or State agency under this section;

((B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

((C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

((D) has 1 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 such children.

((2) **MANNER AND LOCATION OF EDUCATION AND SERVICES.**--The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State educational agency considers appropriate. Such education and services shall be provided in accordance with this part.

((h) **STATE AGENCY ELIGIBILITY.**--Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that--

((1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

((2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

((i) **DISCIPLINARY INFORMATION.**--The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. 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. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

((j) **STATE AGENCY FLEXIBILITY.**--

((1) **ADJUSTMENT TO STATE FISCAL EFFORT IN CERTAIN FISCAL YEARS.**--For any fiscal year for which the allotment received by a State under section 611 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

((2) **PROHIBITION.**--Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

((3) **EDUCATION ACTIVITIES.**--If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

((4) **REPORT.**--For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

((5) **LIMITATION.**--Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency

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receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency.

SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

((a) **EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS.**--

“(1) INITIAL EVALUATIONS.--

“(A) IN GENERAL.--A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

“(B) REQUEST FOR INITIAL EVALUATION.--Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

“(C) PROCEDURES.--

“(i) IN GENERAL.--Such initial evaluation shall consist of procedures--

“(I) to determine whether a child is a child with a disability (as defined in section 602) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

“(II) to determine the educational needs of such child.

“(ii) EXCEPTION.--The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--

“(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 602), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

“(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

“(D) PARENTAL CONSENT.--

“(i) IN GENERAL.--

“(I) CONSENT FOR INITIAL EVALUATION.--The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

“(II) CONSENT FOR SERVICES.--An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

“(ii) ABSENCE OF CONSENT.--

“(I) FOR INITIAL EVALUATION.--If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

“(II) FOR SERVICES.--If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.

“(III) EFFECT ON AGENCY OBLIGATIONS.--If the parent of

such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--

“(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

“(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

“(iii) CONSENT FOR WARDS OF THE STATE.--

“(I) IN GENERAL.--If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 602) of the child for an initial evaluation to determine whether the child is a child with a disability.

“(II) EXCEPTION.--The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--

“(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

“(bb) the rights of the parents of the child have been terminated in accordance with State law; or

“(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

“(E) RULE OF CONSTRUCTION.--The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

“(2) REEVALUATIONS.--

“(A) IN GENERAL.--A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--

“(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

“(ii) if the child's parents or teacher requests a reevaluation.

“(B) LIMITATION.--A reevaluation conducted under subparagraph (A) shall occur--

“(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

“(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

“(b) EVALUATION PROCEDURES.--

“(1) NOTICE.--The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

“(2) CONDUCT OF EVALUATION.--In conducting the evaluation, the local educational agency shall--

“(A) use a variety of assessment tools and strategies to gather

relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--

- “(i) whether the child is a child with a disability; and
- “(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

“(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

“(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

“(3) **ADDITIONAL REQUIREMENTS.**--Each local educational agency shall ensure that--

“(A) assessments and other evaluation materials used to assess a child under this section--

“(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

“(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

“(iii) are used for purposes for which the assessments or measures are valid and reliable;

“(iv) are administered by trained and knowledgeable personnel; and

“(v) are administered in accordance with any instructions provided by the producer of such assessments;

“(B) the child is assessed in all areas of suspected disability;

“(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

“(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

“(4) **DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED.**--Upon completion of the administration of assessments and other evaluation measures--

“(A) the determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

“(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

“(5) **SPECIAL RULE FOR ELIGIBILITY DETERMINATION.**--In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--

“(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);

“(B) lack of instruction in math; or

“(C) limited English proficiency.

“(6) **SPECIFIC LEARNING DISABILITIES.**--

“(A) **IN GENERAL.**--Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

“(B) **ADDITIONAL AUTHORITY.**--In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

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“(c) **ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.**--

“(1) **REVIEW OF EXISTING EVALUATION DATA.**--As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall--

“(A) review existing evaluation data on the child, including--

“(i) evaluations and information provided by the parents of the child;

“(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

“(iii) observations by teachers and related services providers; and

“(B) 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 is a child with a disability as defined in section 602(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

“(ii) the present levels of academic achievement and related developmental 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 individualized education program of the child and to participate, as appropriate, in the general education curriculum.

“(2) **SOURCE OF DATA.**--The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

“(3) **PARENTAL CONSENT.**--Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain

such consent and the child's parent has failed to respond.

“(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.--If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency--

“(A) shall notify the child's parents of--

“(i) that determination and the reasons for the determination; and

“(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

“(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

“(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.--

“(A) **IN GENERAL.**--Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

“(B) **EXCEPTION.**--

“(i) **IN GENERAL.**--The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

“(ii) **SUMMARY OF PERFORMANCE.**--For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

“(d) INDIVIDUALIZED EDUCATION PROGRAMS.--

“(1) DEFINITIONS.--In this title:

“(A) INDIVIDUALIZED EDUCATION PROGRAM.--

“(i) **IN GENERAL.**--The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

“(l) a statement of the child's present levels of academic achievement and functional performance, including--

“(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;

“(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

“(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

“(ll) a statement of measurable annual goals, including academic and functional goals, designed to--

“(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

“(bb) meet each of the child's other educational needs that result from the child's disability;

“(lll) a description of how the child's progress toward meeting the annual goals described in subclause (ll) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

“(llv) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--

“(aa) to advance appropriately toward attaining the annual goals;

“(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (l) and to participate in extracurricular and other nonacademic activities; and

“(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

“(v) 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 subclause (ll)(cc);

“(vl)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

“(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--

“(AA) the child cannot participate in the regular assessment; and

“(BB) the particular alternate assessment selected is appropriate for the child;

“(vll) the projected date for the beginning of the services and modifications described in subclause (llv), and the anticipated frequency, location, and duration of those services and modifications; and

“(vlll) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter--

“(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

“(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

“(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

“(ii) **RULE OF CONSTRUCTION.**--Nothing in this section shall be construed to require--

“(l) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

“(ll) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.--The term "individualized education program team" or "IEP Team" means a group of individuals composed of--

- “(i) the parents of a child with a disability;
- “(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
- “(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;
- “(iv) a representative of the local educational agency who--
 - “(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - “(II) is knowledgeable about the general education curriculum; and
 - “(III) is knowledgeable about the availability of resources of the local educational agency;
- “(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);
- “(vi) 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
- “(vii) whenever appropriate, the child with a disability.

(C) IEP TEAM ATTENDANCE.--

(i) ATTENDANCE NOT NECESSARY.--A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(ii) EXCUSAL.--A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

- “(I) the parent and the local educational agency consent to the excusal; and
- “(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED.--A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

(D) IEP TEAM TRANSITION.--In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.

(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.--

(A) IN GENERAL.--At the beginning of each school year, each local educational agency,

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State educational agency, or other State agency, as the case may

be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.--In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, and the individualized family service plan 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.

(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.--

(i) IN GENERAL.--

(I) TRANSFER WITHIN THE SAME STATE.--In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) TRANSFER OUTSIDE STATE.--In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(ii) TRANSMITTAL OF RECORDS.--To facilitate the transition for a child described in clause (i)--

(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

(3) DEVELOPMENT OF IEP.--

(A) IN GENERAL.--In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--

- “(i) the strengths of the child;
- “(ii) the concerns of the parents for enhancing the education of their child;
- “(iii) the results of the initial evaluation or most recent evaluation of the child; and
- “(iv) the academic, developmental, and functional needs of the child.

(B) CONSIDERATION OF SPECIAL FACTORS.--The IEP Team

shall--

“(i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

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

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

“(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

“(v) consider whether the child needs assistive technology devices and services.

“(C) **REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.**--A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

“(D) **AGREEMENT.**--In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

“(E) **CONSOLIDATION OF IEP TEAM MEETINGS.**--To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

“(F) **AMENDMENTS.**--Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

“(4) **REVIEW AND REVISION OF IEP.**--

“(A) **IN GENERAL.**--The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team--

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

“(ii) revises the IEP as appropriate to address--

“(I) any lack of expected progress toward the annual goals and in the general education curriculum, where 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 subsection (c)(1)(B);

“(IV) the child's anticipated needs; or

“(V) other matters.

“(B) **REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.**--A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

“(5) **MULTI-YEAR IEP DEMONSTRATION.**--

“(A) **PILOT PROGRAM.**--

“(i) **PURPOSE.**--The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

“(ii) **AUTHORIZATION.**--In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

“(iii) **PROPOSAL.**--

“(I) **IN GENERAL.**--A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

“(II) **CONTENT.**--The proposal shall include--

“(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

“(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

“(cc) a list of required elements for each multi-year IEP, including--

“(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

“(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

“(dd) a description of the process for the review and revision of each multi-year IEP, including--

“(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

“(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

“(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

“(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

“(B) **REPORT.**--Beginning 2 years after the date of enactment of

the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including--

- “(i) reducing--
- “(l) the paperwork burden on teachers, principals, administrators, and related service providers; and
- “(ll) noninstructional time spent by teachers in complying with this part;
- “(ii) enhancing longer-term educational planning;
- “(iii) improving positive outcomes for children with disabilities;
- “(iv) promoting collaboration between IEP Team members; and
- “(v) ensuring satisfaction of family members.

“(C) **DEFINITION.**--In this paragraph, the term ‘natural transition points’ means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

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“(6) **FAILURE TO MEET TRANSITION OBJECTIVES.**--If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), 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.

“(7) **CHILDREN WITH DISABILITIES IN ADULT PRISONS.**--

“(A) **IN GENERAL.**--The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

“(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).

“(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of such children’s age, before such children will be released from prison.

“(B) **ADDITIONAL REQUIREMENT.**--If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child’s IEP Team may modify the child’s IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

“(e) **EDUCATIONAL PLACEMENTS.**--Each local educational agency or State educational 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.

“(f) **ALTERNATIVE MEANS OF MEETING PARTICIPATION.**--When conducting IEP team meetings and placement meetings pursuant to this section, section 615(e), and section 615(f)(1)(B), and carrying out administrative matters under section 615 (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational

agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

“**SEC. 615. PROCEDURAL SAFEGUARDS.**

“(a) **ESTABLISHMENT OF PROCEDURES.**--Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

“(b) **TYPES OF PROCEDURES.**--The procedures required by this section shall include the following:

“(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

“(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of--

“(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child’s care provided that the surrogate meets the requirements of this paragraph; and

“(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.

“(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

“(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency--

“(A) proposes to initiate or change; or

“(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

“(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

“(5) An opportunity for mediation, in accordance with subsection (e).

“(6) An opportunity for any party to present a complaint--

“(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

“(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

“(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)--

“(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

“(ii) that shall include--

“(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

“(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

“(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

“(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

“(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

“(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

“(c) **NOTIFICATION REQUIREMENTS.--**

“(1) **CONTENT OF PRIOR WRITTEN NOTICE.--**The notice required by subsection (b)(3) shall include--

“(A) a description of the action proposed or refused by the agency;

“(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

“(C) 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;

“(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

“(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

“(F) a description of the factors that are relevant to the agency's proposal or refusal.

“(2) **DUE PROCESS COMPLAINT NOTICE.--**

“(A) **COMPLAINT.--**The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

“(B) **RESPONSE TO COMPLAINT.--**

“(i) **LOCAL EDUCATIONAL AGENCY RESPONSE.--**

“(I) **IN GENERAL.--**If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--

“(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

“(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

“(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

“(dd) a description of the factors that are relevant to the agency's proposal or refusal.

“(II) **SUFFICIENCY.--** A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

“(ii) **OTHER PARTY RESPONSE.--**Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

“(C) **TIMING.--**The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

“(D) **DETERMINATION.--**Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

“(E) **AMENDED COMPLAINT NOTICE.--**

“(i) **IN GENERAL.--**A party may amend its due process complaint notice only if--

“(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

“(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

“(ii) **APPLICABLE TIMELINE.--**The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

“(d) **PROCEDURAL SAFEGUARDS NOTICE.--**

“(1) **IN GENERAL.--**

“(A) **COPY TO PARENTS.--**A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents--

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“(i) upon initial referral or parental request for evaluation;

“(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

“(iii) upon request by a parent.

“(B) **INTERNET WEBSITE.**--A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

“(2) **CONTENTS.**--The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to--

“(A) independent educational evaluation;

“(B) prior written notice;

“(C) parental consent;

“(D) access to educational records;

“(E) the opportunity to present and resolve complaints, including--

“(i) the time period in which to make a complaint;

“(ii) the opportunity for the agency to resolve the complaint; and

“(iii) the availability of mediation;

“(F) the child's placement during pendency of due process proceedings;

“(G) procedures for students who are subject to placement in an interim alternative educational setting;

“(H) requirements for unilateral placement by parents of children in private schools at public expense;

“(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

“(J) State-level appeals (if applicable in that State);

“(K) civil actions, including the time period in which to file such actions; and

“(L) attorneys' fees.

“(e) **MEDIATION.**--

“(1) **IN GENERAL.**--Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

“(2) **REQUIREMENTS.**--Such procedures shall meet the following requirements:

“(A) The procedures shall 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 subsection (f), or to deny any other rights afforded under this part; and

“(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

“(B) **OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.**--A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with--

“(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

“(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

“(C) **LIST OF QUALIFIED MEDIATORS.**--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.

“(D) **COSTS.**--The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

“(E) **SCHEDULING AND LOCATION.**--Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

“(F) **WRITTEN AGREEMENT.**--In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

“(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

“(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

“(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

“(G) **MEDIATION DISCUSSIONS.**--Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

“(f) **IMPARTIAL DUE PROCESS HEARING.**--

“(1) **IN GENERAL.**--

“(A) **HEARING.**--Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

“(B) **RESOLUTION SESSION.**--

“(i) **PRELIMINARY MEETING.**--Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint--

“(I) within 15 days of receiving notice of the parents' complaint;

“(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

“(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

“(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in

writing to waive such meeting, or agree to use the mediation process described in subsection (e).

“(ii) **HEARING.**--If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

“(iii) **WRITTEN SETTLEMENT AGREEMENT.**--In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--

“(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

“(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

“(iv) **REVIEW PERIOD.**--If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

“(2) **DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.**--

“(A) **IN GENERAL.**--Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), 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.

“(B) **FAILURE TO DISCLOSE.**--A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

“(3) **LIMITATIONS ON HEARING.**--

“(A) **PERSON CONDUCTING HEARING.**--A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum--

“(i) not be--

“(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

“(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

“(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts;

“(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

“(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

“(B) **SUBJECT MATTER OF HEARING.**--The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

“(C) **TIMELINE FOR REQUESTING HEARING.**--A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

“(D) **EXCEPTIONS TO THE TIMELINE.**--The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--

“(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

“(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

“(E) **DECISION OF HEARING OFFICER.**--

“(i) **IN GENERAL.**--Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

“(ii) **PROCEDURAL ISSUES.**--In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

“(I) impeded the child's right to a free appropriate public education;

“(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

“(III) caused a deprivation of educational benefits.

“(iii) **RULE OF CONSTRUCTION.**--Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

“(F) **RULE OF CONSTRUCTION.**--Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

“(g) **APPEAL.**--

“(1) **IN GENERAL.**--If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the

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findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

“(2) **IMPARTIAL REVIEW AND INDEPENDENT DECISION.**--The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

“(h) **SAFEGUARDS.**--Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded--

“(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

“(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

“(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

“(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions--

“(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

“(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(21).

“(i) **ADMINISTRATIVE PROCEDURES.--**

“(1) **IN GENERAL.--**

“(A) **DECISION MADE IN HEARING.--**A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

“(B) **DECISION MADE AT APPEAL.--**A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

“(2) **RIGHT TO BRING CIVIL ACTION.--**

“(A) **IN GENERAL.--**Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which 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) **LIMITATION.--**The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

“(C) **ADDITIONAL REQUIREMENTS.--**In any action brought under this paragraph, the court--

“(i) shall receive the records of the administrative proceedings;

“(ii) shall hear additional evidence at the request of a party; and

“(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

“(3) **JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.--**

“(A) **IN GENERAL.--**The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

“(B) **AWARD OF ATTORNEYS' FEES.--**

“(i) **IN GENERAL.--**In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs--

“(I) to a prevailing party who is the parent of a child with a disability;

“(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

“(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

“(ii) **RULE OF CONSTRUCTION.--**Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

“(C) **DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.--**

Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

“(D) **PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.--**

“(i) **IN GENERAL.--**Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if--

“(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

“(II) the offer is not accepted within 10 days; and

“(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

“(ii) **IEP TEAM MEETINGS.--**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 described in subsection (e).

“(iii) **OPPORTUNITY TO RESOLVE COMPLAINTS.--**A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered--

“(I) a meeting convened as a result of an administrative hearing or judicial action; or

“(II) an administrative hearing or judicial action for purposes of this paragraph.

“(E) **EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.--**Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

“(F) **REDUCTION IN AMOUNT OF ATTORNEYS' FEES.--**Except as provided in subparagraph (G), whenever the court finds that--

“(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

“(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

“(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

“(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

“(G) **EXCEPTION TO REDUCTION IN AMOUNT OF**

ATTORNEYS' FEES.--The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.--Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.--

(1) AUTHORITY OF SCHOOL PERSONNEL.--

(A) CASE-BY-CASE DETERMINATION.--School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) AUTHORITY.--School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) ADDITIONAL AUTHORITY.--If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

(D) SERVICES.--A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall--

(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) MANIFESTATION DETERMINATION.--

(i) **IN GENERAL.**--Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) **MANIFESTATION.**--If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for

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the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION.--If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) SPECIAL CIRCUMSTANCES.--School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) NOTIFICATION.--Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) DETERMINATION OF SETTING.--The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) APPEAL.--

(A) IN GENERAL.--The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) AUTHORITY OF HEARING OFFICER.--

(i) **IN GENERAL.**--A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) **CHANGE OF PLACEMENT ORDER.**--In making the

determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may--

“(I) return a child with a disability to the placement from which the child was removed; or

“(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

“(4) **PLACEMENT DURING APPEALS.**--When an appeal under paragraph (3) has been requested by either the parent or the local educational agency--

“(A) the child shall 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 paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

“(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

“(5) **PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.**--

“(A) **IN 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 violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency 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.**--A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--

“(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

“(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

“(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

“(C) **EXCEPTION.**--A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

“(D) **CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.**--

“(i) **IN GENERAL.**--If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

“(ii) **LIMITATIONS.**--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 this subsection, the evaluation shall be conducted in an expedited manner. 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 this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

“(6) **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.**--

“(A) **RULE OF CONSTRUCTION.**--Nothing in this part shall be construed to prohibit 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) **TRANSMITTAL OF RECORDS.**--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 the agency reports the crime.

“(7) **DEFINITIONS.**--In this subsection:

“(A) **CONTROLLED SUBSTANCE.**--The term ‘controlled substance’ means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

“(B) **ILLEGAL DRUG.**--The term ‘illegal drug’ means a controlled substance but does not include a controlled 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.

“(C) **WEAPON.**--The term ‘weapon’ has the meaning given the term ‘dangerous weapon’ under section 930(g)(2) of title 18, United States Code.

“(D) **SERIOUS BODILY INJURY.**--The term ‘serious bodily injury’ has the meaning given the term ‘serious bodily injury’ under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

“(I) **RULE OF CONSTRUCTION.**--Nothing in this title shall be construed to restrict or limit 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 such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

“(m) **TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.**--

“(1) **IN GENERAL.**--A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--

“(A) the agency shall provide any notice required by this section to both the individual and the parents;

“(B) all other rights accorded to parents under this part transfer to the child;

“(C) the agency shall notify the individual and the parents of the transfer of rights; and

((D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

((2) **SPECIAL RULE.**--If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

((n) **ELECTRONIC MAIL.**--A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

((o) **SEPARATE COMPLAINT.**--Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

((a) **FEDERAL AND STATE MONITORING.**--

((1) **IN GENERAL.**--The Secretary shall--

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((A) monitor implementation of this part through--

((i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

((ii) the State performance plans, described in subsection (b);

((B) enforce this part in accordance with subsection (e); and

((C) require States to--

((i) monitor implementation of this part by local educational agencies; and

((ii) enforce this part in accordance with paragraph (3) and subsection (e).

((2) **FOCUSED MONITORING.**--The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on--

((A) improving educational results and functional outcomes for all children with disabilities; and

((B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

((3) **MONITORING PRIORITIES.**--The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

((A) Provision of a free appropriate public education in the least restrictive environment.

((B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition

services as defined in sections 602(34) and 637(a)(9).

((C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

((4) **PERMISSIVE AREAS OF REVIEW.**--The Secretary shall consider other relevant information and data, including data provided by States under section 618.

((b) **STATE PERFORMANCE PLANS.**--

((1) **PLAN.**--

((A) **IN GENERAL.**--Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this part and describes how the State will improve such implementation.

((B) **SUBMISSION FOR APPROVAL.**--Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

((C) **REVIEW.**--Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

((2) **TARGETS.**--

((A) **IN GENERAL.**--As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

((B) **DATA COLLECTION.**--

((i) **IN GENERAL.**--Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

((ii) **RULE OF CONSTRUCTION.**--Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

((C) **PUBLIC REPORTING AND PRIVACY.**--

((i) **IN GENERAL.**--The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

((ii) **REPORT.**--

((I) **PUBLIC REPORT.**--The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

((II) **STATE PERFORMANCE REPORT.**-- The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

((iii) **PRIVACY.**--The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

(c) APPROVAL PROCESS.—

(1) DEEMED APPROVAL.--The Secretary shall review (including the specific provisions described in subsection

(b)) each performance plan submitted by a State pursuant to subsection

(b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

(2) DISAPPROVAL.--The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

(3) NOTIFICATION.--If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—

(A) give the State notice and an opportunity for a hearing; and

(B) notify the State of the finding, and in such notification shall—

(i) cite the specific provisions in the plan that do not meet the requirements; and

(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

(4) <<NOTE: Deadlines.>> **RESPONSE.**--If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of—

(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

(B) the expiration of the 120-day period described in paragraph (1).

(5) FAILURE TO RESPOND.--If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

(d) SECRETARY'S REVIEW AND DETERMINATION.—

(1) REVIEW.--The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

(2) DETERMINATION.—

(A) IN GENERAL.--Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

(i) meets the requirements and purposes of this part;

(ii) needs assistance in implementing the requirements of this part;

(iii) needs intervention in implementing the requirements of this part; or

(iv) needs substantial intervention in implementing the requirements of this part.

(B) NOTICE AND OPPORTUNITY FOR A HEARING.--For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

(e) Enforcement.—

(1) NEEDS ASSISTANCE.--If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this part, the Secretary shall take 1 or more of the following actions:

(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—

(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

(B) Direct the use of State-level funds under section 611(e) on the area or areas in which the State needs assistance.

(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

(2) NEEDS INTERVENTION.--If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this part, the following shall apply:

(A) The Secretary may take any of the actions described in paragraph (1).

(B) The Secretary shall take 1 or more of the following actions:

(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(3) NEEDS SUBSTANTIAL INTERVENTION.--Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

(A) Recover funds under section 452 of the General Education Provisions Act.

(B) Withhold, in whole or in part, any further payments to the State under this part.

(C) Refer the case to the Office of the Inspector General at the Department of Education.

(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(4) OPPORTUNITY FOR HEARING.—

(A) <<NOTE: Notification.>> **WITHHOLDING FUNDS.**-- Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

(B) **SUSPENSION.**--Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

(5) **REPORT TO CONGRESS.**--The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

(6) NATURE OF WITHHOLDING.—

(A) **LIMITATION.**--If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—

(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); or

(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination under subsection (d)(2).

(B) **WITHHOLDING UNTIL RECTIFIED.**--Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) payments to the State under this part shall be withheld in whole or in part; and

(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), as the case may be.

(7) **PUBLIC ATTENTION.**--Any State that has received notice under subsection (d)(2) 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 State.

(8) JUDICIAL REVIEW.—

(A) <<NOTE: Deadline.>> **IN GENERAL.**--If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. <<NOTE: Records.>> The Secretary thereupon shall file 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.

(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME

COURT.--Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(C) <<NOTE: Records.>> **STANDARD OF REVIEW.**--The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

(f) **State Enforcement.**--If a State educational agency determines that A LOCAL EDUCATIONAL agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 613(a)(2)(C) for any fiscal year.

(g) **RULE OF CONSTRUCTION.**--Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this title.

(h) **DIVIDED STATE AGENCY RESPONSIBILITY.**--For purposes of this section, where 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 State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that—

(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 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 (1) shall be limited to the specific agency responsible for the failure to comply with this part.

(i) **DATA CAPACITY AND TECHNICAL ASSISTANCE REVIEW.**--The Secretary shall—

(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

(2) provide technical assistance (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements.

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

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Appendix D to Part 300--Maintenance of Effort and Early Intervening Services

Appendix E to Part 300--Index for IDEA--Part B Regulations (34 CFR part 300)

Authority: 20 U.S.C. 1221e-3, 1406, 1411-1419, unless otherwise noted.

Subpart A— -General Purposes and Applicability

§300.1 Purposes.

The purposes of this part are--

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

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

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

- (a) States. This part applies to each State that receives payments under Part B of the Act, as defined in §300.4.
- (b) Public agencies within the State. The provisions of this part--
 - (1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:
 - (i) The State educational agency (SEA).
 - (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.

(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).

(iv) State and local juvenile and adult correctional facilities; and

(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.

(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities--

(1) Referred to or placed in private schools and facilities by that public agency; or

(2) Placed in private schools by their parents under the provisions of §300.148.

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

Definitions Used in This Part

§300.4 Act.

Act means the Individuals with Disabilities Education Act, as amended. (Authority: 20 U.S.C. 1400(a))

§300.5 Assistive technology device.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1))

§300.6 Assistive technology service.

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

The term includes--

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. (Authority: 20 U.S.C. 1401(2))

Charter Schools 300.7

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary

Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C. 7221i(1))

300.8 Child with a Disability

(a) General. (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child--

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

(2) Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child’s educational performance.

(4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness in this section.

(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.

(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

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

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

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

(10) Specific learning disability. (i) General. Specific learning disability means a disorder in one or more of the

basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance.

Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30))

§300.9 Consent. See Page 124 for 12/31/08 amendment

Consent means that--

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

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

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

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

§300.10 Core academic subjects.

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

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

§300.11 Day; business day; school day.

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

(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(d)(1)(ii)).

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

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

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

§300.12 Educational service agency.

Educational service agency means--

(a) A regional public multiservice agency--

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

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

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

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

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

§300.13 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. (Authority: 20 U.S.C. 1401(6))

§300.14 Equipment.

Equipment means--

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

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials. (Authority: 20 U.S.C. 1401(7))

§300.15 Evaluation.

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

(Authority: 20 U.S.C. 1414(a)— (c))

§300.16 Excess costs.

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

(a) Amounts received--

(1) Under Part B of the Act;

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

(3) Under Parts A and B of title III of the ESEA and;

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding

any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.) (Authority: 20 U.S.C. 1401(8))

§300.17 Free appropriate public education.

Free appropriate public education or FAPE means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324. (Authority: 20 U.S.C. 1401(9))

§300.18 Highly qualified special education teachers.

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

- (1) Include the requirements described in paragraph (b) of this section; and
 - (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
- (b) Requirements for special education teachers in general.
- (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that--
 - (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;
 - (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) The teacher holds at least a bachelor's degree.
 - (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which--
 - (i) The teacher--
 - (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
 - (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
 - (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
 - (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

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

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

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

- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
 - (2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.
- (d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--
- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);
 - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or
 - (3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.
- (e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers--

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

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

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

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

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

(h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138. (Authority: 20 U.S.C. 1401(10))

§300.19 Homeless children.

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. (Authority: 20 U.S.C. 1401(11))

§300.20 Include.

Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. (Authority: 20 U.S.C. 1221e-3)

§300.21 Indian and Indian tribe.

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

(b) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.).

(c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1. (Authority: 20 U.S.C. 1401(12) and (13))

§300.22 Individualized education program.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324. (Authority: 20 U.S.C. 1401(14))

§300.23 Individualized education program team.

Individualized education program team or IEP Team means a group of individuals described in §300.321 that is responsible

for developing, reviewing, or revising an IEP for a child with a disability. (Authority: 20 U.S.C. 1414(d)(1)(B))

§300.24 Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act. (Authority: 20 U.S.C. 1401(15))

§300.25 Infant or toddler with a disability.

Infant or toddler with a disability--

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

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

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

(b) May also include, at a State's discretion--

(1) At-risk infants and toddlers; and

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

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

(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619. (Authority: 20 U.S.C. 1401(16) and 1432(5))

§300.26 Institution of higher education.

Institution of higher education--

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

(b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

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

§300.27 Limited English proficient.

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

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

§300.28 Local educational agency.

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

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

(1) An educational service agency, as defined in §300.12; and
 (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

(c) BIA funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population. (Authority: 20 U.S.C. 1401(19))

§300.29 Native language.

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

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

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

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

§300.30 Parent.

(a) Parent means--

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section. (Authority: 20 U.S.C. 1401(23))

§300.31 Parent training and information center.

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

(Authority: 20 U.S.C. 1401(25))

§300.32 Personally identifiable.

Personally identifiable means information that contains--

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. (Authority: 20 U.S.C. 1415(a))

§300.33 Public agency.

Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (Authority: 20 U.S.C. 1412(a)(11))

§300.34 Related services.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section-- (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in §300.113(b).

(c) Individual related services terms defined. The terms used in this definition are defined as follows:

- (1) Audiology includes--
- (i) Identification of children with hearing loss;
 - (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
 - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
 - (iv) Creation and administration of programs for prevention of hearing loss;
 - (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
 - (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- (4) Interpreting services includes--
- (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
 - (ii) Special interpreting services for children who are deaf-blind.
- (5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- (6) Occupational therapy--
- (i) Means services provided by a qualified occupational therapist; and
 - (ii) Includes--
 - (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
 - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
 - (C) Preventing, through early intervention, initial or further impairment or loss of function.
- (7) Orientation and mobility services--
- (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - (ii) Includes teaching children the following, as appropriate:
 - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
 - (C) To understand and use remaining vision and distance low vision aids; and
 - (D) Other concepts, techniques, and tools.
- (8)(i) Parent counseling and training means assisting parents in understanding the special needs of their child;
- (ii) Providing parents with information about child development; and
 - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- (9) Physical therapy means services provided by a qualified physical therapist.
- (10) Psychological services includes--
- (i) Administering psychological and educational tests, and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
 - (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
 - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
 - (vi) Assisting in developing positive behavioral intervention strategies.
- (11) Recreation includes--
- (i) Assessment of leisure function;
 - (ii) Therapeutic recreation services;
 - (iii) Recreation programs in schools and community agencies; and
 - (iv) Leisure education.
- (12) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
- (13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- (14) Social work services in schools includes--
- (i) Preparing a social or developmental history on a child with a disability;
 - (ii) Group and individual counseling with the child and family;
 - (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
 - (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) Speech-language pathology services includes--

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) Transportation includes--

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. (Authority: 20 U.S.C. 1401(26))

§300.35 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

§300.36 Secondary school.

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

§300.37 Services plan.

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

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

§300.38 Secretary.

Secretary means the Secretary of Education.

(Authority: 20 U.S.C. 1401(28))

§300.39 Special education.

(a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) Individual special education terms defined. The terms in this definition are defined as follows:

(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees

that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) Physical education means--

(i) The development of-- (A) Physical and motor fitness; (B) Fundamental motor skills and patterns; and (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29)) §300.40 State.

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

§300.41 State educational agency.

State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(Authority: 20 U.S.C. 1401(32))

§300.42 Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

(Authority: 20 U.S.C. 1401(33))

§300.43 Transition services.

(a) Transition services means a coordinated set of activities for a child with a disability that--

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the

child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes--

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. (Authority: 20 U.S.C. 1401(34))

§300.44 Universal design.

Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002. (Authority: 20 U.S.C. 1401(35))

§300.45 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--

- (1) A foster child;
- (2) A ward of the State; or
- (3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30. (Authority: 20 U.S.C. 1401(36))

Subpart B--State Eligibility

General

§300.100 Eligibility for assistance.

A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§300.101 through 300.176.

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

FAPE Requirements

§300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

(b) FAPE for children beginning at age 3. (1) Each State must ensure that--

- (i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and
- (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade. (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations. (Approved by the Office of Management and Budget under control number 1820-0030)

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

§300.102 Limitation--exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

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

(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--

(A) Were not actually identified as being a child with a disability under §300.8; and

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

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--

(A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

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

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

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

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

Other FAPE Requirements

§300.103 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.

(c) Consistent with §300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined. (Approved by the Office of Management and Budget under control number 1820-0030)

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

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

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

§300.105 Assistive technology.

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

- (1) Special education under §300.36;
- (2) Related services under §300.34; or
- (3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. (Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))

§300.106 Extended school year services.

(a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in

accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not--

- (i) Limit extended school year services to particular categories of disability; or
- (ii) Unilaterally limit the type, amount, or duration of those services.

(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.

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

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

§300.107 Nonacademic services.

The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

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

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

§300.108 Physical education.

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

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(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 must provide the services directly or make arrangements

for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5)(A))

§300.109 Full educational opportunity goal (FEOG).

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

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(2))

§300.110 Program options.

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

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

§300.111 Child find.

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

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

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

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

(1) A State that adopts a definition of developmental delay under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

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

(3) If an LEA uses the term developmental delay for children described in §300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

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

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

(2) Highly mobile children, including migrant children.

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

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

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))

§300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii).

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

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

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

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

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

(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device). (Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(1), 1401(26)(B))

Least Restrictive Environment (LRE)

§300.114 LRE requirements.

(a) General. (1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.

(2) Each public agency must ensure that--

(i) 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

(ii) 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.

(b) Additional requirement--State funding mechanism.

(1) General. (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

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

§300.115 Continuum of alternative placements.

(a) Each public agency must 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 §300.38 (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. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5))

§300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must 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 §§300.114 through 300.118;

(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;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5))

§300.117 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107,

each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

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

§300.118 Children in public or private institutions.

Except as provided in §300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures). (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5))

§300.119 Technical assistance and training activities.

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies--

(a) Are fully informed about their responsibilities for implementing §300.114; and

(b) Are provided with technical assistance and training necessary to assist them in this effort. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5))

§300.120 Monitoring activities.

(a) The SEA must carry out activities to ensure that §300.114 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the SEA must--

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5))

Additional Eligibility Requirements

§300.121 Procedural safeguards.

(a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§300.500 through 300.536.

(b) Procedural safeguards identified. Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(6)(A))

§300.122 Evaluation.

Children with disabilities must be evaluated in accordance with §§300.300 through 300.311 of subpart D of this part. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(7))

§300.123 Confidentiality of personally identifiable information.

The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act. (Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.124 Transition of children from the Part C program to preschool programs.

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

(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)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act. (Approved by the Office of Management and Budget under control number 1820-0030)

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

§§300.125-300.128 [Reserved]**Children in Private Schools****§300.129 State responsibility regarding children in private schools.**

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10))

Children With Disabilities Enrolled by Their Parents in Private Schools**§300.130 Definition of parentally-placed private school children with disabilities.**

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147. (Approved by the Office of Management and Budget under control number 1820-0030)

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

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

(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

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

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

(2) An accurate count of those children.

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

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

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

(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located. (Approved by the Office of Management and Budget under control number 1820-0030)

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

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

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

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

(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

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

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

§300.133 Expenditures.

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

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

(2)(i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

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

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

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

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

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

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

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

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.134 Consultation.

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

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

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) Written explanation by LEA regarding services.

How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1412(a)(10)(A)(iii))

§300.135 Written affirmation.

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

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

Budget under control numbers 1820-0030 and 1820-0600
(Authority: 20 U.S.C. 1412(a)(10)(A)(iv))

§300.136 Compliance.

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

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

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

(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The SEA must forward the appropriate documentation to the Secretary.

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

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

§300.137 Equitable services determined.

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

(b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must--

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.138 Equitable services provided.

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

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

(b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

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

- (i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and
- (ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

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

- (i) By employees of a public agency; or
- (ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)(vi))

§300.139 Location of services and transportation.

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

(b) Transportation. (1) General.

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

- (A) From the child's school or the child's home to a site other than the private school; and
- (B) From the service site to the private school, or to the child's home, depending on the timing of the services.

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

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.140 Due process complaints and State complaints.

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

the provision of services indicated on the child's services plan.

(b) Child find complaints--to be filed with the LEA in which the private school is located. (1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §300.131, including the requirements in §§300.300 through 300.311.

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

(c) State complaints. (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through 300.153.

(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b). (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.141 Requirement that funds not benefit a private school.

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

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

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.142 Use of personnel.

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

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

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

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

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

(2) The employee performs the services under public supervision and control. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.143 Separate classes prohibited.

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

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

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

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.144 Property, equipment, and supplies.

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

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

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

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

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

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

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

(2) 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. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)(vii))

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

§300.145 Applicability of §§300.146 through 300.147.

Sections 300.146 through 300.147 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. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(B))

§300.146 Responsibility of SEA.

Each SEA must 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 §§300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.18 and §300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(B))

§300.147 Implementation by SEA.

In implementing §300.146, the SEA must--

(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. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(B))

Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue

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

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

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

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

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

(1) If--

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

(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--

(1) Must not be reduced or denied for failure to provide the notice if--

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

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

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

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(C))

SEA Responsibility for General Supervision and Implementation of Procedural Safeguards

§300.149 SEA responsibility for general supervision.

(a) The SEA is responsible for ensuring--

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)--

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

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

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

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

(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 students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. (Approved by the

Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(11); 1416)

§300.150 SEA implementation of procedural safeguards.

The SEA (and any agency assigned responsibility pursuant to §300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(11); 1415(a))

State Complaint Procedures

§300.151 Adoption of State complaint procedures.

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

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

- (i) Providing for the filing of a complaint with the SEA; and
 - (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and
- (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.

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

- (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- (2) Appropriate future provision of services for all children with disabilities. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

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

§300.152 Minimum State complaint procedures.

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

- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
- (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--
 - (i) At the discretion of the public agency, a proposal to resolve the complaint; and
 - (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;
- (4) 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
- (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--

- (1) Permit an extension of the time limit under paragraph (a) of this section only if--
 - (i) Exceptional circumstances exist with respect to a particular complaint; or
 - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and
 - (2) Include procedures for effective implementation of the SEA's final decision, if needed, including--
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532. (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
- (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--
- (i) The due process hearing decision is binding on that issue; and
 - (ii) The SEA must inform the complainant to that effect.
- (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1221e-3)
- §300.153 Filing a complaint.**
- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- (b) The complaint must include--
- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
 - (2) The facts on which the statement is based;
 - (3) The signature and contact information for the complainant; and
 - (4) If alleging violations with respect to a specific child--
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))),

available contact information for the child, and the name of the school the child is attending;

- (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1221e-3)

Methods of Ensuring Services

§300.154 Methods of ensuring services.

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

- (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).
 - (2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.
 - (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.
 - (4) 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)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in §300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.34 relating to related services, §300.41 relating to supplementary aids and services, and §300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency

must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

- (ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.
- (2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.
- (c) Special rule. The requirements of paragraph (a) of this section may be met through--
- (1) State statute or regulation;
 - (2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 - (3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.
- (d) Children with disabilities who are covered by public benefits or insurance. (1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.
- (2) With regard to services required to provide FAPE to an eligible child under this part, the public agency--
- (i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;
 - (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;
 - (iii) May not use a child's benefits under a public benefits or insurance program if that use would--
 - (A) Decrease available lifetime coverage or any other insured benefit;
 - (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - (C) Increase premiums or lead to the discontinuation of benefits or insurance; or
 - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv)(A) Must obtain parental consent, consistent with §300.9, each time that access to public benefits or insurance is sought; and

(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) Children with disabilities who are covered by private insurance. (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with §300.9.

(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must--

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) Use of Part B funds. (1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public benefits or insurance or private insurance. (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.

(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(12) and (e))

Additional Eligibility Requirements

§300.155 Hearings relating to LEA eligibility.

The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d). (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(13))

§300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately

prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals.

The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession--

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

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

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

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

(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(14))

§300.157 Performance goals and indicators.

The State must--

(a) Have in effect established goals for the performance of children with disabilities in the State that--

(1) Promote the purposes of this part, as stated in §300.1;

(2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;

(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
 (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;

(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and

(c) Annually 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, which may include elements of the reports required under section 1111(h) of the ESEA.

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

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

§§300.158-300.161 [Reserved]

§300.162 Supplementation of State, local, and other Federal funds.

(a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part.

(b) Prohibition against commingling. (1) Funds paid to a State under this part must not be commingled with State funds.

(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

(c) State-level nonsupplanting. (1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.

(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(17))

§300.163 Maintenance of State financial support.

(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise 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 §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

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

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(18))

§300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes--

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--

- (A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;
 - (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;
 - (C) The State's complaint procedures under §§300.151 through 300.153; and
 - (D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;
- (3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and
- (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 §300.167.

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

(f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(17)(C), (18)(C)(ii))

§300.165 Public participation.

(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the

hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7). (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(19); 20 U.S.C. 1232d(b)(7))

§300.166 Rule of construction.

In complying with §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(20))

State Advisory Panel

§300.167 State advisory panel.

The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(21)(A))

§300.168 Membership.

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

- (1) Parents of children with disabilities (ages birth through 26);
- (2) Individuals with disabilities;
- (3) Teachers;
- (4) Representatives of institutions of higher education that prepare special education and related services personnel;
- (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 et seq.);
- (6) Administrators of programs for children with disabilities;
- (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
- (8) Representatives of private schools and public charter schools;
- (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- (10) A representative from the State child welfare agency responsible for foster care; and
- (11) Representatives from the State juvenile and adult corrections agencies.

(b) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26). (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(21)(B) and (C))

§300.169 Duties.

The advisory panel must--

- (a) Advise the SEA of unmet needs within the State in the education of children with disabilities;
- (b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
- (c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;
- (d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and
- (e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(21)(D))

Other Provisions Required for State Eligibility

§300.170 Suspension and expulsion rates.

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

- (1) Among LEAs in the State; or
 - (2) Compared to the rates for nondisabled children within those agencies.
- (b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(22))

§300.171 Annual description of use of Part B funds.

- (a) In order to receive a grant in any fiscal year a State must annually describe--
- (1) How amounts retained for State administration and State-level activities under §300.704 will be used to meet the requirements of this part; and
 - (2) How those amounts will be allocated among the activities described in §300.704 to meet State priorities based on input from LEAs.
- (b) If a State's plans for use of its funds under §300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.
- (c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1411(e)(5))
- §300.172 Access to instructional materials.**
- (a) General. The State must--

- (1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and
 - (2) Establish a State definition of "timely manner" for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.
- (b) Rights and responsibilities of SEA. (1) Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC.
- (2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
 - (3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
 - (4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.
 - (c) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must--
 - (1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--
 - (i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
 - (ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
 - (2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
 - (d) Assistive technology. In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.
 - (e) Definitions. (1) In this section and §300.210--

- (i) Blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a;
- (ii) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the Act;
- (iii) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the Act;
- (iv) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(23), 1474(e))

§300.173 Overidentification and disproportionality.

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8. (Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(24))

§300.174 Prohibition on mandatory medication.

(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.

(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find).

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

§300.175 SEA as provider of FAPE or direct services.

If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency--

(a) Must comply with any additional requirements of §§300.201 and 300.202 and §§300.206 through 300.226 as if the agency were an LEA; and

(b) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to §300.202(b) (relating to excess costs).

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

§300.176 Exception for prior State plans.

(a) General. If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate

that the State meets any requirement of §300.100, including any policies and procedures filed under Part B of the Act as in effect before, December 3, 2004, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act.

(b) Modifications made by a State. (1) Subject to paragraph (b)(2) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary. (2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan.

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

- (1) After December 3, 2004, the provisions of the Act or the regulations in this part are amended;
- (2) There is a new interpretation of this Act by a Federal court or a State's highest court; or
- (3) There is an official finding of noncompliance with Federal law or regulations. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(c)(2) and (3))

§300.177 States' sovereign immunity

See Page 124 for December 31, 2008 revisions

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

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

(c) Effective date. Paragraphs (a) and (b) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990. (Authority: 20 U.S.C. 1404)

Department Procedures

§300.178 Determination by the Secretary that a State is eligible to receive a grant.

If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination. (Authority: 20 U.S.C. 1412(d)(1))

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

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

- (i) With reasonable notice; and
- (ii) With an opportunity for a hearing.

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

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

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

- (2) May describe possible options for resolving the issues;
- (3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and
- (4) Provides the SEA with information about the hearing procedures that will be followed (Authority: 20 U.S.C. 1412(d)(2))

§300.180 Hearing official or panel.

- (a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.
- (b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official. (Authority: 20 U.S.C. 1412(d)(2))

§300.181 Hearing procedures.

- (a) As used in §§300.179 through 300.184 the term party or parties means the following:
 - (1) An SEA that requests a hearing regarding the proposed disapproval of the State's eligibility under this part.
 - (2) The Department official who administers the program of financial assistance under this part.
 - (3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel.
- (b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.
- (c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Hearing Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:
 - (1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.
 - (2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.
 - (3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.
 - (4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as--
 - (i) Narrowing 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 Hearing Panel (including an evidentiary hearing or oral argument, if either is scheduled);
- (D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or
- (E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel.
- (5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.
- (6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (b)(4) of this section.
- (7) Following a prehearing or other conference the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.
- (d) The Hearing Official or Hearing Panel may require parties to state their positions and to provide all or part of the evidence in writing.
- (e) The Hearing Official or Hearing Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.
- (f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.
- (g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.
- (h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.
- (i) The Hearing Official or Hearing Panel may examine witnesses.
- (j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.
- (k) The Hearing Official or Hearing Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.
- (l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.
- (m)(1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing 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 Hearing Panel gives each party an opportunity to be represented by counsel.
- (n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing 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 Hearing 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 Hearing 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 must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings. (Authority: 20 U.S.C. 1412(d)(2))
- §300.182 Initial decision; final decision.**
- (a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under §300.179 including any amendments to or further clarifications of the issues, under §300.181(c)(7).
 - (b) The initial decision of a Hearing Panel is made by a majority of Panel members.
 - (c) The Hearing Official or Hearing 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 Hearing Panel within 15 days of the date the party receives the Panel's decision.
 - (e) The Hearing Official or Hearing 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 Hearing Panel within seven days of the date the party receives the initial comments and recommendations.
 - (f) The Hearing Official or Hearing 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 Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments and recommendations, the Secretary informs the Hearing Official or Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.
 - (h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing 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 transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments.

- (j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings.
- (k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(d)(2))

§300.183 Filing requirements.

- (a) Any written submission by a party under §§300.179 through 300.184 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 Hearing 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. 1412(d))

§300.184 Judicial review.

If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under section 612 of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary's decision was based, as provided in 28 U.S.C. 2112. (Authority: 20 U.S.C. 1416(e)(8))

§300.185 [Reserved]

§300.186 Assistance under other Federal programs.

Part B of the Act may not be construed to permit a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of FAPE for children with disabilities in the State. (Authority: 20 U.S.C. 1412(e))

By-pass for Children in Private Schools

§300.190 By-pass--general.

- (a) If, on December 2, 1983, the date of enactment of the Education of the Handicapped Act Amendments of 1983, an SEA was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by section 612(a)(10)(A) of the Act, or if the Secretary determines

that an SEA, LEA, or other public agency has substantially failed or is unwilling to provide for such equitable participation then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to these children through arrangements which shall be subject to the requirements of section 612(a)(10)(A) of the Act.

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

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

§300.191 Provisions for services under a by-pass.

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

- (1) Any prohibition imposed by State law that results in the need for a by-pass; and
- (2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State, LEA or other public agency in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and §§300.131 through 300.144 by providing services through one or more agreements with appropriate parties.

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

- (1) A per child amount determined by dividing the total amount received by the State under Part B of the Act for the fiscal year by the number of children with disabilities served in the prior year as reported to the Secretary under section 618 of the Act; by

(2) The number of private school children with disabilities (as defined in §§300.8(a) and 300.130) in the State, LEA or other public agency, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State's allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented. (Authority: 20 U.S.C. 1412(f)(2))

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

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

(b) In the written notice, the Secretary--

- (1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA and, as appropriate, LEA or other public agency to respond; and
- (2) Advises the SEA and, as appropriate, LEA or other public agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the

opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA and, as appropriate, LEA or other public agency by certified mail with return receipt requested. (Authority: 20 U.S.C. 1412(f)(3)(A))

§300.193 Request to show cause.

An SEA, LEA or other public agency in receipt of a notice under §300.192 that seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time period in the written notice in §300.192(b)(2). (Authority: 20 U.S.C. 1412(f)(3))

§300.194 Show cause hearing.

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

- (1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing;
- (2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing; and
- (3) Notifies the SEA, LEA or other public agency, and representatives of private schools that they may be represented by legal counsel and submit oral or written evidence and arguments at the hearing.

(b) At the show cause hearing, the designee considers matters such as--

- (1) The necessity for implementing a by-pass;
- (2) Possible factual errors in the written notice of intent to implement a by-pass; and
- (3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee has no authority to require or conduct discovery.

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

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

(g) Within 10 days after the hearing, the designee--

- (1) Indicates that a decision will be issued on the basis of the existing record; or
- (2) Requests further information from the SEA, LEA, other public agency, representatives of private schools or Department officials. (Authority: 20 U.S.C. 1412(f)(3))

§300.195 Decision.

(a) The designee who conducts the show cause hearing--

- (1) Within 120 days after the record of a show cause hearing is closed, issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 30 days of the date the party receives the designee's decision.

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

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

§300.196 Filing requirements.

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

(b) The filing date under paragraph (a) of this section is the date the document is--

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

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

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

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

(f) A party must show a proof of mailing to establish the filing date under paragraph (b)(2) of this section as provided in 34 CFR 75.102(d). (Authority: 20 U.S.C. 1412(f)(3))

§300.197 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) through (D) of the Act.

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

§300.198 Continuation of a by-pass.

The Secretary continues a by-pass until the Secretary determines that the SEA, LEA or other public agency will meet the requirements for providing services to private school children. (Authority: 20 U.S.C. 1412(f)(2)(C))

State Administration

§300.199 State administration.

(a) Rulemaking. Each State that receives funds under Part B of the Act must--

(1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part;

(2) Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations; and

(3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act.

(b) Support and facilitation. State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable

children with disabilities to meet the challenging State student academic achievement standards. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C 1407)

Subpart C--Local Educational Agency Eligibility

§300.200 Condition of assistance.

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

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

§300.201 Consistency with State policies.

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§300.101 through 300.163, and §§300.165 through 300.174. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(1))

§300.202 Use of amounts.

(a) General. Amounts provided to the LEA under Part B of the Act--

(1) Must be expended in accordance with the applicable provisions of this part;

(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and

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

(b) Excess cost requirement. (1) General.

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

(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(2)(i) 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.

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

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

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

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

§300.203 Maintenance of effort.

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

(b) Standard. (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

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

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(2)(A))

§300.204 Exception to maintenance of effort.

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

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

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

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

(1) Has left the jurisdiction of the agency;

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

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

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

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

Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(2)(B))

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

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

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

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

(d) Special rule. The amount of funds expended by an LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(2)(C))

§300.206 Schoolwide programs under title I of the ESEA.

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

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

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

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

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

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

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

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

(1) Receive services in accordance with a properly developed IEP; and
 (2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(2)(D))

§300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(3))

§300.208 Permissive use of funds.

(a) Uses. Notwithstanding §§300.202, 300.203(a), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:

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

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

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

(b) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(4))

§300.209 Treatment of charter schools and their students.

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

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

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

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

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

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

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

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

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

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

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

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity.

However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(5))

§300.210 Purchase of instructional materials.

(a) General. Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.

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

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

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (Approved by the Office of Management and Budget under control number 1820-0600)

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

§300.211 Information for SEA.

The LEA must 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 §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(7))

§300.212 Public information.

The LEA must 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. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(8))

§300.213 Records regarding migratory children with disabilities.

The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(a)(9))

§§300.214-300.219 [Reserved]**§300.220 Exception for prior local plans.**

(a) General. If an LEA or a State agency described in §300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of §300.200, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act.

(b) Modification made by an LEA or State agency. Subject to paragraph (c) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until the LEA or State agency submits to the SEA the modifications that the LEA or State agency determines are necessary.

(c) 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 Part B of the Act or State law, if--

- (1) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended;
- (2) There is a new interpretation of an applicable provision 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))

§300.221 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must--

- (a) Notify the LEA or State agency of that determination; and
- (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing. (Authority: 20 U.S.C. 1413(c))

§300.222 LEA and State agency compliance.

(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the SEA must reduce or must 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 must, 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) Consideration. In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision. (Authority: 20 U.S.C. 1413(d))

§300.223 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 will be ineligible under this subpart because the agency will 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 the charter school 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 §300.705 if the agencies were eligible for those payments. (Authority: 20 U.S.C. 1413(e)(1) and (2))

§300.224 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 §§300.101 through 300.163, and §§300.165 through 300.174; and
- (2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

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

- (1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and
- (2) Must be carried out only by that educational service agency.

(c) Additional requirement. Notwithstanding any other provision of §§300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive

environment, as required by §300.112. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(e)(3) and (4))

§300.225 [Reserved]

§300.226 Early intervening services.

(a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D for examples of how §300.205(d), regarding local maintenance of effort, and §300.226(a) affect one another.)

(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include--

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

(d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on--

(1) The number of children served under this section who received early intervening services; and

(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.

(e) Coordination with ESEA. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(f))

§300.227 Direct services by the SEA.

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

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

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

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

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

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

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

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

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

§300.228 State agency eligibility.

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

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

(b) The agency meets the other conditions of this subpart that apply to LEAs. (Authority: 20 U.S.C. 1413(h))

§300.229 Disciplinary information.

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

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

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(i))

§300.230 SEA flexibility.

(a) Adjustment to State fiscal effort in certain fiscal years. For any fiscal year for which the allotment received by a State under §300.703 exceeds the amount

the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding §§300.162 through 300.163 (related to State-level nonsupplanting and maintenance of effort), and §300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

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

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

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

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

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

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

(2) If an SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under §300.205 by more than the reduction in the State funds they receive. (Authority: 20 U.S.C. 1413(j))

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

Parental Consent

§300.300 Parental consent. See Page 124 for 12/31/08 revisions

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

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

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

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.

(b) Parental consent for services. (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

(4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency--

(i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(ii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.

(c) Parental consent for reevaluations. (1) Subject to paragraph (c)(2) of this section, each public agency--

(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that--

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(d) Other consent requirements.

(1) Parental consent is not required before--

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

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

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

(ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d). (Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))

Evaluations and Reevaluations

§300.301 Initial evaluations.

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

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

(c) Procedures for initial evaluation. The initial evaluation--

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures--

(i) To determine if the child is a child with a disability under §300.8; and

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

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

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

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

§300.302 Screening for instructional purposes is not evaluation.

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

§300.303 Reevaluations.

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311--

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section--

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. (Authority: 20 U.S.C. 1414(a)(2))

§300.304 Evaluation procedures.

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

(b) Conduct of evaluation. In conducting the evaluation, the public agency must--

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--

(i) Whether the child is a child with a disability under §300.8; and

- (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) Other evaluation procedures. Each public agency must ensure that--
- (1) Assessments and other evaluation materials used to assess a child under this part--
- (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
- (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
- (iv) Are administered by trained and knowledgeable personnel; and
- (v) Are administered in accordance with any instructions provided by the producer of the assessments.
- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
- (6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.
- (Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))

§300.305 Additional requirements for evaluations and reevaluations.

- (a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--
- (1) Review existing evaluation data on the child, including—
- (i) Evaluations and information provided by the parents of the child;
- (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) Observations by teachers and related services providers; and
- (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--
- (i)(A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or
- (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
- (ii) The present levels of academic achievement and related developmental needs of the child;
- (iii)(A) Whether the child needs special education and related services; or
- (B) In 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 education curriculum.
- (b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.
- (c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.
- (d) Requirements if additional data are not needed.
- (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—
- (i) That determination and the reasons for the determination; and
- (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
- (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.
- (e) Evaluations before change in eligibility.
- (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a

disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(Authority: 20 U.S.C. 1414(c))

§300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures--

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--

(1) If the determinant factor for that determination is--

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) Procedures for determining eligibility and educational need. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must--

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324. (Authority: 20 U.S.C. 1414(b)(4) and (5))

Additional Procedures for Identifying Children With Specific Learning Disabilities

§300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State--

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a

child has a specific learning disability, as defined in §300.8(c)(10);

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include--

(a)(1) The child's regular teacher; or

(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. 1221e-3; 1401(30); 1414(b)(6))

§300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if--

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading fluency skills.

(vi) Reading comprehension.

(vii) Mathematics calculation.

(viii) Mathematics problem solving.

(2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and

- (3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of--
- (i) A visual, hearing, or motor disability;
 - (ii) Mental retardation;
 - (iii) Emotional disturbance;
 - (iv) Cultural factors;
 - (v) Environmental or economic disadvantage; or
 - (vi) Limited English proficiency.
- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306--
- (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- (c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)--
- (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
 - (2) Whenever a child is referred for an evaluation.
- (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§300.310 Observation.

- (a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
 - (b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to--
 - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
 - (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.
 - (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.
- (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§300.311 Specific documentation for the eligibility determination.

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain a statement of--
 - (1) Whether the child has a specific learning disability;

- (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally relevant medical findings, if any;
- (5) Whether--
 - (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and
 - (ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or
 - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii);
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--
 - (i) The instructional strategies used and the student-centered data collected; and
 - (ii) The documentation that the child's parents were notified about--
 - (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (B) Strategies for increasing the child's rate of learning; and
 - (C) The parents' right to request an evaluation.
- (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

Individualized Education Programs

§300.320 Definition of individualized education program.

- (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
 - (1) A statement of the child's present levels of academic achievement and functional performance, including--
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

- (2)(i) A statement of measurable annual goals, including academic and functional goals designed to--
- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- (B) Meet each of the child's other educational needs that result from the child's disability;
- (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (3) A description of--
- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
- (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--
- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
- (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
- (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--
- (A) The child cannot participate in the regular assessment; and
- (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
- (b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--
- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training,

- education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
- (c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.
- (d) Construction. Nothing in this section shall be construed to require--
- (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
- (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.
- (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))
- §300.321 IEP Team.**
- (a) General. The public agency must ensure that the IEP Team for each child with a disability includes--
- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who--
- (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
- (ii) Is knowledgeable about the general education curriculum; and
- (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(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) Whenever appropriate, the child with a disability.
- (b) Transition services participants. (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).
- (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.
- (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a

representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance.

(1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. (Authority: 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D))

§300.322 Parent participation.

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

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

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

(b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

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

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).

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

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

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

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

(e) Use of interpreters or other action, as appropriate.

The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§300.323 When IEPs must be in effect.

(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with State policy; and

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

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--

- (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
- (ii) If the parents choose an IFSP, obtain written informed consent from the parents.
- (c) Initial IEPs; provision of services. Each public agency must ensure that--
 - (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
 - (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.
- (d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--
 - (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
 - (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of--
 - (i) His or her specific responsibilities related to implementing the child's IEP; and
 - (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- (e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--
 - (1) Adopts the child's IEP from the previous public agency; or
 - (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.
- (f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--
 - (1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
 - (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.
- (g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section--
 - (1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
 - (2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request

from the new public agency. (Authority: 20 U.S.C. 1414(d)(2)(A)-(C))

Development of IEP

§300.324 Development, review, and revision of IEP.

- (a) Development of IEP. (1) General. In developing each child's IEP, the IEP Team must consider--
 - (i) The strengths of the child;
 - (ii) The concerns of the parents for enhancing the education of their child;
 - (iii) The results of the initial or most recent evaluation of the child; and
 - (iv) The academic, developmental, and functional needs of the child.
- (2) Consideration of special factors. The IEP Team must--
 - (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
 - (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
 - (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
 - (v) Consider whether the child needs assistive technology devices and services.
- (3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--
 - (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
 - (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).
- (4) Agreement. (i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
 - (ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs. (1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--

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

(ii) Revises the IEP, as appropriate, to address--

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) Failure to meet transition objectives. (1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

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

(d) Children with disabilities in adult prisons. (1)

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

(i) The requirements contained in section 612(a)(16) of the Act and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement. (i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or

placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))

§300.325 Private school placements by public agencies.

(a) Developing IEPs. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.

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

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

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

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

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

(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA. (Authority: 20 U.S.C. 1412(a)(10)(B))

§300.326 [Reserved]

§300.327 Educational placements.

Consistent with §300.501(c), each public agency must 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. (Authority: 20 U.S.C. 1414(e))

§300.328 Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(Authority: 20 U.S.C. 1414(f))

Subpart E--Procedural Safeguards

Due Process Procedures for Parents and Children **§300.500 Responsibility of SEA and other public agencies.**

Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500 through 300.536.

(Authority: 20 U.S.C. 1415(a))

§300.501 Opportunity to examine records; parent participation in meetings.

(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to--

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting 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. A meeting 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 must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(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 must 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 a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

(Authority: 20 U.S.C. 1414(e), 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 must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart--

(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 §300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must

be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

§300.503 Prior notice by the public agency; content of notice.

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include--

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be--

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 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 only one time a school year, except that a copy also must be given to the parents--

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;

(3) In accordance with the discipline procedures in §300.530(h); and

(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §300.520, §§300.530 through 300.536 and §§300.610 through 300.625 relating to--

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including--

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child's placement during the pendency of any due process complaint;

(8) Procedures for students who are subject to placement in an interim alternative educational setting;

(9) Requirements for unilateral placement by parents of children in private schools at public expense;

(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in the State);

(12) Civil actions, including the time period in which to file those actions; and

(13) Attorneys' fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c). (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1415(d))

§300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available. (Authority: 20 U.S.C. 1415(n))

§300.506 Mediation.

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process--

- (i) Is voluntary on the part of the parties;
- (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
- (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--

- (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
- (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) 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.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--

- (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- (ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator. (1) An individual who serves as a mediator under this part--

- (i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and
- (ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1415(e))

§300.507 Filing a due process complaint.

(a) General. (1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--

- (1) The parent requests the information; or
- (2) The parent or the agency files a due process complaint under this section. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1415(b)(6))

§300.508 Due process complaint.

(a) General. (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include--

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the school the child is attending;
- (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), available contact information for the child, and the name of the school the child is attending;
- (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process

complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if--

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint. (1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes--

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. (Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

§300.509 Model forms.

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint. (Authority: 20 U.S.C. 1415(b)(8))

§300.510 Resolution process.

(a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in §300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but

later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution. (Authority: 20 U.S.C. 1415(f)(1)(B))

§300.511 Impartial due process hearing.

(a) General. Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Impartial hearing officer. (1) At a minimum, a hearing officer--

(i) Must not be--

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(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 hearing officer.

(3) Each public agency must 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.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency

knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent. (Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D))

§300.512 Hearing rights. See page 125 for 12/31/08 revisions

(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to--

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to--

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h))

§300.513 Hearing decisions.

(a) Decision of hearing officer on the provision of FAPE.

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--

- (i) Impeded the child's right to a FAPE;
 - (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
 - (iii) Caused a deprivation of educational benefit.
- (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.
- (b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.
- (c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.
- (d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must--
- (1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and
 - (2) Make those findings and decisions available to the public. (Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

§300.514 Finality of decision; appeal; impartial review.

- (a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.
- (b) Appeal of decisions; impartial review. (1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.
- (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--
- (i) Examine the entire hearing record;
 - (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
 - (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - (v) Make an independent decision on completion of the review; and
 - (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.
- (c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--
- (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and
 - (2) Make those findings and decisions available to the public.
- (d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516. (Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

§300.515 Timelines and convenience of hearings and reviews.

- (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)--
- (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.
- (b) The SEA must ensure that not later than 30 days after the receipt of a request for a review--
- (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.
- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.
- (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. (Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

§300.516 Civil action.

- (a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
- (b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.
- (c) Additional requirements. In any action brought under paragraph (a) of this section, the court--
- (1) Receives the records of the administrative proceedings;
 - (2) Hears additional evidence at the request of a party; and
 - (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.
- (d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.
- (e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action

under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l))

§300.517 Attorneys' fees.

(a) In general. (1) 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--

- (i) The prevailing party who is the parent of a child with a disability;
- (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds. (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--

- (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
- (B) The offer is not accepted within 10 days; and
- (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.

(iii) A meeting conducted pursuant to §300.510 shall not be considered--

- (A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--

- (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- (iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

§300.518 Child's status during proceedings.

(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, 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 complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State 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 and the parents for purposes of paragraph (a) of this section. (Authority: 20 U.S.C. 1415(j))

§300.519 Surrogate parents.

(a) General. Each public agency must ensure that the rights of a child are protected when--

- (1) No parent (as defined in §300.30) can be identified;
- (2) The public agency, after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of that State; or
- (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method--

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents. (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent--

- (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
- (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
- (iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to--

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent. (Authority: 20 U.S.C. 1415(b)(2))

§300.520 Transfer of parental rights at age of majority.

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that

applies to all children (except for a child with a disability who has been determined to be incompetent under State law)--

(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and

(ii) All rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program. (Authority: 20 U.S.C. 1415(m))

§§300.521-300.529 [Reserved]**Discipline Procedures****§300.530 Authority of school personnel.**

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services. (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--

(1) Either--

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement

occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled 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) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) 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) and (7))

§300.531 Determination of setting.

The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g). (Authority: 20 U.S.C. 1415(k)(2))

§300.532 Appeal.

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that

believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

(b) Authority of hearing officer. (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing. (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506--

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with §300.514. (Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

§300.533 Placement during appeals.

When an appeal under §300.532 has been made by either the parent or the LEA, 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 specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise. (Authority: 20 U.S.C. 1415(k)(4)(A))

§300.534 Protections for children not determined 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 a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if--

(1) The parent of the child--

(i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge.

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

(2)(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 §300.530, 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, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. 1415(k)(5))

§300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents 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) Transmittal of records. (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(6))

§300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern--

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings. (Authority: 20 U.S.C. 1415(k))

§300.537 State enforcement mechanisms.

Notwithstanding §§300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

(Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B))

§§300.538–300.599 [Reserved]**Subpart F— Monitoring, Enforcement, Confidentiality, and Program Information****Monitoring, Technical Assistance, and Enforcement****§300.600 State monitoring and enforcement.****See Page 125 for 12/31/08 amendments**

(a) The State must monitor the implementation of this part, enforce this part in accordance with §300.604(a)(1) and (a)(3),

(b)(2)(i) and (b)(2)(v), and (c)(2), and annually report on performance under this part.

(b) The primary focus of the State's monitoring activities must be on--

- (1) Improving educational results and functional outcomes for all children with disabilities; and
- (2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

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

(Approved by the Office of Management and Budget under control number 1820-0624) (Authority: 20 U.S.C. 1416(a))

§300.601 State performance plans and data collection.

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

- (1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.
- (2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.
- (3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §300.600(d).

(b) Data collection. (1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

- (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring

or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act. (Approved by the Office of Management and Budget under control number 1820-0624) (Authority: 20 U.S.C. 1416(b))

§300.602 State use of targets and reporting.

See Page 125 for December 31, 2008 revisions

(a) General. Each State must use the targets established in the State's performance plan under §300.601 and the priority areas described in §300.600(d) to analyze the performance of each LEA.

(b) Public reporting and privacy. (1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must--

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan; and

(B) Make the State's performance plan available through public means, including by posting on the Web site of the SEA, distribution to the media, and distribution through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.

(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information. (Approved by the Office of Management and Budget under control number 1820-0624) (Authority: 20 U.S.C. 1416(b)(2)(C))

§300.603 Secretary's review and determination regarding State performance.

(a) Review. The Secretary annually reviews the State's performance report submitted pursuant to §300.602(b)(2).

(b) Determination. (1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State--

- (i) Meets the requirements and purposes of Part B of the Act;
- (ii) Needs assistance in implementing the requirements of Part B of the Act;
- (iii) Needs intervention in implementing the requirements of Part B of the Act; or
- (iv) Needs substantial intervention in implementing the requirements of Part B of the Act.

(2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

(ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary

for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section. (Authority: 20 U.S.C. 1416(d))

§300.604 Enforcement.

(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under §300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

(1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include--

(i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

(2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.

(3) Identifies the State as a high-risk grantee and impose special conditions on the State's grant under Part B of the Act.

(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under §300.603(b)(1)(iii) in implementing the intervention under §300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions:

(i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.

(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq.

(GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.

(iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seeks to recover funds under section 452 of GEPA.

(v) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

(1) Recovers funds under section 452 of GEPA.

(2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(3) Refers the case to the Office of the Inspector General at the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) Report to Congress. The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

(Authority: 20 U.S.C. 1416(e)(1)-(e)(3), (e)(5))

§300.605 Withholding funds.

(a) Opportunity for hearing. Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§300.180 through 300.183.

(b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

(c) Nature of withholding. (1) If the Secretary determines that it is appropriate to withhold further payments under §300.604(b)(2) or (c)(2), the Secretary may determine--

(i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under §300.603(b)(1); or

(ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under §300.603(b)(1).

(2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified--

(i) Payments to the State under Part B of the Act must be withheld in whole or in part; and

(ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under §300.603(b)(1), as the case may be. (Authority: 20 U.S.C. 1416(e)(4), (e)(6))

§300.606 Public attention.

See Page 125 for 12/31/08 revision

Any State that has received notice under

§§300.603(b)(1)(ii) through (iv) must, by means of a public notice, take such measures as may be necessary to notify the public within the State of the pendency of an action taken pursuant to §300.604. (Authority: 20 U.S.C. 1416(e)(7))

§300.607 Divided State agency responsibility.

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to §300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that--

(a) Any reduction or withholding of payments to the State under §300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and

(b) Any withholding of funds under §300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act. (Authority: 20 U.S.C. 1416(h))

§300.608 State enforcement.

(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under §300.203 for any fiscal year.

(b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act. (Authority: 20 U.S.C. 1416(f); 20 U.S.C. 1412(a)(11))

§300.609 Rule of construction.

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, 80, and 81 to monitor and enforce the requirements of the Act, including the imposition of special conditions under 34 CFR 80.12. (Authority: 20 U.S.C. 1416(g))

Confidentiality of Information

§300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of

the Act, and consistent with §§300.611 through 300.627.
(Authority: 20 U.S.C. 1417(c))

§300.611 Definitions.

As used in §§300.611 through 300.625--

(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.
(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

§300.612 Notice to parents.

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including--

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.
(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.613 Access rights.

(a) Each participating agency must 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 must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, 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))

§300.614 Record of access.

Each participating agency must 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))

§300.615 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))

§300.616 List of types and locations of information.

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.617 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents 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))

§300.618 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must 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 must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.619 Opportunity for a hearing.

The agency must, 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))

§300.620 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 must 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 must inform the parent of the parent's right to place in the records the agency 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))

§300.621 Hearing procedures.

A hearing held under §300.619 must be conducted according to the procedures in 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.622 Consent.

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.623 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must 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 §300.123 and 34 CFR part 99.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.624 Destruction of information.

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.625 Children's rights.

(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with §300.520, the rights regarding educational records in §§300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.626 Enforcement.

The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.627 Department use of personally identifiable information. If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Reports--Program Information

§300.640 Annual report of children served--report requirement.

(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary. (Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0518, 1820-0521, 1820-0517, and 1820-0677) (Authority: 20 U.S.C. 1418(a))

§300.641 Annual report of children served--information required in the report.

(a) For purposes of the annual report required by section 618 of the Act and §300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special

education and related services on any date between October 1 and December 1 of each year.

(b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

(c) The SEA may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

(1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0621, 1820-0521, and 1820-0517) (Authority: 20 U.S.C. 1418(a), (b))

§300.642 Data reporting.

(a) Protection of personally identifiable data. The data described in section 618(a) of the Act and in §300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.

(b) Sampling. The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling. (Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0518, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(b))

§300.643 Annual report of children served--certification.

The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under §300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0043) (Authority: 20 U.S.C. 1418(a)(3))

§300.644 Annual report of children served--criteria for counting children.

The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that--

(a) Provides them with both special education and related services that meet State standards;

(b) Provides them only with special education, if a related service is not required, that meets State standards; or

(c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under §§300.132 through 300.144.

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(a))

§300.645 Annual report of children served--other responsibilities of the SEA.

In addition to meeting the other requirements of §§300.640 through 300.644, the SEA must--

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with §300.640(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§300.640 through 300.644; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count. (Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0518, 1820-0521, and 1820-0517) (Authority: 20 U.S.C. 1418(a))

§300.646 Disproportionality.

(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--

(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;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(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 must--

(1) 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 the Act.

(2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and

(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section. (Authority: 20 U.S.C. 1418(d))

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

Allotments, Grants, and Use of Funds**§300.700 Grants to States.**

(a) Purpose of grants. The Secretary makes grants to States, outlying areas, and freely associated States (as defined in §300.717), 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 amount. The maximum amount of the grant a State may receive under section 611 of the Act is--

(1) For fiscal years 2005 and 2006--

(i) The number of children with disabilities in the State who are receiving special education and related services--

(A) Aged three through five, if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by--

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in §300.717); and

(2) For fiscal year 2007 and subsequent fiscal years--

(i) The number of children with disabilities in the 2004–2005 school year in the State who received special education and related services--

(A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in §300.717);

(iii) Adjusted by the rate of annual change in the sum of--

(A) Eighty-five (85) percent of the State's population of children aged 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

(B) Fifteen (15) percent of the State's population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty. (Authority: 20 U.S.C. 1411(a) and (d))

§300.701 Outlying areas, freely associated States, and the Secretary of the Interior.

(a) Outlying areas and freely associated States. (1) Funds reserved. From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves not more than one percent, which must be used--

(i) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(ii) To provide each freely associated State a grant in the amount that the freely associated State received for fiscal year 2003 under Part B of the Act, but only if the freely associated State--

(A) Meets the applicable requirements of Part B of the Act that apply to States.

(B) Meets the requirements in paragraph (a)(2) of this section.

(2) Application. Any freely associated State that wishes to receive funds under Part B of the Act must include, in its application for assistance--

(i) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act.

(ii) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children

with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;

(iii) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and

(iv) Such other information and assurances as the Secretary may require.

(3) Special rule. The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to the outlying areas or to the freely associated States under Part B of the Act.

(b) Secretary of the Interior. From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with §§300.707 through 300.716. (Authority: 20 U.S.C. 1411(b))

§300.702 Technical assistance.

(a) In general. The Secretary may reserve not more than one-half of one percent of the amounts appropriated under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(i) of the Act.

(b) Maximum amount. The maximum amount the Secretary may reserve under paragraph (a) of this section for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (Authority: 20 U.S.C. 1411(c))

§300.703 Allocations to States.

(a) General. After reserving funds for technical assistance under §300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under §300.701 (a) and (b) for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section.

(b) Special rule for use of fiscal year 1999 amount. If a State received any funds under section 611 of the Act for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(c) Increase in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(1) Allocation of increase. (i) General. Except as provided in paragraph (c)(2) of this section, the Secretary allocates for the fiscal year--

(A) To each State the amount the State received under this section for fiscal year 1999;

(B) Eighty-five (85) percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(C) Fifteen (15) percent of those remaining funds to States on the basis of the States' relative populations of children described in paragraph (c)(1)(i)(B) of this section who are living in poverty.

(ii) Data. For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(2) Limitations. Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following:

(i) Preceding year allocation. No State's allocation may be less than its allocation under section 611 of the Act for the preceding fiscal year.

(ii) Minimum. No State's allocation may be less than the greatest of--

(A) The sum of--

(1) The amount the State received under section 611 of the Act for fiscal year 1999; and

(2) One third of one percent of the amount by which the amount appropriated under section 611(i) of the Act for the fiscal year exceeds the amount appropriated for section 611 of the Act for fiscal year 1999;

(B) The sum of--

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the Act from the preceding fiscal year exceeds 1.5 percent; or

(C) The sum of--

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by 90 percent of the percentage increase in the amount appropriated for section 611 of the Act from the preceding fiscal year.

(iii) Maximum. Notwithstanding paragraph (c)(2)(ii) of this section, no State's allocation under paragraph (a) of this section may exceed the sum of--

(A) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(B) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 611 of the Act from the preceding fiscal year.

(3) Ratable reduction. If the amount available for allocations to States under paragraph (c) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (c)(2)(i) of this section.

(d) Decrease in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is less than the amount allocated to the States under section 611

of the Act for the preceding fiscal year, those allocations are calculated as follows:

(1) Amounts greater than fiscal year 1999 allocations. If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of--

(i) 1999 amount. The amount the State received under section 611 of the Act for fiscal year 1999; and

(ii) Remaining funds. An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the Act for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(2) Amounts equal to or less than fiscal year 1999 allocations. (i) General. If the amount available for allocations under paragraph (a) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999.

(ii) Ratable reduction. If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section, those allocations are ratably reduced. (Authority: 20 U.S.C. 1411(d))

§300.704 State-level activities.

(a) State administration. (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities--

(i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or \$800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and

(ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under §300.701(a) for the fiscal year or \$35,000, whichever is greater.

(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts--

(i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004; and

(ii) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current.

(4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part.

(b) Other State-level activities. (1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:

- (i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than \$850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:
 - (A) For fiscal years 2005 and 2006, 10 percent of the State's allocation under §300.703.
 - (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.
- (ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section--
 - (A) For fiscal years 2005 and 2006, nine percent of the State's allocation under §300.703.
 - (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.
- (iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to \$850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:
 - (A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under §300.703.
 - (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.
- (iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:
 - (A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under §300.703.
 - (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.
- (2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.
- (3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:
 - (i) For monitoring, enforcement, and complaint investigation; and
 - (ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel;
- (4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities:
 - (i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;
 - (ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

- (iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities;
 - (iv) To improve the use of technology in the classroom by children with disabilities to enhance learning;
 - (v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;
 - (vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;
 - (vii) To assist LEAs in meeting personnel shortages;
 - (viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;
 - (ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;
 - (x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and
 - (xi) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA.
- (c) Local educational agency high cost fund. (1) In general--
- (i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section--
 - (A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and
 - (B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with

representatives from LEAs, subject to paragraph (c)(2)(ii) of this section.

(ii) For purposes of paragraph (c) of this section, local educational agency includes a charter school that is an LEA, or a consortium of LEAs.

(2)(i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs.

(ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

(3)(i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must--

(A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum--

(1) Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and

(2) Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State;

(B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA;

(C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§300.114 through 300.118;

(D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph(c)(3)(i)(B) of this section;

(E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and

(F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be used.

(ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.

(4)(i) Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section.

(ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined necessary, consistent with §300.114, to implement a child's IEP.

(iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section.

(5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.

(6) Nothing in paragraph (c) of this section--

(i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or

(ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability.

(7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) of this section.

(8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.

(9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under §300.705 during their final year of availability.

(d) Inapplicability of certain prohibitions. A State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to--

(1) The prohibition on commingling of funds in §300.162(b).

(2) The prohibition on supplanting other funds in §300.162(c).

(e) Special rule for increasing funds. A State may use funds the State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph(b)(4)(i), (iii), (vii), or (viii) of this section.

(f) Flexibility in using funds for Part C. Any State eligible to receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, §300.705(c), or §300.814(e) to develop and

implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1411(e))

§300.705 Subgrants to LEAs.

See Page 125 for 12/31/08 amendments

(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act.

(b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under §300.703, each State shall allocate funds as follows:

(1) Base payments. The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.

(2) Base payment adjustments. For any fiscal year after 1999-

(i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.703(b), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and

(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.703(b), currently provided special education by each affected LEA.

(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must--

(i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(c) Reallocation of funds. If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1411(f))

§300.706 [Reserved]

Secretary of the Interior

§300.707 Use of amounts by Secretary of the Interior.

(a) Definitions. For purposes of §§300.707 through 300.716, the following definitions apply:

(1) Reservation means Indian Country as defined in 18 U.S.C. 1151.

(2) Tribal governing body has the definition given that term in 25 U.S.C. 2021(19).

(b) Provision of amounts for assistance. The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under section 611(b)(2) of the Act for that fiscal year. Of the amount described in the preceding sentence, after the Secretary of the Interior reserves funds for administration under §300.710, 80 percent must be allocated to such schools by July 1 of that fiscal year and 20 percent must be allocated to such schools by September 30 of that fiscal year.

(c) Additional requirement. With respect to all other children aged 3 to 21, inclusive, on reservations, the SEA of the State in which the reservation is located must ensure that all of the requirements of Part B of the Act are implemented. (Authority: 20 U.S.C. 1411(h)(1))

§300.708 Submission of information.

The Secretary may provide the Secretary of the Interior amounts under §300.707 for a fiscal year only if the Secretary of the Interior submits to the Secretary information that--

(a) Meets the requirements of section 612(a)(1), (3) through (9), (10)(B) through (C), (11) through (12), (14) through (16), (19), and (21) through (25) of the Act (including monitoring and evaluation activities);

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

(c) Meets the requirements of section 613(a)(1), (2)(A)(i), (7) through (9) and section 613(i) of the Act (references to LEAs in these sections must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior);

(d) Meets the requirements of section 616 of the Act that apply to States (references to LEAs in section 616 of the Act must be read as references to elementary

schools and secondary schools for Indian children operated or funded by the Secretary of the Interior).

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

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

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

(h) Includes an assurance that the Secretary of the Interior provides the information that the Secretary may require to comply with section 618 of the Act;

(i)(1) Includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with the SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations.

(2) The agreement must provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies, as needed for a child with a disability to remain in a school or program; and

(j) Includes an assurance that the Department of the Interior will cooperate with the Department in its exercise of monitoring and oversight of the requirements in this section and §§300.709 through 300.711 and §§300.713 through 300.716, and any agreements entered into between the Secretary of the Interior and other entities under Part B of the Act, and will fulfill its duties under Part B of the Act. The Secretary withholds payments under §300.707 with respect to the requirements described in this section in the same manner as the Secretary withholds payments under section 616(e)(6) of the Act.

(Authority: 20 U.S.C. 1411(h)(2) and (3))

§300.709 Public participation.

In fulfilling the requirements of §300.708 the Secretary of the Interior must provide for public participation consistent with §300.165. (Authority: 20 U.S.C. 1411(h))

§300.710 Use of funds under Part B of the Act.

(a) The Secretary of the Interior may reserve five percent of its payment under §300.707(b) in any fiscal year, or \$500,000, whichever is greater, for administrative costs in carrying out the provisions of §§300.707 through 300.709, 300.711, and 300.713 through 300.716.

(b) Payments to the Secretary of the Interior under §300.712 must be used in accordance with that section.

(Authority: 20 U.S.C. 1411(h)(1)(A))

§300.711 Early intervening services.

(a) The Secretary of the Interior may allow each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior to use not more than 15

percent of the amount the school receives under §300.707(b) for any fiscal year, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade three) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment, in accordance with section 613(f) of the Act.

(b) Each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior that develops and maintains coordinated early intervening services in accordance with section 613(f) of the Act and §300.226 must annually report to the Secretary of the Interior in accordance with section 613(f) of the Act. (Authority: 20 U.S.C. 1411(h) and 1413(f))

§300.712 Payments for education and services for Indian children with disabilities aged three through five.

(a) General. With funds appropriated under section 611(i) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under §300.701(b).

(b) Distribution of funds. The Secretary of the Interior must distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged three through five residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(c) Submission of information. To receive a payment under this section, the tribe or tribal organization must 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 three through five, 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 tribe or tribal organization, as appropriate, must 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 must provide to the Secretary of the Interior a biennial report of activities undertaken under this section, 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 year in which the report is made. The Secretary of the Interior must include a summary of this information on a biennial basis in the report to the Secretary required under section 611(h) of the Act. 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(h)(4))

§300.713 Plan for coordination of services.

(a) The Secretary of the Interior must develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior.

(b) The plan must provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, other Federal agencies, State educational agencies, and State, local, and tribal juvenile and adult correctional facilities.

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

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

(e) The plan also must be distributed upon request to States; to SEAs, 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(h)(5))

§300.714 Establishment of advisory board.

(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary of the Interior must establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 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 must--

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

(2) Advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in section 611(h) 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 early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

(5) Provide assistance in the preparation of information required under §300.708(h). (Authority: 20 U.S.C. 1411(h)(6))

§300.715 Annual reports.

(a) In general. The advisory board established under §300.714 must prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(b) Availability. The Secretary of the Interior must make available to the Secretary the report described in paragraph (a) of this section. (Authority: 20 U.S.C. 1411(h)(7))

§300.716 Applicable regulations.

The Secretary of the Interior must comply with the requirements of §§300.103 through 300.108, 300.110 through 300.124, 300.145 through 300.154, 300.156 through 300.160, 300.165, 300.170 through 300.186, 300.226, 300.300 through 300.606, 300.610 through 300.646, and 300.707 through 300.716.

(Authority: 20 U.S.C. 1411(h)(2)(A))

Definitions that Apply to this Subpart

§300.717 Definitions applicable to allotments, grants, and use of funds.

As used in this subpart--

(a) Freely associated States means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau;

(b) Outlying areas means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(c) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(d) Average per-pupil expenditure in public elementary schools and secondary schools in the United States means--

(1) Without regard to the source of funds--

(i) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus

(ii) Any direct expenditures by the State for the operation of those agencies; divided by

(2) The aggregate number of children in average daily attendance to whom those agencies provided free public

education during that preceding year. (Authority: 20 U.S.C. 1401(22), 1411(b)(1)(C) and (g))

Acquisition of Equipment and Construction or Alteration of Facilities

§300.718 Acquisition of equipment and construction or alteration of facilities.

(a) General. If the Secretary determines that a program authorized under Part B of the Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph

(a) of this section must comply with the requirements of--

(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Accessibility Standards for Buildings and Facilities"); or

(2) Appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards"). (Authority: 20 U.S.C. 1404)

Subpart H--Preschool Grants for Children with Disabilities §300.800 In general.

The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act--

(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))

§§300.801-300.802 [Reserved]

§300.803 Definition of State.

As used in this subpart, State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. (Authority: 20 U.S.C. 1419(i))

§300.804 Eligibility.

A State is eligible for a grant under section 619 of the Act if the State--

(a) Is eligible under section 612 of the Act to receive a grant under Part B of the Act; and

(b) Makes FAPE available to all children with disabilities, aged three through five, residing in the State.

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1419(b))

§300.805 [Reserved]

§300.806 Eligibility for financial assistance.

No State or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the State is eligible to receive a grant under section 619(b) of the Act. (Authority: 20 U.S.C. 1481(e))

§300.807 Allocations to States.

The Secretary allocates the amount made available to carry out section 619 of the Act for a fiscal year among the States in

accordance with §§300.808 through 300.810.

(Authority: 20 U.S.C. 1419(c)(1))

§300.808 Increase in funds.

If the amount available for allocation to States under §300.807 for a fiscal year 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 §300.809, the Secretary--

(1) Allocates to each State the amount the State received under section 619 of the Act for fiscal year 1997;

(2) Allocates 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged three through five; and

(3) Allocates 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged three through five who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

§300.809 Limitations.

(a) Notwithstanding §300.808, allocations under that section are subject to the following:

(1) No State's allocation may be less than its allocation under section 619 of the Act for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of--

(i) The sum of--

(A) The amount the State received under section 619 of the Act for fiscal year 1997; and

(B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act for the fiscal year exceeds the amount appropriated for section 619 of the Act for fiscal year 1997;

(ii) The sum of--

(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated under section 619 of the Act from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of--

(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under §300.808 may exceed the sum of--

(1) The amount the State received under section 619 of the Act for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.

(c) If the amount available for allocation to States under §300.808 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1419(c)(2)(B) and (c)(2)(C))

§300.810 Decrease in funds.

If the amount available for allocations to States under §300.807 for a fiscal year is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of--

(1) The amount the State received under section 619 of the Act for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received under section 619 of the Act for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(b) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State is allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

(Authority: 20 U.S.C. 1419(c)(3))

§300.811 [Reserved]

§300.812 Reservation for State activities.

(a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§300.813 and 300.814.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of--

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1419(d))

§300.813 State administration.

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), a State may use not more than 20 percent of the maximum amount the State may reserve under §300.812 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act.

(Authority: 20 U.S.C. 1419(e))

§300.814 Other State-level activities.

Each State must use any funds the State reserves under §300.812 and does not use for administration under §300.813-

(a) For support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than three or older than five as long as those services also benefit children with disabilities aged three through five;

(b) For direct services for children eligible for services under section 619 of the Act;

(c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the Act;

(d) To supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than one percent of the amount received by the State under section 619 of the Act for a fiscal year;

(e) To provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten; or

(f) At the State's discretion, to continue service coordination or case management for families who receive services under Part C of the Act, consistent with §300.814(e). (Authority: 20 U.S.C. 1419(f))

§300.815 Subgrants to LEAs.

See Page 126 for 12/31/08 revisions

Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds that the State does not reserve under §300.812 to LEAs in the State that have established their eligibility under section 613 of the Act. (Authority: 20 U.S.C. 1419(g)(1))

§300.816 Allocations to LEAs.

See Page 126 for December 31, 2008 amendments

(a) Base payments. The State must first award each LEA described in §300.815 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

(b) Base payment adjustments. For fiscal year 1998 and beyond--

(1) If a new LEA is created, the State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the LEAs;

(2) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three through five changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA.

- (c) Allocation of remaining funds. After making allocations under paragraph (a) of this section, the State must--
- (1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and
 - (2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.
- (d) Use of best data. For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty. (Authority: 20 U.S.C. 1419(g)(1))

§300.817 Reallocation of LEA funds. See Page 126 for December 31, 2008 revisions

If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas the other LEAs serve. (Authority: 20 U.S.C. 1419(g)(2))

§300.818 Part C of the Act inapplicable.

Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under section 619 of the Act. (Authority: 20 U.S.C. 1419(h))

The IDEA was amended after public comment. These changes to 34 CFR Part 300 go into effect December 31, 2008. Please note, these revisions may be additions to the existing language or replacement of previous language.

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

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List of Subjects in 34 CFR Part 300

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

Dated: November 21, 2008. Margaret Spellings, Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations as follows:

PART 300--ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

1. The authority citation for part 300 **continues to read** as follows: [[Page 73027]] Authority: 20 U.S.C. 1221e-3, 1406, 1411-1419, unless otherwise noted.

2. Section **300.9** is amended by **adding** a new paragraph (c)(3). The **addition reads as follows:**

Sec. 300.9 Consent.

(c) (3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

3. **Section 300.177** is **revised** to read as follows:
Sec. 300.177 States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

(a) States' sovereign immunity.

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

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

(3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(b) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act. (Authority: 20 U.S.C. 1403, 1405)

4. **Section 300.300** is amended by:

A. **Revising** paragraphs (b)(3) and (b)(4).

B. In paragraph (d)(2), **removing** the words ``paragraph (a)'' and **inserting**, in their place, the words ``paragraphs (a), (b), and (c)''.

C. In paragraph (d)(3), adding after the words ``paragraphs (a)'' the words `` , (b), (c), ''.

The **revision reads** as follows:

Sec. 300.300 Parental consent.

(b) (3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency--

(i) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency--

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Sec. 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under Sec. 300.320 and 300.324 for the child for further provision of special education and related services.

5. **Section 300.512** is amended by **revising** paragraph (a)(1) to read as follows:

Sec. 300.512 Hearing rights.

(a) (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

6. **Section 300.600** is amended by:

A. **Revising** paragraph (a).

B. **Adding** a new paragraph (e).

The **revision and addition** read as follows:

Sec. 300.600 State monitoring and enforcement.

(a) The State must--

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each LEA using the categories in Sec. 300.603(b)(1);

(3) Enforce this part, consistent with Sec. 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in Sec. 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and

(4) Report annually on the performance of the State and of each LEA under this part, as provided in Sec. 300.602(b)(1)(i)(A) and (b)(2).

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

7. **Section 300.602(b)(1)(i)** is **revised** to read as follows:
Sec. 300.602 State use of targets and reporting.

(b) (1) (i) Subject to paragraph (b)(1)(ii) of this section, the State must--

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make each of the following items available through public means: the State's performance plan, under Sec. 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) [[Page 73028]] of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA's Web site, and distribute the plan and reports to the media and through public agencies.

8. **Section 300.606** is **revised** to read as follows:

Sec. 300.606 Public attention.

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to Sec. 300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to Sec. 300.604, including, at a minimum, by posting the notice on the SEA's Web site and distributing the notice to the media and through public agencies. (Authority: 20 U.S.C. 1416(e)(7))

9. **Section 300.705** is amended by:

A. **Revising** paragraph (a).

B. In paragraph (b)(2)(ii), **removing** the word "and" at the end of the paragraph.

C. In paragraph (b)(2)(iii), **removing** the punctuation ".," and adding, in its place, the words "; and".

D. **Adding a new paragraph** (b)(2)(iv).

E. **Revising** paragraph (c).

The **revisions and addition** read as follows:

Sec. 300.705 Subgrants to LEAs.

(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under Sec. 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with funds that become available on the July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

(b)(2) (iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(c) Reallocation of LEA funds. (1) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.704.

(2) After an SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.704.

10. **Section 300.815 is revised** to read as follows:

Sec. 300.815 Subgrants to LEAs.

Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under Sec. 300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act. Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children aged three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities. (Authority: 20 U.S.C. 1419(g)(1))

11. **Section 300.816 is amended by:**

A. In paragraph (b)(2), **removing** the word "and".

B. In paragraph (b)(3), **removing** the punctuation "." and **adding**, in its place, the words "; and".

C. **Adding a new paragraph** (b)(4) to read as follows:

Sec. 300.816 Allocations to LEAs.

(b) (4) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities aged three through five years. The State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities aged three through five years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

12. **Section 300.817 is revised** to read as follows:

Sec. 300.817 Reallocation of LEA funds.

(a) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five years residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.812.

(b) After an SEA distributes section 619 funds to an eligible LEA that is not serving any children with disabilities aged three through five years, as provided in Sec. 300.815, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.812. (Authority 20 U.S.C. 1419 (g)(2))

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Section 504 of the Rehabilitation Act Rules Regulations

**P.L. 93-112
34 CFR, PART 104**

Section 504 of the Rehabilitation Act, first passed in 1973, prohibits discrimination against individuals with disabilities by agencies and programs receiving Federal funds. Section 504 applies to school districts, post-secondary education, health and social services. It requires the provision of equivalent, accessible services.

[Code of Federal Regulations] [Title 34, Volume 1] [Revised as of July 1, 2003] [CITE: 34CFR104.1]

504 Regulations

TITLE 34--EDUCATION

CHAPTER I--OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 104--NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE--Table of Contents

Subpart A--General Provisions

Sec. 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Sec. 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to the program or activity that receives such assistance. [65 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

Sec. 104.3 Definitions.

As used in this part, the term:

(a) The Act means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) Section 504 means section 504 of the Act.

(c) Education of the Handicapped Act means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) Department means the Department of Education.

(e) Assistant Secretary means the Assistant Secretary for Civil Rights of the Department of Education.

(f) Recipient means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) Handicapped person--(1) Handicapped persons means any person who

(i) has a physical or mental impairment which substantially limits

one or more major life activities, (ii) has a record of such an impairment,

or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) Program or activity means all of the operations of--

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) Qualified handicapped person means:

(1) With respect to employment, a handicapped person who,

with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

Sec. 104.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to

discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Aid, benefits, or services limited by Federal law. The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

Sec. 104.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to

be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

Sec. 104.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part,

require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation. (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,
(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

Sec. 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

Sec. 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

Sec. 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with Secs. 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

Sec. 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B--Employment Practices

Sec. 104.11 Discrimination prohibited.

(a) General. (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Sec. 104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the

composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant. [45 FR 30936, May 9, 2000, as amended at 65 FR 68054, Nov. 13, 2000]

Subpart C--Accessibility

Sec. 104.22 Existing facilities.

(a) Accessibility. A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of Sec. 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full accessibility in order to comply with paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Sec. 104.23 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. [45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 55 FR 52138, 52141, Dec. 19, 1990]

Subpart D--Preschool, Elementary, and Secondary Education

Sec. 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart. [45 FR 30936, May 9, 2000, as amended at 65 FR 68054, Nov. 13, 2000]

Sec. 104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of

nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Secs. 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education--(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) Residential placement. If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and Sec. 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Sec. 104.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Sec. 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a

handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) 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 Sec. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Sec. 104.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient 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, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Sec. 104.34.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement. [45 FR 30936, May 9,

1980, as amended at 65 FR 68055, Nov. 13, 2000]

Sec. 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

Sec. 104.37 Nonacademic services.

(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Sec. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Sec. 104.38 Preschool and adult education.

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits or services to be provided. [65 FR 68055, Nov. 13, 2000]

Sec. 104.39 Private education.

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in Sec.

104.33(b)(1), within that recipient's program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of Secs. 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Secs. 104.34, 104.37, and 104.38. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Subpart E--Postsecondary Education

Sec. 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Sec. 104.42 Admissions and recruitment.

(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions. In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Sec. 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Sec. 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped. Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended

for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

Sec. 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Sec. 104.44 Academic adjustments.

(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids. (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Sec. 104.47 Nonacademic services.

(a) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of Sec. 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Subpart F--Health, Welfare, and Social Services

Sec. 104.52 Health, welfare, and other social services.

(a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in Sec. 104.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped

persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids. (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

Sec. 104.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

Sec. 104.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity that provides aid, benefits or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in Sec. 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in Sec. 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D. [45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Subpart G--Procedures

Sec. 104.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in Secs. 100.6-100.10 and part 101 of this title.

Appendix A to Part 104--Analysis of Final Regulation

Subpart A--General Provisions

Definitions--

1. Recipient. Section 104.23 contains definitions used throughout the regulation.

One comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of Sec. 104.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs.

2. Federal financial assistance. In Sec. 104.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under section 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that section 504, unlike title VI and title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended section 504 to have a broader application, in terms of federal financial assistance, than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as titles VI and IX.

In view of the long established exemption of contracts of insurance or guaranty under title VI, we think it unlikely that Congress intended section 504 to apply to such contracts.

3. Handicapped person. Section 104.3(j), which defines the class of persons protected under the regulation, has not been substantially changed. The definition of handicapped person in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93-516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment that substantially limits one or more major life activities. Paragraph (j)(2)(i) further defines physical or mental impairments. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list. The term includes, however, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and, as discussed below, drug addiction and alcoholism.

It should be emphasized that a physical or mental impairment does not constitute a handicap for purposes of section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities. Several comments observed

the lack of any definition in the proposed regulation of the phrase "substantially limits." The Department does not believe that a definition of this term is possible at this time.

A related issue raised by several comments is whether the definition of handicapped person is unreasonably broad. Comments suggested narrowing the definition in various ways. The most common recommendation was that only "traditional" handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps. The Department intends, however, to give particular attention in its enforcement of section 504 to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The first of the three parts of the definition specifies that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered; nor are prison records, age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in section 602 of the Education of the Handicapped Act, as amended. Paragraph (15) of section 602 uses the term "specific learning disabilities" to describe such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Paragraph (j)(2)(i) has been shortened, but not substantively changed, by the deletion of clause (C), which made explicit the inclusion of any condition which is mental or physical but whose precise nature is not at present known. Clauses (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits a major life activity. Under the definition of "record" in paragraph (j)(2)(iii), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination under section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped.

4. Drug addicts and alcoholics. As was the case during the first comment period, the issue of whether to include drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The arguments presented on each side of the issue were similar during the two comment periods, as was the preference of commenters for exclusion of this group of persons. While some

comments reflected misconceptions about the implications of including alcoholics and drug addicts within the scope of the regulation, the Secretary understands the concerns that underlie the comments on this question and recognizes that application of section 504 to active alcoholics and drug addicts presents sensitive and difficult questions that must be taken into account in interpretation and enforcement. The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. That opinion concludes that drug addiction and alcoholism are "physical or mental impairments" within the meaning of section 7(6) of the Rehabilitation Act of 1973, as amended, and that drug addicts and alcoholics are therefore handicapped for purposes of section 504 if their impairment substantially limits one of their major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism in enacting section 504, the committees that considered the Rehabilitation Act of 1973 were made aware of the Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act.

The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider--for all applicants including drug addicts and alcoholics--past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work-place, provided that such rules are enforced against all employees.

With respect to other services, the implications of coverage, of alcoholics and drug addicts are two-fold: first, no person may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause substantial interference with the operation of the program, the condition may be taken into consideration. Thus, a college may not exclude an addict or alcoholic as a student, on the basis of addiction or alcoholism, if the person can successfully participate in the education program and complies with the rules of the college and if his or her behavior does not impede the

performance of other students.

Of great concern to many commenters was the question of what effect the inclusion of drug addicts and alcoholics as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students. Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students.

5. Qualified handicapped person. Paragraph (k) of Sec. 104.3 defines the term "qualified handicapped person." Throughout the regulation, this term is used instead of the statutory term "otherwise qualified handicapped person." The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be "otherwise qualified" for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.

Section 104.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term "essential functions" does not appear in the corresponding provision of the Department of Labor's section 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of Sec. 104.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Section 104.3(k)(2) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of Sec. 104.6(a)(3), however, persons beyond the age limits prescribed in Sec. 104.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of section 504.

Section 104.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which State law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act--generally, 3-18 as of September 1978, and 3-

21 as of September 1980 are incorporated by reference in this paragraph.

Section 104.3(k)(3) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term technical standards refers to all nonacademic admissions criteria that are essential to participation in the program in question.

6. General prohibitions against discrimination. Section 104.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1)(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

In this context, the term equally effective, defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau v. Nichols*, 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase "in the most integrated setting appropriated to the person's needs" is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to Sec. 104.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in Secs. 104.38 and 104.47 in connection with physical education and athletics programs.

Section 104.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret Sec. 104.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional

buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of Sec. 104.23.

7. Assurances of compliance. Section 104.5(a) requires a recipient to submit to the Assistant Secretary an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating title VI, title IX, and section 504 assurances. The Secretary is sympathetic to this request. While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. Private rights of action. Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under section 504. To confer such a right is beyond the authority of the executive branch of Government. There is, however, case law holding that such a right exists. *Lloyd v. Regional Transportation Authority*, 548 F. 2d 1277 (7th Cir. 1977); see *Hairston v. Drosick*, Civil No. 75-0691 (S.D. W. Va., Jan. 14, 1976); *Gurmankin v. Castanzo*, 411 F. Supp. 982 (E.D. Pa. 1976); cf. *Lau v. Nichols*, supra.

9. Remedial action. Where there has been a finding of discrimination, Sec. 104.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against, reinstatement of employees and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of Federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraphs (a) (1), (2), and (3) have also been amended in response to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. Voluntary action. In Sec. 104.6(b), the term "voluntary action" has been substituted for the term "affirmative action" because the use of the latter term led to some confusion. We believe the term "voluntary action" more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes much the same purpose.

11. Self-evaluation. Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped

persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c) (ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. Grievance procedure. Section 104.7 requires recipients with fifteen or more employees to designate an individual responsible for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from the Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of Sec. 104.8 could be coordinated with comparable action required by the title IX regulation. The Department encourages such efforts.

13. Notice. Section 104.8 (formerly Sec. 84.9) sets forth requirements for dissemination of statements of nondiscrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under section 504 and this regulation. In Sec. 104.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of section 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department.

Section 104.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under section 504. The last sentence of Sec. 104.8(a) has been revised to list possible, rather than required, means of notification. Section 104.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials.

In response to a number of comments, Sec. 104.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and

ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance. The separate form should, however, be included with each significant publication or form that is distributed.

Section 104 which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recruitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new Sec. 104.9 the Assistant Secretary may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. Inconsistent State laws. Section 104.10(a) states that compliance with the regulation is not excused by State or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession, does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind lawyers may find it more difficult to find jobs than do nonhandicapped lawyers.

Subpart B--Employment Practices

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulation implementing title IX of the Education Amendments of 1972 (34 CFR, part 106) and the regulation of the Department of Labor under section 503 of the Rehabilitation Act, which requires certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive Federal procurement contracts in excess of \$2,500 and are therefore also subject to section 503.

15. Discriminatory practices. Section 104.11 sets forth general provisions with respect to discrimination in employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive Federal funds under Part B of the Education of the Handicapped Act, as amended (EHA). Section 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of section 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting section 606 Congress chose the words "positive steps" instead of "affirmative action" advisedly and did not intend section 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under sections 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of Sec. 104.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides

that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. Reasonable accommodation. The reasonable accommodation requirement of Sec. 104.12 generated a substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirements of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Section 104.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Section 104.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed. Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. The reasonable accommodation standard in Sec. 104.12 is similar to the obligation imposed upon Federal contractors in the regulation implementing section 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two regulations is not identical, the obligation that the two regulations impose is the same, and the Federal Government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the "business necessity" standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, colleges and universities. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to an understandable by recipients of ED funds.

17. Tests and selection criteria. Revised Sec. 104.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Secretary to be available. This paragraph is an application of the

principle established under title VII of the Civil Rights Act of 1964 in *Griggs v. Duke Power Company*, 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, Sec. 104.13(a) has been revised to place the burden on the Assistant Secretary, rather than the recipient, to identify alternate tests.

Section 104.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. Preemployment inquiries. Section 104.14, concerning preemployment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on preemployment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that preemployment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might be required.

The Secretary has concluded that a general prohibition of preemployment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

Section 104.14(b) allows preemployment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under section 503 of the Rehabilitation Act of 1973. In these instances, paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition

offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. Specific acts of Discrimination. Sections 104.15 (recruitment), 104.16 (compensation), 104.17 (job classification and structure) and 104.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of Sec. 104.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These deletions bring the regulation closer in form to the Department of Labor's section 503 regulation.

A proposed section, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Section 104.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

Subpart C--Program Accessibility

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. Existing facilities. Section 104.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipient's program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under Sec. 104.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with Sec. 104.22, but would discriminate against

qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost-efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate section 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that provide health, welfare, or other social services may also comply with Sec. 104.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist might arrange to make home deliveries of drugs. Under revised Sec. 104.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a significant alteration in existing facilities is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under section 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to \$25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with Sec. 104.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a

transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but Sec. 104.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See Sec. 104.4(c)(2)(iv), prohibiting unnecessarily separate treatment; Sec. 104.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and new Sec. 104.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. New construction. Section 104.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Section 104.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words “if construction has commenced” will be considered to mean “if groundbreaking has taken place.” Thus, a recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase “to the maximum extent feasible” has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

Section 104.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to section 502 as well as section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

Subpart D--Preschool, Elementary, and Secondary Education

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term “adult education” refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, Secs. 104.32 and 104.33 apply only to public programs and Sec. 104.39 applies only to private programs; Secs. 104.35 and 104.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Lebanks v. Spears*, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Pub. L. 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the “process” requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. Location and notification. Section 104.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by section 504 and this regulation. This section has been shortened without substantive change.

23. Free appropriate public education. Under Sec. 104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word “in”

encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D.

And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another person's or entity's failure to assume financial responsibility.

Section 104.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of Sec. 104.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new Sec. 104.33(b)(2) has been added, which allows this requirement to be met through the full implementation of an individualized education program developed in accordance with the standards of the EHA.

Paragraph (c) of Sec. 104.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in Sec. 104.36.) Under this paragraph, a recipient's obligation extends beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to Sec. 104.33. Section 104.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of Sec. 104.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. Educational setting. Section 104.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under Sec. 104.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student 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 and would not be required by Sec. 104.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under Sec. 104.36 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 and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under Secs. 104.34 and 104.36.

New paragraph (b) specified 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.

Section 104.34(c) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates section 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being for handicapped persons.

25. Evaluation and placement. Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, Sec. 104.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure

appropriate classification and placement.

These procedures, delineated in Secs. 104.35 and 104.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Section 104.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. "Any action" includes denials of placement.

Paragraphs (b) and (c) of Sec. 104.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in "Issues in the Classification of Children," a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Paragraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, Sec. 104.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under Sec. 104.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed section 504 regulation, are inappropriate for

some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. Nonacademic services. Section 104.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of Sec. 104.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery course, as can a deaf student in a wrestling course.

Finally, the one-year transition period provided in a proposed section was deleted in response to the almost unanimous objection of commenters to that provision.

27. Preschool and adult education. Section 104.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to section 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. Private education. Section 104.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they operate special education programs; second, under Sec. 104.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of Sec. 104.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

Subpart E--Postsecondary Education

Subpart E prescribes requirements for nondiscrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

29. Admission and recruitment. In addition to a general prohibition of discrimination on the basis of handicap in Sec. 104.42(a), the regulation delineates, in Sec. 104.42(b), specific

prohibitions concerning the establishment of limitations on admission of handicapped students, the use of tests or selection criteria, and preadmission inquiry. Several changes have been made in this provision.

Section 104.42(b) provides that postsecondary educational institutions may not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department to be available. There are two significant changes in this approach from the July 16 proposed regulation.

First, many commenters expressed concern that Sec. 104.42(b)(2)(ii) could be interpreted to require a "global search" for alternate tests that do not have a disproportionate, adverse impact on handicapped persons. This was not the intent of the provision and, therefore, it has been amended to place the burden on the Assistant Secretary for Civil Rights, rather than on the recipient, to identify alternate tests.

Second, a new paragraph (d), concerning validity studies, has been added. Under the proposed regulation, overall success in an education program, not just first-year grades, was the criterion against which admissions tests were to be validated. This approach has been changed to reflect the comment of professional testing services that use of first year grades would be less disruptive of present practice and that periodic validity studies against overall success in the education program would be sufficient check on the reliability of first-year grades.

Section 104.42(b)(3) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the aptitude and achievement of persons who are not able to take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests that it uses.

Section 104.42(b)(3)(iii) has been amended to require that admissions tests be administered in facilities that, on the whole, are accessible. In this context, "on the whole" means that not all of the facilities need be accessible so long as a sufficient number of facilities are available to handicapped persons.

Revised Sec. 104.42(b)(4) generally prohibits preadmission inquiries as to whether an applicant has a handicap. The considerations that led to this revision are similar to those underlying the comparable revision of Sec. 104.14 on preemployment inquiries. The regulation does, however, allow inquiries to be made, after admission but before enrollment, as to handicaps that may require accommodation.

New paragraph (c) parallels the section on preemployment inquiries and allows postsecondary institutions to inquire about applicants' handicaps before admission, subject to certain safeguards, if the purpose of the inquiry is to take remedial action to correct past discrimination or to take voluntary action to overcome the limited participation of handicapped persons in postsecondary educational institutions.

Proposed Sec. 104.42(c), which would have allowed different admissions criteria in certain cases for handicapped persons, was widely misinterpreted in comments from both handicapped persons and recipients. We have concluded that the section is unnecessary, and it has been deleted.

30. Treatment of students. Section 104.43 contains general provisions prohibiting the discriminatory treatment of qualified handicapped applicants. Paragraph (b) requires recipients to ensure that equal opportunities are provided to its handicapped students in education programs and activities that are not operated by the recipient. The recipient must be satisfied that the outside education program or activity as a whole is nondiscriminatory. For example, a college must ensure that discrimination on the basis of handicap does not occur in connection with teaching assignments of student teachers in elementary or secondary schools not operated by the college. Under the "as a whole" wording, the college could continue to use elementary or secondary school systems that discriminate if, and only if, the college's student teaching program, when viewed in its entirety, offered handicapped student teachers the same range and quality of choice in student teaching assignments afforded nonhandicapped students.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job would be available in the area in question for a person with that handicap.

New paragraph (d) requires postsecondary institutions to operate their programs and activities so that handicapped students are provided services in the most integrated setting appropriate. Thus, if a college had several elementary physics classes and had moved one such class to the first floor of the science building to accommodate students in wheelchairs, it would be a violation of this paragraph for the college to concentrate handicapped students with no mobility impairments in the same class.

31. Academic adjustments. Paragraph (a) of Sec. 104.44 requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of handicap. This requirement, like its predecessor in the proposed regulation, does not obligate an institution to waive course or other academic requirements. But such institutions must accommodate those requirements to the needs of individual handicapped students. For

example, an institution might permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation or music history course for a required course in music appreciation or could modify the manner in which the music appreciation course is conducted for the deaf student. It should be stressed that academic requirements that can be demonstrated by the recipient to be essential to its program of instruction or to particular degrees need not be changed.

Paragraph (b) provides that postsecondary institutions may not impose rules that have the effect of limiting the participation of handicapped students in the education program. Such rules include prohibition of tape recorders or braille in classrooms and dog guides in campus buildings. Several recipients expressed concern about allowing students to tape record lectures because the professor may later want to copyright the lectures. This problem may be solved by requiring students to sign agreements that they will not release the tape recording or transcription or otherwise hinder the professor's ability to obtain a copyright.

Paragraph (c) of this section, concerning the administration of course examinations to students with impaired sensory, manual, or speaking skills, parallels the regulation's provisions on admissions testing (Sec. 104.42(b)) and will be similarly interpreted.

Under Sec. 104.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision.

The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the methods by which the aids will be supplied. For example, some universities have used students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape texts for handicapped students free of charge in order to reduce the number of readers needed for visually impaired students.

As long as no handicapped person is excluded from a program because of the lack of an appropriate aid, the recipient need not have all such aids on hand at all times. Thus, readers need not be available in the recipient's library at all times so long as the schedule of times when a reader is available is established, is adhered to, and is sufficient. Of course, recipients are not required to maintain a complete braille library.

32. Housing. Section 104.45(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide it to other students and in a convenient, accessible, and comparable manner. Commenters, particularly blind persons pointed out that some handicapped persons can live in any college housing and need not wait to the end of the transition period in subpart C to be offered the same variety and scope of housing accommodations given to nonhandicapped persons. The Department concurs with this position and will interpret this section accordingly.

A number of colleges and universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assists in making off-campus housing available to its students, it should develop and implement procedures to assure itself that off-campus housing, as a whole, is available to handicapped students. Since postsecondary institutions are presently required to assure themselves that off-campus housing is provided in a manner that does not discriminate on the basis of sex (Sec. 106.32 of the title IX regulation), they may use the procedures developed under title IX in order to comply with Sec. 104.45(b). It should be emphasized that not every off-campus living accommodation need be made accessible to handicapped persons.

33. Health and insurance. A proposed section, providing that recipients may not discriminate on the basis of handicap in the provision of health related services, has been deleted as duplicative of the general provisions of Sec. 104.43. This deletion represents no change in the obligation of recipients to provide nondiscriminatory health and insurance plans. The Department will continue to require that nondiscriminatory health services be provided to handicapped students. Recipients are not required, however, to provide specialized services and aids to handicapped persons in health programs. If, for example, a college infirmary treats only simple disorders such as cuts, bruises, and colds, its obligation to handicapped persons is to treat such disorders for them.

34. Financial assistance. Section 104.46(a), prohibiting discrimination in providing financial assistance, remains substantively the same. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the

assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. Awards that are made under wills, trusts, or similar legal instruments in a discriminatory manner are permissible, but only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

It will not be considered discriminatory to deny, on the basis of handicap, an athletic scholarship to a handicapped person if the handicap renders the person unable to qualify for the award. For example, a student who has a neurological disorder might be denied a varsity football scholarship on the basis of his inability to play football, but a deaf person could not, on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied a scholarship on the basis of comparative diving ability.

Commenters on Sec. 104.46(b), which applies to assistance in obtaining outside employment for students, expressed similar concerns to those raised under Sec. 104.43(b), concerning cooperative programs. This paragraph has been changed in the same manner as Sec. 104.43(b) to include the "as a whole" concept and will be interpreted in the same manner as Sec. 104.43(b).

35. Nonacademic services. Section 104.47 establishes nondiscrimination standards for physical education and athletics counseling and placement services, and social organizations. This section sets the same standards as does Sec. 104.38 of subpart D, discussed above, and will be interpreted in a similar fashion.

Subpart F--Health, Welfare, and Social Services

Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others.

Although many commented that subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services has been consolidated with the section regulating providers of welfare and social services. Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation.

Several commenters asked whether subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, Sec. 104.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Many comments suggested requiring state social service agencies to take an active role in the enforcement of section 504 with regard to local social service providers. The Department believes that the possibility for federal-state cooperation in the administration and enforcement of section 504 warrants further consideration.

A number of comments also discussed whether section 504 should be read to require payment of compensation to institutionalized handicapped patients who perform services for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor Standards Act (FLSA) that covers the question of compensation

for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. Health, welfare, and other social service providers.

Section 104.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels Secs. 104.4(b)(ii) and 104.43(b). New paragraph (a)(3) requires the provision of effective benefits or services, as defined in Sec. 104.4(b)(2) (i.e., benefits or services which "afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *").

Section 104.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Section 104.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Section 104.52(b) has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tactile devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Section 104.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 104.52(c), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Assistant Secretary may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or service.

37. Treatment of Drug Addicts and Alcoholics. Section 104.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals

and outpatient facilities. Section 104.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. Education of institutionalized persons. The regulation retains Sec. 104.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

Subpart G--Procedures

In Sec. 104.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedural regulation applicable to all of the civil rights statutes and executive orders administered by the Department. [45 FR 30936, May 9, 1980, as amended at 55 FR 52141, Dec. 19, 1990]

Family Educational Rights and Privacy Act Regulations

P.L. 93-390

34 C.F.R., Part 99

Please note ‘New’ FERPA Regulations went into effect on January 8, 2009. The revised Regulations are found immediately following the current FERPA Regulations.

The Family Educational Rights and Privacy Act governs access to your child's school records, provides for confidentiality for you and your child, and establishes procedures for correcting or amending your child's school records.

PART 99 -- FAMILY EDUCATIONAL RIGHTS AND PRIVACY

(AUTHORITY: 20 U.S.C. 1232g unless otherwise noted.)
 The authority citation for part continues to read as follows:
 Authority: 20 U.S.C. 1232g, unless otherwise noted.

Subpart A - General

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in § 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if -

(1) The educational institution provides educational services or instruction, or both, to students; or

(2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section -

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, sub grant, or subcontract; or (2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

NOTE: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act. (Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to:

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Dates of attendance"

(a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g (a)(5)(A))

"Directory information" means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

(Authority: 20 U.S.C. 1232g)(a)(5)(A))

"Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under § 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records"

(a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution. (Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education. (Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law. (Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian. (Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization. (Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to: (Authority: 20 U.S.C 1232g)

- (a) The student's name;
- (b) The name of the student's parent or other family member;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number or student number;
- (e) A list of personal characteristics that would make the student's identity easily traceable; or
- (f) Other information that would make the student's identity easily traceable.

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche. (Authority: 20 U.S.C 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority. (Authority: 20 U.S.C 1232g)

"Student," except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records. (Authority: 20 U.S.C 1232g(a)(6))

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that

specifically revokes these rights. (Authority: 20 U.S.C 1232g)

§ 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) An individual who is or has been a student at an educational institution and who applies for admission at another component of that institution does not have rights under this part with respect to records maintained by that other component, including records maintained in connection with the student's application for admission, unless the student is accepted and attends that other component of the institution. (Authority: 20 U.S.C 1232g(d))

§ 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to -

- (i) Inspect and review the student's education records;
 - (ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
 - (iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and § 99.31 authorize disclosure without consent; and
 - (iv) File with the Department a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the act and this part.
- (3) The notice must include all of the following:
- (i) The procedure for exercising the right to inspect and review education records.
 - (ii) The procedure for requesting amendment of records under § 99.20.
 - (iii) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.
 - (b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English. (Approved by the Office of Management and Budget under control number 1880-0508) (Authority: 20 U.S.C 1232g (e) and (f))

§ 99.8 What provisions apply to records of a law enforcement unit?

(a) (1) "Law enforcement unit" means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to -

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a "law enforcement unit" if it also performs other, non-law enforcement functions for the agency or institution, including investigation of Incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b) (1) Records of law enforcement unit means those records, files, documents, and other materials that are -

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of law enforcement unit does not mean -

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c) (1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of § 99.30, while in possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by any educational agency or institution of its law enforcement unit records.
(Authority: 20 U.S.C 1232g(a)(4)(B)(ii))

Subpart B - What Are the Rights of Inspection and Review of Education Records?

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to -

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

(c) The educational agency or institution, or SEA or its component, shall respond to reasonable requests for explanations and interpretations of the records.

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall -

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and re-view the requested records.

(e) The educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in § 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C 1232g(a)(1) (A) and (B))

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C 1232g(a)(1)?)

§ 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are:

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if:

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's:

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition

(c) (1) A waiver under paragraph (b)(3)(i) of this section is valid only if:

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall:

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3) (i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing. (Authority: 20 U.S.C 1232g(a)(1) (A), (B), (C), and (D))

Subpart C - What Are the Procedures for Amending Education Records?

§ 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21. (Authority: 20 U.S.C 1232g(a)(2))

§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.

(b) (1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall:

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates. (Authority: 20 U.S.C 1232g(a)(2))

§ 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by § 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C 1232g(a)(2))

Subpart D - May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

§ 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in § 99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C 1232g (b)(1) and (b)(2)(A))

§99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally

identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of § 99.35, to authorized representatives of -

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

(4) (i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution. (Authority: 20 U.S.C 1232g(b)(1)(D))

(5) (i) The disclosure is to State and local officials or authorities to whom this information is specifically -

(A) Allowed to be reported or disclosed pursuant to a State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to a State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

(ii) Paragraph (a)(5)(1) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6) (i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes

for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents, as defined in § 99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

(9) (i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with -

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii) (A) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

(B) If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in § 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in § 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure, subject to the requirements in § 99.39, is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense. The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.

(14) (i) The disclosure, subject to the requirements in § 99.39, is in connection with a disciplinary proceeding at an institution of postsecondary education. The institution must not disclose the final results of the disciplinary proceeding unless it determines that -

(A) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(B) With respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

(ii) The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student.

(iii) This section applies only to disciplinary proceedings in which the final results were reached on or after October 7, 1998.

(15) (i) The disclosure is to a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if -

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

(ii) Paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

(Authority: 20 U.S.C 1232g(a)(5)(A), (b)(1), (b)(2)(B), (b)(6), (h) and (l))

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a) (1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under § 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in § 99.31(a)(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under § 99.31 (a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C 1232g(b)(1) and (b)(4)(A))

§ 99.33 What limitations apply to the redisclosure of information?

(a) (1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of § 99.31; and

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made to parents of dependent students under § 99.31(a)(8), to disclosures made pursuant to court orders, lawfully issued subpoenas, or litigation under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), to disclosures made to a parent or student under § 99.31(a)(12), to disclosures made in connection with a disciplinary proceeding under § 99.31(a)(14), or to disclosures made to parents under § 99.31(a)(15).

(d) Except for disclosures under § 99.31(a)(9), (11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of § 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C 1232g(b)(4)(B))

§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31 (a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under § 99.7 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll:

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance at another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section. (Authority: 20 U.S.C 1232g(b)(1)(B))

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law. (Authority: 20 U.S.C 1232g(b)(3))

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in the Act or this part shall prevent an educational agency or institution from -

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed. (Authority: 20 U.S.C 1232g (b)(1)(l) and (h))

§ 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section. (Authority: 20 U.S.C 1232g (a)(5) (A) and (B))

§ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student. (Authority: 20 U.S.C 1232g((b)(1)(J))

§ 99.39 What definitions apply to the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses?

As used in this part:

"Alleged perpetrator of a crime of violence" is a student who is alleged to have committed acts that would, if proven, constitute any of the following offenses or attempts to commit the following offenses that are defined in appendix A to this part:

- Arson
- Assault offenses
- Burglary
- Criminal homicide - manslaughter by negligence
- Criminal homicide - murder and nonnegligent manslaughter
- Destruction/damage/vandalism of property
- Kidnapping/abduction
- Robbery
- Forcible sex offenses.

"Alleged perpetrator of a nonforcible sex offense" means a student who is alleged to have committed acts that, if proven, would constitute statutory rape or incest. These offenses are defined in appendix A to this part.

"Final results" means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. The disclosure of final results must include only the name of the student, the violation committed, and any sanction imposed by the institution against the

<p>student.</p>	<p>(Authority: 20 U.S.C 1232g(f))</p>
<p>"Sanction imposed" means a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.</p>	<p>§ 99.65 What is the content of the notice of complaint issued by the Office?</p>
<p>"Violation committed" means the institutional rules or code sections that were violated and any essential findings supporting the institution's conclusion that the violation was committed. Authority: 20 U.S.C 1232g (b)(6))</p>	<p>(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under § 99.64(b). The notice to the educational agency or institution -</p>
<p>Subpart E - What Are the Enforcement Procedures?</p>	<p>(1) Includes the substance of the alleged violation; and</p>
<p>§ 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?</p>	<p>(2) Asks the agency or institution to submit a written response to the complaint.</p>
<p>(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.</p>	<p>(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 99.64. (Authority: 20 U.S.C 1232g(f))</p>
<p>(b) The Secretary designates the Office to:</p>	<p>§ 99.66 What are the responsibilities of the Office in the enforcement process?</p>
<p>(1) Investigate, process, and review complaints and violations under the Act and this part; and</p>	<p>(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.</p>
<p>(2) Provide technical assistance to ensure compliance with the Act and this part.</p>	<p>(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.</p>
<p>(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act. (Authority: 20 U.S.C 1232g (f) and (g), 1234)</p>	<p>(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:</p>
<p>§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?</p>	<p>(1) Includes a statement of the specific steps that the agency or institution must take to comply; and</p>
<p>If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law. (Authority: 20 U.S.C 1232g (f))</p>	<p>(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily. (Authority: 20 U.S.C 1232g(f))</p>
<p>§ 99.62 What information must an educational agency or institution submit to the Office?</p>	<p>§ 99.67 How does the Secretary enforce decisions?</p>
<p>The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part. (Authority: 20 U.S.C 1232g (f) and (g))</p>	<p>(a) If the educational agency or institution does not comply during the period of time set under §99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act</p>
<p>§ 99.63 Where are complaints filed?</p>	<p>(1) Withhold further payments under any applicable program;</p>
<p>A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-4605. (Authority: 20 U.S.C 1232g (g))</p>	<p>(2) Issue a complaint to compel compliance through a cease-and-desist order; or</p> <p>(3) Terminate eligibility to receive funding under any applicable program.</p>
<p>§ 99.64 What is the complaint procedure?</p>	<p>(b) If, after an investigation under § 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.</p>
<p>(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.</p>	<p>NOTE: 34 CFR part 78 contains the regulations of the Education Appeal Board. (Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)</p>
<p>(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.</p>	<p>Appendix A to Part 99 – Crimes of Violence Definitions</p>
<p>(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.</p>	<p>Arson--Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.</p>
<p>(d) The Office may extend the time limit in this section for good cause shown.</p>	

Assault Offenses--An unlawful attack by one person upon another.
(NOTE: By definition there can be no "attempted" assaults, only "completed" assaults.)

(a) Aggravated Assault. An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious injury if the crime were successfully completed.)

(b) Simple Assault. An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

(c) Intimidation. To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words or other conduct, or both, but without displaying a weapon or subjecting the victim to actual physical attack.
(NOTE: This offense includes stalking.)

Burglary--The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Criminal Homicide - Manslaughter by Negligence--The killing of another person through gross negligence.

Criminal Homicide - Murder and Nonnegligent Manslaughter--The willful (nonnegligent) killing of one human being by another.

Destruction/Damage/Vandalism of Property--To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

Kidnapping/Abduction--The unlawful seizure, transportation, or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parent(s) or legal guardian.

(NOTE: Kidnapping/Abduction includes hostage taking.)

Robbery--The taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear.

(NOTE: Carjackings are robbery offenses where a motor vehicle is taken through force or threat of force.)

Sex Offenses, Forcible--Any sexual act directed against another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent.

(a) Forcible Rape (Except "Statutory Rape"). The carnal knowledge of a person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity (or because of his or her youth).

(b) Forcible Sodomy. Oral or anal sexual intercourse with another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(c) Sexual Assault With An Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(NOTE: An "object" or "instrument" is anything used by the offender other than the offender's genitalia. Examples are a finger, bottle, handgun, stick, etc..)

(d) Forcible Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.
(NOTE: Forcible Fondling includes "Indecent Liberties" and "Child Molesting.")

Nonforcible Sex Offenses (Except "Prostitution Offenses")--Unlawful, nonforcible sexual intercourse.

(a) Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(b) Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.
(Authority: 20 U.S.C 1232g(b)(6) and 18 U.S.C 16)

[Federal Register: December 9, 2008 (Volume 73, Number 237)] [Rules and Regulations] [Page 74805-74855]
 From the Federal Register Online via GPO Access
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**34 CFR Part 99
 Family Educational Rights and Privacy; Final Rule**

DEPARTMENT OF EDUCATION

SUMMARY: The Secretary amends our regulations implementing the Family Educational Rights and Privacy Act (FERPA), which is section 444 of the General Education Provisions Act. These amendments are needed to implement a provision of the USA Patriot Act and the Campus Sex Crimes Prevention Act, which added new exceptions permitting the disclosure of personally identifiable information from education records without consent. The amendments also implement two U.S. Supreme Court decisions interpreting FERPA, and make necessary changes identified as a result of the Department's experience administering FERPA and the current regulations. These changes clarify permissible disclosures to parents of eligible students and conditions that apply to disclosures in health and safety emergencies; clarify permissible disclosures of student identifiers as directory information; allow disclosures to contractors and other outside parties in connection with the outsourcing of institutional services and functions; revise the definitions of attendance, disclosure, education records, personally identifiable information, and other key terms; clarify permissible redisclosures by State and Federal officials; and update investigation and enforcement provisions.

DATES: These regulations are effective January 8, 2009.

FOR FURTHER INFORMATION CONTACT: Frances Moran, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W243, Washington, DC 20202-8250. Telephone: (202) 260-3887.

SUPPLEMENTARY INFORMATION:

On March 24, 2008, the U.S. Department of Education (the Department or we) published a notice of proposed rulemaking (NPRM) in the Federal Register (73 FR 15574). In the preamble to the NPRM, the Secretary discussed the major changes proposed in that document that are necessary to implement statutory changes made to FERPA, to implement two U.S. Supreme Court decisions, to respond to changes in information technology, and to address other issues identified through the Department's experience in administering FERPA.

We believe that the regulatory changes adopted in these final regulations provide clarification on many important issues that have arisen over time with regard to how FERPA affects decisions that school officials have to make on an everyday basis. Educational agencies and institutions face considerable challenges, especially with regard to maintaining safe campuses, protecting personally identifiable information in students' education records, and responding to requests for data on student progress. These final regulations, as well as the discussion on various provisions in the preamble, will assist school officials in addressing these challenges in a manner that complies with FERPA and protects the privacy of students' education records.

Notice of Proposed Rulemaking

In the NPRM, we proposed regulations to implement section 507 of the USA Patriot Act (Pub. L. 107-56), enacted October 26, 2001, and the Campus Sex Crimes Prevention Act, section 1601(d) of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386), enacted October 28, 2000. Other major changes proposed in the NPRM included the following:

Amending Sec. 99.5 to clarify the conditions under which an educational agency or institution may disclose personally

identifiable information from an eligible student's education records to a parent without the prior written consent of the eligible student; Amending Sec. 99.31(a)(1) to authorize the disclosure of education records without consent to contractors, consultants, volunteers, and other outside parties to whom an educational agency or institution has outsourced institutional services or functions;

Amending Sec. 99.31(a)(1) to ensure that teachers and other school officials only gain access to education records in which they have legitimate educational interests;

Amending Sec. 99.31(a)(2) to permit educational agencies and institutions to disclose education records, without consent, to another institution even after the student has enrolled or transferred so long as the disclosure is for purposes related to the student's enrollment or transfer;

Amending Sec. 99.31(a)(6) to require that an educational agency or institution may disclose personally identifiable information under this section only if it enters into a written agreement with the organization specifying the purposes of the study and the use and destruction of the data;

Amending Sec. 99.31 to include a new subsection to provide standards for the release of information from education records that has been de-identified;

Amending Sec. 99.35 to permit State and local educational authorities and Federal officials listed in Sec. 99.31(a)(3) to make further disclosures of personally identifiable information from education records on behalf of the educational agency or institution; and

Amending Sec. 99.36 to remove the language requiring strict construction of this exception and add a provision stating that if an educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individual, it may disclose the information to any person, including parents, whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Significant Changes From the NPRM

These final regulations contain several significant changes from the NPRM as follows: Amending the definition of personally identifiable information in Sec. 99.3 to provide a definition of biometric record; Removing the proposed definition of State auditor in Sec. 99.3 and provisions in Sec. 99.35(a)(3) related to State auditors and audits;

Revising Sec. 99.31(a)(6) to clarify the specific types of information that must be contained in the written agreement between an educational agency or institution and an organization conducting a study for the agency or institution;

Removing the statement from Sec. 99.31(a)(16) that FERPA does not require or encourage agencies or institutions to collect or maintain information concerning registered sex offenders;

Requiring a State or local educational authority or Federal official or agency that rediscloses personally identifiable information from education records to record that disclosure if the educational agency or institution does not do so under Sec. 99.32(b); and

Revising Sec. 99.32(b) to require an educational agency or institution that makes a disclosure in a health or safety emergency to record information concerning the circumstances of the emergency. These changes are explained in greater detail in the following Analysis of Comments and Changes.

For the reasons discussed in the preamble, the Secretary amends part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.2 is amended by revising the note following the authority citation to read as follows:

Sec. 99.2 What is the purpose of these regulations?

Note to Sec. 99.2: 34 CFR 300.610 through 300.626 contain requirements regarding the confidentiality of information relating to children with disabilities who receive evaluations, services or other benefits under Part B of the Individuals with Disabilities Education Act (IDEA). 34 CFR 303.402 and 303.460 identify the confidentiality of information requirements regarding children and infants and toddlers with disabilities and their families who receive evaluations, services, or other benefits under Part C of IDEA. 34 CFR 300.610 through 300.627 contain the confidentiality of information requirements that apply to personally identifiable data, information, and records collected or maintained pursuant to Part B of the IDEA.

3. Section 99.3 is amended by:

- A. Adding, in alphabetical order, a definition of Biometric record.
- B. Revising the definitions of Attendance, Directory information, Disclosure, and Personally identifiable information.
- C. In the definition of Education records, revising paragraph (b)(5) and adding a new paragraph (b)(6).

These additions and revisions read as follows:

Sec. 99.3 What definitions apply to these regulations?

Attendance includes, but is not limited to--

- (a) Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and
- (b) The period during which a person is working under a work-study program. (Authority: 20 U.S.C. 1232g)

Biometric record, as used in the definition of personally identifiable information, means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting. (Authority: 20 U.S.C. 1232g)

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

(a) Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

(b) Directory information does not include a student's--

- (1) Social security number; or
- (2) Student identification (ID) number, except as provided in paragraph (c) of this section.

(c) Directory information includes a student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or

electronic means, to any party except the party identified as the party that provided or created the record.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2))

Education Records

(b) (5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.

(6) Grades on peer-graded papers before they are collected and recorded by a teacher.

Personally Identifiable Information

The term includes, but is not limited to--

- (a) The student's name;
 - (b) The name of the student's parent or other family members;
 - (c) The address of the student or student's family;
 - (d) A personal identifier, such as the student's social security number, student number, or biometric record;
 - (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
 - (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
 - (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.
- (Authority: 20 U.S.C. 1232g)

4. Section 99.5 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

Sec. 99.5 What are the rights of students?

(a)(1) (2) Nothing in this section prevents an educational agency or institution from disclosing education records, or personally identifiable information from education records, to a parent without the prior written consent of an eligible student if the disclosure meets the conditions in Sec. 99.31(a)(8), Sec. 99.31(a)(10), Sec. 99.31(a)(15), or any other provision in Sec. 99.31(a).

5. Section 99.31 is amended by:

- A. Redesignating paragraph (a)(1) as paragraph (a)(1)(i)(A) and adding new paragraphs (a)(1)(i)(B) and (a)(1)(ii).
- B. Revising paragraph (a)(2).
- C. Redesignating paragraphs (a)(6)(iii) and (a)(6)(iv) as paragraphs (a)(6)(iv) and (a)(6)(v), respectively.
- D. Revising paragraph (a)(6)(ii).
- E. Adding a new paragraph (a)(6)(iii).
- F. In paragraph (a)(9)(ii)(A), removing the word "or" after the punctuation ";".
- G. In paragraph (a)(9)(ii)(B), removing the punctuation "." and adding in its place the word ";or".
- H. Adding paragraph (a)(9)(ii)(C).
- I. Adding paragraph (a)(16).
- J. Revising paragraph (b).
- K. Adding paragraphs (c) and (d).
- L. Revising the authority citation at the end of the section.

The additions and revisions read as follows:

Sec. 99.31 Under what conditions is prior consent not required to disclose information?

- (a) (1)(i)(A)
- (B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party--

(1) Performs an institutional service or function for which the agency or institution would otherwise use employees;

(2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and

(3) Is subject to the requirements of Sec. 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

(ii) An educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement in paragraph (a)(1)(i)(A) of this section.

(2) The disclosure is, subject to the requirements of Sec. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

Note: Section 4155(b) of the No Child Left Behind Act of 2001, 20 U.S.C. 7165(b), requires each State to assure the Secretary of Education that it has a procedure in place to facilitate the transfer of disciplinary records with respect to a suspension or expulsion of a student by a local educational agency to any private or public elementary or secondary school in which the student is subsequently enrolled or seeks, intends, or is instructed to enroll.

(6)(i)(ii) An educational agency or institution may disclose information under paragraph (a)(6)(i) of this section only if--

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information;

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted; and

(C) The educational agency or institution enters into a written agreement with the organization that--

(1) Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;

(2) Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;

(3) Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by anyone other than representatives of the organization with legitimate interests; and

(4) Requires the organization to destroy or return to the educational agency or institution all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be returned or destroyed.

(iii) An educational agency or institution is not required to initiate a study or agree with or endorse the conclusions or results of the study.

(9) (ii)

(C) An ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(16) The disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was provided to the educational agency or institution under 42 U.S.C. 14071 and applicable Federal guidelines.

(b)(1) De-identified records and information. An educational agency or institution, or a party that has received education records or information from education records under this part, may release the records or information without the consent required by Sec.

99.30 after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not

personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.

(2) An educational agency or institution, or a party that has received education records or information from education records under this part, may release de-identified student level data from education records for the purpose of education research by attaching a code to each record that may allow the recipient to match information received from the same source, provided that--

(i) An educational agency or institution or other party that releases de-identified data under paragraph (b)(2) of this section does not disclose any information about how it generates and assigns a record code, or that would allow a recipient to identify a student based on a record code;

(ii) The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and

(iii) The record code is not based on a student's social security number or other personal information.

(c) An educational agency or institution must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the agency or institution discloses personally identifiable information from education records.

(d) Paragraphs (a) and (b) of this section do not require an educational agency or institution or any other party to disclose education records or information from education records to any party.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b), (h), (i), and (j)).

6. Section 99.32 is amended by:

A. Revising paragraph (a)(1).

B. Adding new paragraphs (a)(4) and (a)(5).

C. Redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(1)(i) and (b)(1)(ii) and redesignating paragraph (b), introductory text, as paragraph (b)(1).

D. Revising newly redesignated paragraph (b)(1).

E. Adding a new paragraph (b)(2).

F. Revising paragraph (d)(5).

The additions and revisions read as follows:

Sec. 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student, as well as the names of State and local educational authorities and Federal officials and agencies listed in Sec. 99.31(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent under Sec. 99.33(b).

(4) An educational agency or institution must obtain a copy of the record of further disclosures maintained under paragraph (b)(2) of this section and make it available in response to a parent's or eligible student's request to review the record required under paragraph (a)(1) of this section.

(5) An educational agency or institution must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception in Sec. 99.31(a)(10) and Sec. 99.36:

(i) The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and

(ii) The parties to whom the agency or institution disclosed the information.

(b)(1) Except as provided in paragraph (b)(2) of this section, if an educational agency or institution discloses personally identifiable information from education records with the understanding

authorized under Sec. 99.33(b), the record of the disclosure required under this section must include:

(2)(i) A State or local educational authority or Federal official or agency listed in Sec. 99.31(a)(3) that makes further disclosures of

information from education records under Sec. 99.33(b) must record the names of the additional parties to which it discloses information on behalf of an educational agency or institution and their legitimate interests in the information under Sec. 99.31 if the information was received from:

(A) An educational agency or institution that has not recorded the further disclosures under paragraph (b)(1) of this section; or

(B) Another State or local educational authority or Federal official or agency listed in Sec. 99.31(a)(3).

(ii) A State or local educational authority or Federal official or agency that records further disclosures of information under paragraph (b)(2)(i) of this section may maintain the record by the student's class, school, district, or other appropriate grouping rather than by the name of the student.

(iii) Upon request of an educational agency or institution, a State or local educational authority or Federal official or agency listed in Sec. 99.31(a)(3) that maintains a record of further disclosures under paragraph (b)(2)(i) of this section must provide a copy of the record of further disclosures to the educational agency or institution within a reasonable period of time not to exceed 30 days.

(d) (5) A party seeking or receiving records in accordance with Sec. 99.31(a)(9)(ii)(A) through (C).

7. Section 99.33 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

Sec. 99.33 What limitations apply to the redisclosure of information?

(b)(1) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if--

(i) The disclosures meet the requirements of Sec. 99.31; and

(ii)(A) The educational agency or institution has complied with the requirements of Sec. 99.32(b); or

(B) A State or local educational authority or Federal official or agency listed in Sec. 99.31(a)(3) has complied with the requirements of Sec. 99.32(b)(2).

(2) A party that receives a court order or lawfully issued subpoena and rediscloses personally identifiable information from education records on behalf of an educational agency or institution in response to that order or subpoena under Sec. 99.31(a)(9) must provide the notification required under Sec. 99.31(a)(9)(ii).

(c) Paragraph (a) of this section does not apply to disclosures under Sec. 99.31(a)(8), (9), (11), (12), (14), (15), and (16), and to information that postsecondary institutions are required to disclose under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f) (Clery Act), to the accuser and accused regarding the outcome of any campus disciplinary proceeding brought alleging a sexual offense.

(d) An educational agency or institution must inform a party to whom disclosure is made of the requirements of paragraph (a) of this section except for disclosures made under Sec. 99.31(a)(8), (9), (11), (12), (14), (15), and (16), and to information that postsecondary institutions are required to disclose under the Clery Act to the accuser and accused regarding the outcome of any campus disciplinary proceeding brought alleging a sexual offense.

(e) If this Office determines that a third party outside the educational agency or institution improperly rediscloses personally identifiable information from education records in violation of this section, or fails to provide the notification required under paragraph (b)(2) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

8. Section 99.34 is amended by revising paragraph (a)(1)(ii) to read as follows:

Sec. 99.34 What conditions apply to disclosure of information to other educational agencies and institutions?

(a) (1)

Support & Training for Exceptional Parents, Inc.

(ii) The annual notification of the agency or institution under Sec. 99.7 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer;

9. Section 99.35 is amended by revising paragraphs (a) and (b)(1) to read as follows:

Sec. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a)(1) Authorized representatives of the officials or agencies headed by officials listed in Sec. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs.

(2) Authority for an agency or official listed in Sec. 99.31(a)(3) to conduct an audit, evaluation, or compliance or enforcement activity is not conferred by the Act or this part and must be established under other Federal, State, or local authority.

(b) (1) Be protected in a manner that does not permit personal identification of individuals by anyone other than the officials or agencies headed by officials referred to in paragraph (a) of this section, except that those officials and agencies may make further disclosures of personally identifiable information from education records on behalf of the educational agency or institution in accordance with the requirements of Sec. 99.33(b); and

10. Section 99.36 is amended by revising paragraphs (a) and (c) to read as follows:

Sec. 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

11. Section 99.37 is amended by:

A. Revising paragraph (b).

B. Adding new paragraphs (c) and (d).

The revision and additions read as follows:

Sec. 99.37 What conditions apply to disclosing directory information?

(b) An educational agency or institution may disclose directory information about former students without complying with the notice and opt out conditions in paragraph (a) of this section. However, the agency or institution must continue to honor any valid request to opt

out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt out request.

(c) A parent or eligible student may not use the right under paragraph (a)(2) of this section to opt out of directory information disclosures to prevent an educational agency or institution from

disclosing or requiring a student to disclose the student's name, identifier, or institutional e-mail address in a class in which the student is enrolled.

(d) An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in Sec. 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

12. Section 99.62 is revised to read as follows:

Sec. 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports, information on policies and procedures, annual notifications, training materials, and other information necessary to carry out its enforcement responsibilities under the Act or this part. (Authority: 20 U.S.C. 1232g(f) and (g))

Sec. 99.63 [Amended]

13. Section 99.63 is amended by removing the mail code designation ``4605" before the punctuation ``."

14. Section 99.64 is amended by:

- A. Revising the section heading.
- B. Revising paragraphs (a) and (b).

The revisions read as follows:

Sec. 99.64 What is the investigation procedure?

(a) A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred. A complaint does not have to allege that a violation is based on a policy or practice of the educational agency or institution.

(b) The Office investigates a timely complaint filed by a parent or eligible student, or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to determine whether an educational agency or institution has failed to comply with a provision of the Act or this part. If the Office determines that an educational agency or institution has failed to comply with a provision of the Act or this part, it may also determine whether the failure to comply is based on a policy or practice of the agency or institution.

15. Section 99.65 is revised to read as follows:

Sec. 99.65 What is the content of the notice of investigation issued by the Office?

(a) The Office notifies the complainant, if any, and the educational agency or institution in writing if it initiates an investigation under Sec. 99.64(b). The notice to the educational agency or institution--

- (1) Includes the substance of the allegations against the educational agency or institution; and
- (2) Directs the agency or institution to submit a written response and other relevant information, as set forth in Sec. 99.62, within a specified period of time, including information about its policies and practices regarding education records.

(b) The Office notifies the complainant if it does not initiate an investigation because the complaint fails to meet the requirements of Sec. 99.64.

(Authority: 20 U.S.C. 1232g(g))

16. Section 99.66 is amended by revising paragraphs (a), (b), and the introductory text of paragraph (c) to read as follows:

Sec. 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews a complaint, if any, information submitted by the educational agency or institution, and any other relevant information. The Office may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant, if any, and the educational agency or institution a written notice of its findings and the basis for its findings.

(c) If the Office finds that an educational agency or institution has not complied with a provision of the Act or this part, it may also find that the failure to comply was based on a policy or practice of the agency or institution. A notice of findings issued under paragraph (b) of this section to an educational agency or institution that has not complied with a provision of the Act or this part--

17. Section 99.67 is amended by revising paragraph (a) to read as follows:

Sec. 99.67 How does the Secretary enforce decisions?

(a) If an educational agency or institution does not comply during the period of time set under Sec. 99.66(c), the Secretary may take any legally available enforcement action in accordance with the Act, including, but not limited to, the following enforcement actions available in accordance with part E of the General Education Provisions Act--

Section 2

STATE LAWS, RULES, AND POLICIES

State laws are contained in the Tennessee Code Annotated, referred to as T.C.A. The laws governing education in Tennessee are found in Volume 49 of the T.C.A. The rules and regulations that further define the laws are contained in the State Board of Education Chapter 0520-1-9 Special Education Programs and Services Rules - Part B.

The rules and regulations govern Tennessee's overall education system. It has important provisions for special education. The main points of interest for all students are:

1. Organization of schools

- X Length of school term - not less than 180 days (*TCA 49-6-3004*)
- X Length of school day - the length of time a student is required to be in school is at least 6½ hours.
- X Kindergarten day shall be at least 4 hours per day for programs operating 5 days per week.

2. Admission and Enrollment:

- X A child may enter kindergarten if he/she is no less than 5 years of age on or before August 15. (*TCA 49-6-3001*) for all school years beginning 2014-2015
- X A child entering first grade shall be no less than 6 years of age on or before August 15.
- X A comprehensive screening program prior to first grade.

3. Graduation: “Applicable to students who were Freshmen prior to 2009”

Regular High School Diploma - The high school diploma will be awarded to students who (1) earn the specified 20 units of credit **or** satisfactorily complete an individualized education program, (2) meet gateway examination standards (or competency test until 9/2004), and (3) have satisfactory records of attendance and conduct. (*TN Rule 0520-1-3-.06*)

Gateway Examination Standards: Pass all three Gateway tests -- mathematics (Algebra I), English language arts (English II), and science (Biology).

High School Certificate: - The high school certificate may be awarded to students who have earned the specified 20 units of credit and who have satisfactory records of attendance and conduct, but who have not met competency or gateway examination standards.

Special Education Diploma - The special education diploma will be awarded to students who have satisfactorily completed an individualized education program, and who have satisfactory records of attendance and conduct, but who have not met the competency test or gateway standards.

New Graduation Requirements= Students who will be Freshmen in 2009 will have to meet new requirements which can be found at www.state.tn.us/education

- 4. **Transportation** - Not more than 1 ½ hours each way daily. (*TCA 49-6-2105*)

THE WELDON ACT

The Weldon Act is Tennessee's counterpart to IDEA.

The State Legislature passed a law which was designed to provide, as an integral part of free public education, "special education services sufficient to meet the needs and maximize the capabilities of handicapped children."

Provisions of the Weldon Act include:

Special Education from age 3 through 21 . In the year a student reaches 22 he may stay in school until the end of the school year.

Intellectually gifted children are considered as having a "disability" and are eligible to be served.

Provision for an **eligibility report** at the conclusion of evaluation.

Timelines in Tennessee Special Education

Revised 3/2014

CFR: 71st, No.156 / Monday, August 14, 2006 Volume of the Code of Federal Regulations

TN Rule: TN State Board of Education Rules for Special Education and Services-Rule 0520-01-09

*** Definition of a day**

day = a day is a calendar day unless otherwise indicated as a business day or a school day.

business day = Monday through Friday, except for Federal and State holidays.

school day= any day, including a partial day that children are in attendance for instructional purposes.

If this:	Timeline	Than this:
Referral for initial eligibility/ evaluation for special education and parent's informed consent received. <hr/> Initial IEP meeting held	60 Calendar days* 300.301(c)pg.99 <hr/> 30 Calendar days* from eligibility determination 300.323 (c)	Delivery of special education services, if needed
IEP Team decision to change program without parental consent	14 days TN Rules 0520.01.09-.13 (pg. 207)	Program change takes
Notice of IEP/or proposed Placement/service change	At least 10 days* TN Rule 0520-01-09-..15 (pg. 208)	Program change takes effect unless parents act
Special Education & Related Services	as soon as possible following the meeting 34CFR 300.323 (c)(2) (pg. 99) as soon as possible after completion TN Rule 0520.01.09-.13 (pg. 207)	Program & Services initiated by school
Travel time on buses	not to exceed 1.5 hours each way Regular Education Rule shall not exceed the travel time for other children TCA 49-6-2105 & TN Rule 0520.01.09.05 (3) (pg. 199)	To & From School
The School calls a IEP meeting	10 day notice required before a meeting TN Rule 0520-01-09-.15 (pg. 208)	Change of Placement or amendment to IEP
IEP Team Meeting	at least annually 34CFR 300.324(b)(i) (pg. 99) TN Rule 0520-01-09-.14) (pg. 207-208)	Meet to review or revise IEP

If this:	Timeline	Than this:
Written request by parent for IEP Team Meeting	no later than 10 school days* TN Rule 0520-01-09-.14 (pg. 207-208)	IEP Team meeting held
Individual Assessments of child	if conditions warrant or if child's parents or teacher request a reevaluation, but at least every three years 34CFR 300.303(b)(2) (pg. 93)	Re-evaluation completed Complete retesting in every area is not required. Teams decides
Parents request to review and inspect records	The agency must comply with a request unnecessary delay and before any meeting regarding and IEP, or any hearing pursuant to 300.507, or 300.530-300.532, or resolution session pursuant to 300.510, and in no case more than 45 days after the request has been made. 34CFR300. 613 (a) (pg. 114)	Access to review records
Parents request to amend records	within a reasonable period 34CFR 300.618(b) (pg. 114) within 10 school days of receipt of request TN Rules 0520-01-09-.22 (pg. 211)	Decide to amend record or inform parents of refusal
Administrative Complaint	Any complaint must be investigated and resolved within 60 (calendar) days Complaint is filed 300.152(a) (pg. 77)	Carry out independent investigation Allow additional input
Voluntary Mediation	Scheduled in a timely manner 300.506(b)(5) (pg. 103) 300.506(b)(1)(i) TN Rules 0520-01-09-.17 (pg. 208)	Must be confidential
Due Process Hearing Decision	no later than 45 days* after the written request 34CFR 300.515 (pg. 106) Expiration of 30 calendar day resolution period	Final Decision by hearing officer & copy of decision mailed to each party
Resolution Session Offered by the school	15 days* of receiving due process request 300.510 (pg.104)	Session scheduled with the parent
Manifestation Determination Disagreement / Disagreement regarding placement Expedited Hearing	"Expedited Hearing" 300.532 (a) 20 school days from date hearing requested / 300.532(c)(2) (pg. 110) 10 school days	Hold meeting / Decision

TN State Board of Education Chapter 0520-1-09

Special education programs and services Rules Part B

These Tennessee State Board Rules for special education programs are the state level counterpart to IDEA rules.

TN Specific Information

- State Board for Special Education Chapter 0521-01-09 Revised March 2014 Page 193
- A Guide to Special Education Administrative Complaints in TN Page 216
- Special Education Disability Specific Eligibility Standards Page 289
- Guide to Special Education Administrative Complaint Form Page 319
- Department of Education staff listing Page 361

Federal Information

- Part 303 Early Intervention Program for Infants and Toddlers with Disabilities Page 235

Short-term Objective Rule Change

The state rule change to eliminate the requirement for short-term objectives or benchmarks in all IEPs will take effect on March 31, 2014. On March 31, 2014 and thereafter, short term objectives or benchmarks will only be required in the IEPs of children who take alternate assessments aligned to alternate achievement standards. Should an IEP team wish to add short-term objectives for students outside of our 1 percent population, this option will be available in the system. For additional information, please contact Nathan.Travis@tn.gov.

For additional information & trainings offered by the Department of Education contact:

TN Department of Special Populations
Andrew Johnson Tower, 11th Floor
710 James Robertson Parkway
Nashville, TN 37243
888-212-3162

<https://tn.gov/education/topic/special-education>

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Division of Special Populations

**RULES
OF
STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND SERVICES**

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0520-01-09-.01 GENERAL REGULATIONS. ADOPTION BY REFERENCE.

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety unless otherwise provided herein as the policies and procedures for administration of special education programs and services in the state. The regulations, evaluation procedures and eligibility criteria are available from the Division of Special Education, Tennessee Department of Education, 710 James Robertson Parkway, Nashville, TN 37243, or on the internet by accessing the state department of education's website at www.state.tn.us/education/speced/.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed and new rule filed August 18 1993; effective December 29, 1993. Amendment filed June 21, 1995; effective October 27, 1995. Amendment filed August 7, 1995; effective December 29, 1995. Rule 0520-01-03-.09 removed and new Chapter 0520-01-09 filed per Tennessee State Board of Education letter dated and effective April 29, 1999. Amendment filed June 19, 2001; effective September 2, 2001. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.02 DEFINITIONS.

- (1) "Charter school" means a public charter school as defined at Tenn. Code Ann. § 49-13-104(6).
- (2) "Child with a disability" means, children with disabilities and youth between three (3) and twenty-one (21) years of age, inclusive who have been evaluated in accordance with §§300.304 through 300.311, TCA § 49-10-102 and regulations of the state board of education. Any child with a disability who attains twenty-two (22) years of age subsequent to

(Rule 0520-01-09-.02, continued)

the commencement of a school year continues to be a child with a disability for the remainder of that school year.

- (3) "Child with a disability" means a child with intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf blindness, developmental delay, functional delay and intellectually gifted and who, by reason thereof, needs special education and related services.
- (4) "Autism" means a developmental disability, which significantly affects verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. The term does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disturbance, as defined in this section.

The term of Autism also includes students who have been diagnosed with an Autism Spectrum Disorder such as Autism, Pervasive Developmental Disorder—Not Otherwise Specified (PDD-NOS) or Asperger's Syndrome when the child's educational performance is adversely affected. Additionally, it may also include a diagnosis of a Pervasive Developmental Disorder such as Rett's or Childhood Disintegrative Disorder. Autism may exist concurrently with other areas of disability.

After age three (3), a child could be diagnosed as having Autism if the child manifests the above characteristics. Children with Autism demonstrate the following characteristics prior to age 3:

- (a) Difficulty relating to others or interacting in a socially appropriate manner;
- (b) Absence, disorder, or delay in verbal and/or nonverbal communication; and
- (c) One or more of the following:
1. Insistence on sameness as evidenced by restricted play patterns, repetitive body movements, persistent or unusual preoccupations, and/or resistance to change;
 2. Unusual or inconsistent responses to sensory stimuli.
- (5) "Deaf-Blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs by addressing any one of the impairments. A child with deaf-blindness shall be:
- (a) A child who meets criteria for Deafness/Hearing Impairment and Visual Impairment;
- (b) A child who is diagnosed with a degenerative condition or syndrome which will lead to Deaf-Blindness, and whose present level of functioning is adversely affected by both hearing and vision deficits; or
- (c) A child with severe multiple disabilities due to generalized central nervous system dysfunction, and who exhibits auditory and visual impairments or deficits which are not perceptual in nature.

(Rule 0520-01-09-.02, continued)

- (6) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. The child has:
- (a) An inability to communicate effectively due to Deafness; and/or
 - (b) An inability to perform academically on a level commensurate with the expected level because of Deafness; and/or
 - (c) Delayed speech and/or language development due to Deafness.
- (7) "Developmental Delay" refers to children aged three (3) through nine (9) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical, cognitive, communication, social or emotional, or adaptive development that adversely affects a child's educational performance. Other disability categories shall be used if they are more descriptive of a young child's strengths and needs. Local school systems have the option of using Developmental Delay as a disability category. Initial eligibility as Developmental Delay shall be determined before the child's seventh birthday.
- (8) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree that adversely affects a child's educational performance over an extended period of time (during which time documentation of informal assessments and interventions are occurring):
- (a) Inability to learn which cannot be explained by limited school experience, cultural differences, or intellectual, sensory, or health factors;
 - (b) Inability to build or maintain satisfactory interpersonal relationships with peers and school personnel;
 - (c) Inappropriate types of behavior or feelings when no major or unusual stressors are evident;
 - (d) General pervasive mood of unhappiness or depression;
 - (e) Tendency to develop physical symptoms or fears associated with personal or school problems.

The term may include other mental health diagnoses. The term does not apply to children who are socially maladjusted, unless it is determined that they have an Emotional Disturbance. Social maladjustment includes, but is not limited to, substance abuse related behaviors, gang-related behaviors, oppositional defiant behaviors, and/or conduct behavior problems.

- (9) "Functional Delay" means a continuing significant disability in intellectual functioning and achievement which adversely affects the student's ability to progress in the general school program, but adaptive behavior in the home or community is not significantly impaired and is at or near a level appropriate to the student's chronological age, including:
- (a) Significantly impaired intellectual functioning which is two or more standard deviations below the mean, and difficulties in these areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning;
 - (b) Limited English proficiency;

(Rule 0520-01-09-.02, continued)

- (c) Cultural factors;
 - (d) Medical conditions that impact school performance;
 - (e) Environmental factors;
 - (f) Communication, sensory or motor disabilities;
 - (g) Deficient academic achievement which is at or below the fourth percentile in two or more total or composite scores in the following areas:
 - 1. Basic reading skills;
 - 2. Reading fluency skills;
 - 3. Reading comprehension;
 - 4. Mathematics calculation;
 - 5. Mathematics problem solving;
 - 6. Written expression; or
 - 7. Home or school adaptive behavior scores that fall above the level required for meeting Intellectual disability eligibility standards.
- (10) "Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include Deafness.
- A child shall have one or more of the following characteristics:
- (a) Inability to communicate effectively due to a Hearing Impairment;
 - (b) Inability to perform academically on a level commensurate with the expected level because of a Hearing Impairment;
 - (c) Delayed speech and/or language development due to a Hearing Impairment.
- (11) "Intellectually Gifted" means a child whose intellectual abilities and potential for achievement are so outstanding that the child's educational performance is adversely affected. "Adverse affect" means the general curriculum alone is inadequate to appropriately meet the student's educational needs. Children identified as intellectually gifted are exempted from the discipline procedures at 34 C.F.R. §300.530-537. Children with a dual diagnosis that includes intellectually gifted must be considered as children with a disability and may not be exempted from the discipline procedures at 34 C.F.R. §300.530-537.
- (12) "Intellectual disability" is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.
- (13) "Multiple Disabilities" means concomitant impairments (such as Intellectual disability-Deafness, Intellectual disability-Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one of the impairments. The term does not include Deaf-Blindness.

(Rule 0520-01-09-.02, continued)

- (14) "Orthopedic Impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g. club foot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).
- (15) "Other Health Impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Syndrome that adversely affects a child's educational performance.

A child is "Other Health Impaired" who has chronic or acute health problems that require specially designed instruction due to:

- (a) Impaired organizational or work skills;
 - (b) Inability to manage or complete tasks;
 - (c) Excessive health related absenteeism; or
 - (d) Medications that affect cognitive functioning.
- (16) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affect a child's educational performance. Such term includes conditions such as visual processing (perceptual) disabilities, brain injury that is not caused by an external physical force, dyslexia, and developmental aphasia. Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment, Hearing Impairment, Orthopedic Impairment, Intellectual disability, Emotional Disturbance, limited English proficiency, or environmental or cultural disadvantage.
- (17) "Speech or Language Impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child's educational performance.

Speech or Language Impairment includes demonstration of impairments in the following areas of language, articulation, voice, or fluency.

- (a) Language Impairment – A significant deficiency not consistent with the student's chronological age in one or more of the following areas:
 - 1. A deficiency in receptive language skills to gain information;
 - 2. A deficiency in expressive language skills to communicate information;
 - 3. A deficiency in processing (auditory perception) skills to organize information.
- (b) Articulation Impairment – A significant deficiency in ability to produce sounds in conversational speech not consistent with chronological age.
- (c) Voice Impairment – An excess or significant deficiency in pitch, intensity, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism.

(Rule 0520-01-09-.02, continued)

- (d) Fluency Impairment – Abnormal interruption in the flow of speech by repetitions or prolongations of a sound, syllable, or by avoidance and struggle behaviors.

Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition and/or dialectic differences.

- (18) “Traumatic Brain Injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Traumatic Brain Disorder may include all of the following:

- (a) An insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and
- (b) The insult to the brain induces a partial or total functional disability and results in one or more of the following:
1. Physical impairments such as, but not limited to:
 - (i) Speech, vision, hearing, and other sensory impairments,
 - (ii) Headaches,
 - (iii) Fatigue,
 - (iv) Lack of coordination,
 - (v) Spasticity of muscles,
 - (vi) Paralysis of one or both sides,
 - (vii) Seizure disorder.
 2. Cognitive impairments such as, but not limited to:
 - (i) Attention or concentration,
 - (ii) Ability to initiate, organize, or complete tasks,
 - (iii) Ability to sequence, generalize, or plan,
 - (iv) Flexibility in thinking, reasoning or problem solving,
 - (v) Abstract thinking,
 - (vi) Judgment or perception,
 - (vii) Long-term or short term memory, including confabulation,
 - (viii) Ability to acquire or retain new information,

(Rule 0520-01-09-.02, continued)

- (ix) Ability to process information/processing speed.
- 3. Psychosocial impairments such as, but not limited to:
 - (i) Impaired ability to perceive, evaluate, or use social cues or context appropriately that affect peer or adult relationships,
 - (ii) Impaired ability to cope with over-stimulation environments and low frustration tolerance,
 - (iii) Mood swings or emotional lability,
 - (iv) Impaired ability to establish or maintain self-esteem,
 - (v) Lack of awareness of deficits affecting performance,
 - (vi) Difficulties with emotional adjustment to injury (anxiety, depression, anger, withdrawal, egocentricity, or dependence),
 - (vii) Impaired ability to demonstrate age-appropriate behavior,
 - (viii) Difficulty in relating to others,
 - (ix) Impaired self-control (verbal or physical aggression, impulsivity),
 - (x) Inappropriate sexual behavior or disinhibition,
 - (xi) Restlessness, limited motivation and initiation,
 - (xii) Intensification of pre-existing maladaptive behaviors or disabilities.

The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

- (19) "Visual Impairment," including blindness, means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Visual Impairment includes at least one of the following:

- (a) Visual acuity in the better eye or both eyes with best possible correction:
 - 1. Legal blindness – 20/200 or less at distance and/or near;
 - 2. Low vision – 20/50 or less at distance and/or near.
- (b) Visual field restriction with both eyes:
 - 1. Legal blindness – remaining visual field of 20 degrees or less;
 - 2. Low vision – remaining visual field of 60 degrees or less;
 - 3. Medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually.

(Rule 0520-01-09-.02, continued)

- (c) Other Visual Impairment, not perceptual in nature, resulting from a medically documented condition.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed August 13, 2010; effective January 29, 2011.

0520-01-09-.03 CONSENT.

If a parent revokes consent, the revocation must be in writing and the revocation is not effective until it is received by the local education agency to which consent was granted.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.04 PARENT.

- (1) A foster parent may act as a parent if the biological or adoptive parent's authority to make educational decisions on the child's behalf has been terminated under Tennessee law; and
- (2) The foster parent:
 - (a) Has an ongoing relationship with the child for more than one (1) year in duration;
 - (b) Is willing to make the educational decisions required of parents under the law; and
 - (c) Has no interest that would conflict with the interest of the child.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.05 FREE APPROPRIATE PUBLIC EDUCATION.

- (1) A free appropriate public education (FAPE) shall be available to all children with disabilities, ages three (3) through the school year the student turns twenty-two (22), including those children who have been suspended or expelled from school for more than ten (10) school days in a school year. To meet this obligation each local education agency shall:
 - (a) Identify, locate, and evaluate all children with disabilities;
 - (b) Develop and implement child find activities to ensure that all children – including highly mobile children (migrant and homeless children) and those children who are suspected of being a child with a disability, even though they are advancing from grade to grade – are identified, located and evaluated; and
 - (c) Provide services that address all of a child's identified special education and related services needs, based on the child's unique needs and not on the child's disability.
- (2) Facilities.
 - (a) Facilities that serve children with disabilities must be comparable to facilities that serve children without disabilities.

(Rule 0520-01-09-.05, continued)

- (b) Educational programs and facilities must be accessible where children with physical disabilities and children without disabilities are both in attendance.
 - (c) Entrance to and from the facility must be accessible. If access is not visible at the front of the facility, signs must be present to indicate where parking and access to the facility for children and other individuals with disabilities are available.
 - (3) Transportation. Local education agencies shall provide children with disabilities with special transportation, where necessary.
 - (a) Children with disabilities shall, whenever appropriate, be provided transportation along with children who are not disabled. Adaptations shall be made to meet the needs of children with disabilities rather than separate transportation whenever appropriate.
 - (b) Travel time for children with disabilities shall not exceed the travel time for other children, provided that exceptions may be made on the recommendation of an IEP team.
 - (c) Vehicles used to provide special transportation must meet the requirements established by the state board of education.
 - (d) Operators and attendants of vehicles providing special transportation requirements established by the state board of education shall be given special training regarding the needs and special requirements of children with disabilities, except when parents are transporting children with disabilities. Special attendants shall be provided when an IEP team determines that such services are necessary.
 - (e) It is permissible to contract for special transportation provided that the operators, attendants, and vehicles used by a contractor meet the requirements established by the state board of education, except when parents are transporting children with disabilities.
 - (4) FAPE requirements for children with disabilities in adult prisons.
 - (a) The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:
 - 1. The requirements relating to participation of children with disabilities in general assessments, and
 - 2. The requirements relating to transition planning and transition services with respect to the students whose eligibility under IDEA Part B 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.
 - (b) Modifications of IEP or placement.
 - 1. If a child with disabilities is convicted as an adult under Tennessee law and incarcerated in an adult prison, the IEP team may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
 - 2. The requirements of 34 C.F.R. § 300.320 relating to the definition of an IEP and the general requirements of 34 C.F.R. § 300.114 relating to least restrictive environment do not apply with respect to these modifications.
 - (5) Charter schools. Charter schools must ensure compliance with the IDEA.

(Rule 0520-01-09-.05, continued)

Authority: T.C.A. §§ 49-10-101, 49-10-701, 49-13-105, and 49-13-126. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.06 CHILD FIND.

- (1) Each local education agency shall develop and implement procedures for creating public awareness of special education programs and services. This includes a comprehensive system of child find activities for all children suspected of having a disability in public and private schools and facilities and who are homeless. Any child find activities shall be comparable for children in private schools and facilities.
- (2) A notice must be published or announced in newspapers, other media, or both, with circulation adequate to notify parents of the activities conducted by the local education agency.
- (3) Any child suspected of having a disability may be referred to the local education agency. All referrals shall be in writing to the school principal or director of special education. The local education agency shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be approved by the state department of education.

Authority: T.C.A. §§ 49-10-101, and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.07 PLACEMENTS.

- (1) A homebound placement is instruction provided at home, hospital or related site to children with disabilities who are eligible pursuant to IDEA and state regulations. Instruction provided to children with disabilities in homebound placements shall be provided by qualified personnel, pursuant to IDEA and state regulations.
- (2) Eligibility for Homebound Placements.
 - (a) Eligibility for instruction as a child with a disability pursuant to IDEA and state regulations shall be established prior to implementation of homebound services. Children with medical conditions of a short duration or temporary nature, and not previously certified as eligible pursuant to IDEA and state regulations, shall not be eligible for homebound placements pursuant to this regulation, and special education funds shall not be used to fund homebound placements for such children.
 - (b) The IEP team shall consider a medical homebound placement only upon certification by a licensed doctor of medicine or osteopathy that a child with a disability needs a homebound placement, is expected to be absent from school due to a physical or mental condition for at least (10) consecutive school days and that the child can receive instruction in a homebound placement without endangering the health of personnel providing it.
- (3) Use of Homebound Placement.
 - (a) All homebound placements shall be temporary. Homebound placements shall not exceed thirty (30) school days duration. The IEP shall contain a goal of returning the child to a less restrictive environment within the school year, unless there is a medical

(Rule 0520-01-09-.07, continued)

necessity that requires extended homebound instruction, in which case additional homebound placements of thirty (30) school days or less may be instituted.

- (b) An IEP containing a homebound placement shall be reviewed at intervals of thirty (30) school days by the child's IEP team to ensure appropriateness of the provision of instruction and appropriateness of continuing the homebound placement.
- (c) Where behavioral and/or disciplinary issues cannot be safely addressed in any other educational setting, the IEP team may consider a homebound placement. Such changes in placement may be instituted strictly on an emergency basis and for a temporary period of time not to exceed thirty (30) school days to determine how to best address the child's needs. The IEP team must document that a homebound placement is necessary, temporary and consistent with requirements for the provision of a free appropriate public education.
- (d) The frequency and duration of instruction necessary to provide a free appropriate public education (FAPE) during a homebound placement will be determined by the IEP team.
- (e) IDEA Part B funds may be expended only for instruction in homebound placements of children with disabilities who are eligible for special education pursuant to IDEA and state regulations.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.08 STATE ADVISORY PANEL.

The state has established an advisory council on the education of children with disabilities for special education as provided by Tenn. Code Ann. § 49-10-105. The Governor appoints advisory council members.

Authority: T.C.A. §§ 49-10-105. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.09 LOCAL EDUCATION AGENCY ELIGIBILITY.

- (1) Each local education agency shall demonstrate to the satisfaction of the state department of education that it does the following:
 - (a) Identifies, locates, and evaluates all children who are suspected of having disabilities, including children attending non-public schools, regardless of the severity of their disabilities, and who may be in need of special education and related services. These services may be provided to children with disabilities under early transition agreements who are not yet three (3) years of age. If the child's birthday falls during the summer months, the IEP team will determine when special education services begin but no later than the beginning of the next school year.
 - (b) Makes available a free appropriate public education to all children with disabilities, ages three (3) through the school year in which they reach age twenty-two (22), including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year.

(Rule 0520-01-09-.09, continued)

- (c) Includes children with disabilities in state and district-wide assessments, with appropriate accommodations and modifications where necessary, or in alternate assessments. The type of assessment must be determined by the IEP team consistent with the state guidelines for participation of students with disabilities in state/district wide assessments.
- (d) Ensures that children with disabilities participating in early intervention programs shall experience a smooth and effective transition to preschool programs and, that by the third (3rd) birthday, an IEP has been developed and implemented for the child. The local education agency shall participate in the transition planning meeting not less than ninety (90) days prior to the third (3rd) birthday of a child who may be a child with a disability.
- (e) Ensures that children with disabilities who are enrolled in private schools or facilities by the local education agency are provided special education and related services, in accordance with the IEP, at no cost to them or to their parents.
- (f) Ensures that children with disabilities who are enrolled in private schools by their parents have an opportunity for special education services and that the amount spent to provide those services is a proportionate amount of the federal funds made available to the district. No unilaterally placed private school child with a disability has an individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (g) Establishes and has in effect policies, procedures, and programs that are consistent with 0520-01-09 for implementing the provision of special education and related services. Ensures compliance with applicable state and federal regulations including, but not limited to:
 - 1. Free appropriate public education;
 - 2. Child Find procedures;
 - 3. Evaluation/reevaluation and determination of eligibility procedures;
 - 4. IEP/IFSP procedures;
 - 5. Confidentiality procedures;
 - 6. Private school services procedures;
 - 7. Goals for performance of children with disabilities through school improvement planning;
 - 8. Inclusion of children with disabilities in state and district-wide assessment programs with appropriate accommodations and modifications and the reporting of assessment data;
 - 9. Interagency agreements to ensure FAPE for all children;
 - 10. Maintenance of effort.
- (h) Supplements the provision of special education funds but does not commingle or supplant the provision of special education funding.

(Rule 0520-01-09-.09, continued)

- (i) Annually publicizes information regarding its special education programs and services and child find activities.
- (j) Ensures that special education professionals and paraprofessionals are provided professional development collaboratively with general education personnel.
- (k) Ensures that school administrators have professional development, training and the resources to establish challenging expectations and provide access to the general education curriculum in the regular classroom to the maximum extent possible for all children including those eligible for special education.
- (l) Submits to the state department of education a comprehensive application annually on or before July 1 with program narratives and assurances for the provision of special education and related services including, but not limited to, the following:
 - 1. A census of children with disabilities showing the total number and distribution of children within its jurisdiction who are provided special transportation;
 - 2. An inventory of the personnel who provide instruction and other services to children with disabilities and a listing of facilities;
 - 3. A description of the extent to which state department of education standards governing special education services will be met including a goal of providing full educational opportunity to all children with disabilities;
 - 4. An assurance that IDEA funds will be used to supplement and not to supplant state and local funds and will be expended only for the excess cost of providing special education and related services to children with disabilities;
 - 5. An assurance that to the maximum extent appropriate, children with disabilities, including children in public and private facilities, are educated with children without disabilities. Special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services cannot be achieved satisfactorily;
 - 6. An assurance that a continuum of alternative placements and related services are available to meet the needs of children with disabilities;
 - 7. A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services is provided; and
 - 8. An assurance that a free appropriate public education is available to all children with disabilities from age three (3) through the school year in which the student reaches twenty-two (22) years of age, including children who have been suspended or expelled for more than ten (10) school days in a school year.
- (2) Specific funding requirements:
 - (a) For the purpose of entitlement to academic program funds from the Basic Education Program (BEP), children with disabilities shall be counted in the same manner as children without disabilities. To supplement the academic program funds earned and paid from the BEP, special education funds from the BEP shall be paid to local education agencies for the purpose of providing special education and related services to children with disabilities.

(Rule 0520-01-09-.09, continued)

- (b) Special education funds from the BEP shall be allocated to each local education agency in an amount to be determined by applying the prescribed formula to the number of children with disabilities identified and served during the preceding school year.
- (c) The local education agency complies with maintenance of effort if it budgets at least the same total or per-capita amount from the combination of state and local funds as the local education agency spent for that purpose from the prior year. The local education agency may reduce the level of expenditures below the level for the proceeding year if the reduction is attributable to the following:
 - 1. 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;
 - 2. A decrease in the enrollment of children with disabilities;
 - 3. 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 state department of education, because the child:
 - (i) Has left the jurisdiction of the agency;
 - (ii) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (iii) No longer needs the program of special education.
 - 4. The termination of costly expenditures for long-term high cost purchases.
- (d) Each local education agency shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The division shall notify each local education agency of its allocation of federal funds annually.
- (e) Two or more local education agencies may submit a consolidated annual comprehensive plan, with the approval of the division, under the conditions of federal law:
 - 1. Those participating in a consolidated plan will be jointly responsible for implementing a free appropriate public education program in the participating local education agency; and
 - 2. The consolidated plan must designate one of the local education agencies as the fiscal agent for the plan.
- (f) Local education agencies shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the local education agency must not be commingled with state funds.
- (g) Local education agencies must maintain records that demonstrate compliance with the excess cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the application.

(Rule 0520-01-09-.09, continued)

- (h) For children with disabilities unilaterally placed in private schools, the same proportionate amount that is spent on public school children with disabilities from IDEA and preschool grants is allocated for the number of private school children with disabilities within the local education agency's jurisdiction. The preceding December 1 census count is used in calculating private and public school ratios to determine the proportionate amount.
- (3) The curriculum adopted by the state board of education shall serve as the basis for developing educational programs. Each local education agency must provide a variety of services, interventions and programs to meet the educational needs of all students including the needs of children with disabilities.
- (a) Alternative programs must be provided when appropriate educational goals cannot be met in the general education program.
 - (b) School improvement plans must include a continuum of educational services, programs and interventions to address the educational needs of all students, including the needs of children with disabilities.
 - (c) As a component of child find activities, general education programs within each local education agency have specific responsibilities that include the following:
 - 1. Systematic screening of all children in specific grade levels residing within its jurisdiction;
 - 2. Reviewing the educational performance of children who are high risk;
 - 3. Providing interventions and documentation prior to referral for special education evaluation. These intervention strategies should be implemented in the general education program.
 - (d) The state department of education shall make available to the public reports on assessments of all children with the same frequency and in the same detail as it reports on the assessment of children without disabilities to include:
 - 1. The number of children with disabilities participating in:
 - (i) Regular assessments; and
 - (ii) Alternate assessments.
 - 2. Reports to the public must include:
 - (i) The performance results of children with disabilities if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children;
 - (ii) Aggregated data that include the performance of children with disabilities together with all other children; and
 - (iii) Disaggregated data on the performance of children with disabilities.
- (4) Each local education agency shall maintain an accurate record of all children with disabilities ages three (3) through the school year a student turns twenty-two (22) years of age who are residing within its jurisdiction. The census shall be taken on December 1 of each year and at other times as required.

(Rule 0520-01-09-.09, continued)

- (5) Local education agencies shall evaluate their special education programs and related services according to evaluative criteria issued by federal and state authorities.
- (6) Monitoring.
 - (a) Local education agencies, state agencies and private schools shall be monitored on a periodic basis by the division to determine the extent to which special education and related services are being implemented in the least restrictive environment and to assure compliance with applicable laws and regulations.
 - (b) The state department of education shall provide technical assistance in self-evaluation, program planning and implementation of any necessary corrective action plans.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.10 REPEALED.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed August 13, 2010 to be effective January 29, 2011; rule was withdrawn by the State Board of Education on October 15, 2010. Repeal filed August 29, 2013; effective January 29, 2014.

0520-01-09-.11 EVALUATION PROCEDURES.

Guidelines and standards will be established for determining program eligibility criteria, evaluation procedures, and evaluation participants. Revisions to the eligibility criteria must be recommended by a task force within the disability category. Upon recommendations from the Advisory Council for the Education of Students with Disabilities, the assistant commissioner for special education will submit the standards to the State Board of Education for final review and approval.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.12 DEFINITION OF INDIVIDUALIZED EDUCATION PROGRAM (IEP).

Prior to the 9th grade or age fourteen (14) (or younger, if determined appropriate by the IEP team), all students will develop an initial four (4)-year plan of focused and purposeful high school study. The plan will be reviewed annually and amended as necessary and will connect the student's goals for high school including, the courses and/or training and/or skills necessary to meet their potential after high school. This required plan will include identifying possible transition service needs of the student under the applicable components of the student's IEP. This plan may be developed through a process in general education but a copy must be in the students IEP after approval by the IEP team.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed October 23, 2013; effective March 31, 2014.

0520-01-09-.13 WHEN IEPS MUST BE IN EFFECT.

The IEP must be implemented as soon as possible after completion. If agreement was not reached, no change in the child's IEP or eligibility status will be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.14 REVIEW AND REVISION OF THE IEP.

Upon written request of any member, the IEP team shall be convened within ten (10) school days to review or revise the IEP or consider the child's placement.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.15 PARENT PARTICIPATION.

The local education agency must notify the parents of a child with a disability at least ten (10) days before an IEP meeting to ensure that a parent will have an opportunity to attend. A meeting conducted pursuant to 34 C.F.R. §300.530(e) may be conducted on at least twenty-four (24) hours notice to the parents.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.16 PRIOR NOTICE BY LOCAL EDUCATION AGENCY.

Written notice must be given to the parents of a child suspected to have a disability or a child with a disability at least ten (10) school days prior to a local education agency either proposing or refusing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.17 MEDIATION.

All special education mediations shall be conducted by mediators listed by the Alternative Dispute Resolution Commission as general civil or family mediators pursuant to Tennessee Supreme Court Rule 31 and employed by or contracted by the secretary of state. The administrative office of the courts shall provide legal training in special education law to the mediators who conduct special education mediations. All parties shall participate in mediation in good faith.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.18 IMPARTIAL DUE PROCESS HEARING.

- (1) Special education due process cases shall be heard by administrative law judges employed by the secretary of state. Administrative law judges shall have jurisdiction to hear complaints

(Rule 0520-01-09-.18, continued)

arising under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, et seq., as from time to time amended, and Rules of the State Board of Education. The administrative office of the courts shall provide legal training in special education law to the administrative law judges assigned to hear special education due process cases sufficient to comport with the requirements of 20 U.S.C. § 1415, as from time to time amended.

- (2) When a hearing is requested, the director of schools shall immediately contact the Division of Special Education.
- (3) The local education agency shall be responsible for providing an appropriate meeting place, a stenographic record of the hearing and a typed transcript of the hearing proceedings, and shall bear the administrative costs of the hearing, with the exception of the services of the hearing officer.
- (4) Expenses for the services of a court reporter, the original copy of the transcript for the hearing officer and one copy for the parents will be reimbursed upon submission of appropriate documentation to the Division of Special Education.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-19 CIVIL ACTION.

Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with Tenn. Code Ann. § 4-5-322 and Tenn. Code Ann. § 49-10-601 or in a district court of the United States without regard to the amount in controversy.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-20 SURROGATE PARENTS.

- (1) Each local education agency shall have written policies and procedures for the recruitment, training and appointment of surrogate parents.
- (2) Each local education agency shall appoint a surrogate parent to represent the child in all matters relating to the identification, assessment, educational placement, and the provision of a free appropriate public education, including meetings concerning the individualized education program, and any mediation and due process hearings pertaining to the child when it determines that:
 - (a) No parent can be identified;
 - (b) It is unable to locate a biological parent or legal guardian by calls, visits and by sending a letter by certified mail (return receipt requested) to the last known address of the biological parent or the guardian and allowing thirty (30) days for a response of the intention to appoint a surrogate parent;
 - (c) If the child is a ward of the State (including a ward of the court or a state agency); or
 - (d) The educational rights of the parents have been terminated or transferred.
- (3) If the health or safety of the child or other persons would be endangered by delaying the change in placement, due to the unavailability of a surrogate, the change may be made sooner, but without prejudice to any rights that the child and parent may have.

(Rule 0520-01-09-.20, continued)

- (4) The surrogate parent shall continue to represent the child until one (1) of the following occurs:
 - (a) The child is determined by the IEP team no longer to be eligible for, or in need of special education or related services, except when termination from such programs is being contested;
 - (b) The parent, who was previously unknown, or whose whereabouts were previously unknown, becomes known;
 - (c) The legal guardianship of the child is transferred to a person who is able to fulfill the role of the parent;
 - (d) The local education agency determines that the appointed surrogate parent no longer adequately represents the child;
 - (e) The child attains eighteen (18) years of age.
- (5) Criteria for selection of surrogate parents.
 - (a) A person selected as a surrogate parent may not be an employee of the state education agency, the local education agency, or any other agency that is involved in the education or care of the child.
 1. A person is not considered to be an employee of the local education agency solely because he or she is paid by the local education agency to serve as a surrogate parent.
 2. A person is not considered to be an employee of the State solely because he or she is paid by the State to serve as a foster parent.
 - (b) A public agency may select a surrogate parent to represent the child for educational purposes. The selected person may be an employee of a nonpublic agency that only provides non-educational care for the child provided they are able to meet the standards and perform the responsibilities of a surrogate parent.
 - (c) Foster parents, selected by a state agency as the custodian for a child, who have had a foster child children with disabilities for less than one (1) calendar year, may be appointed by a local education agency to serve as surrogate parents for their foster child or children and may represent the child for educational purposes, provided that they perform the responsibilities of a surrogate parent. Foster parents selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for one (1) calendar year or more may act as a parent for their foster child if they meet the definition of a parent.
- (6) Responsibilities of a surrogate parent.
 - (a) A surrogate parent must have no interest that would conflict with the interests of the child to be represented;
 - (b) A surrogate parent must have knowledge and skills that ensure adequate representation of the child, including a functional understanding of the educational rights of children with disabilities;

(Rule 0520-01-09-.20, continued)

- (c) A surrogate parent must participate in whatever training program might be offered to ensure that they will have knowledge and skills to provide adequate representation of the child;
- (d) A surrogate parent must represent the child throughout the special education decision making process of identification, evaluation, program development, initial placement, review of placement, and reevaluation, as appropriate;
- (e) A surrogate parent must be acquainted with the child and his or her educational needs;
- (f) A surrogate parent must attempt to ascertain the child's educational needs and concerns;
- (g) A surrogate parent must respect the confidentiality of all records and information;
- (h) A surrogate parent must become familiar with the assistance provided by other human service agencies in the community that affects the child or that might be helpful resources; and
- (i) A surrogate parent must monitor the child's educational program and placement.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.21 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.

The procedure for determining whether a child with a disability who has attained eighteen (18) years of age is competent to make educational decisions is provided at Tenn. Code Ann. §34-1-101 et seq. and §34-3-101 et seq. Unless the child has been adjudicated incompetent, all rights vest in the child when the child attains eighteen (18) years of age.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.22 AMENDMENT OF RECORDS AT PARENT'S REQUEST.

The local education agency, upon receiving a request from a parent pursuant to 34 C.F.R. §300.618, shall decide, within ten (10) school days of its receipt of the request, whether to amend the information as requested.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES.

- (1) Definitions
 - (a) "Extended isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's individualized education program (IEP).
 - (b) "Extended restraint" means a physical holding restraint lasting longer than five (5) minutes or physical holding restraint which lasts longer than the time provided in the child's IEP.

(Rule 0520-01-09-.23, continued)

- (c) "Noxious substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement or action, including but not limited to Mace and other defense sprays.
- (2) Local education agencies are authorized to develop and implement training programs that include:
 - (a) Use of positive behavioral interventions and supports;
 - (b) Nonviolent crisis prevention and de-escalation;
 - (c) Safe administration of isolation and restraint; and
 - (d) Documentation and reporting requirements.
 - (3) Local education agencies are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
 - (4) Local education agencies shall develop policies and procedures governing:
 - (a) Personnel authorized to use isolation and restraint;
 - (b) Training requirements; and
 - (c) Incident reporting procedures.
 - (5) Only the principal, or the principal's designee, may authorize the use of isolation or restraint.
 - (6) When the use of restraint or isolation is proposed at an IEP meeting, parents/guardians shall be advised of the provisions of T.C.A. § 49-10-1301, et seq., this rule and the IDEA procedural safeguards.
 - (7) An IEP meeting convened pursuant to T.C.A. § 49-10-1304 may be conducted on at least twenty-four (24) hours notice to the parents.
 - (8) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the TDMHDD (Tennessee Department of Mental Health and Developmental Disabilities) state standards as applicable and at least one of the following national standards: ACA (American Correctional Association), COA (Council on Accreditation), CMS (Centers for Medicare & Medicaid Services), JCAHO (Joint Commission for Accreditation of Healthcare Organizations), CARF (Commission on Accreditation of Rehabilitation Facilities), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.
 - (9) Reports.

School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

 - (a) The report form must include the following information:
 - 1. Student's name, age and disability;
 - 2. Student's school and grade level;

(Rule 0520-01-09-.23, continued)

- (3) Local education agencies are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
- (4) Local education agencies shall develop policies and procedures governing:
 - (a) Personnel authorized to use isolation and restraint;
 - (b) Training requirements; and
 - (c) Incident reporting procedures.
- (5) Only the principal, or the principal's designee, may authorize the use of isolation or restraint.
- (6) When the use of restraint or isolation is proposed at an IEP meeting, parents/guardians shall be advised of the provisions of T.C.A. § 49-10-1301, et seq., this rule and the IDEA procedural safeguards.
- (7) An IEP meeting convened pursuant to T.C.A. § 49-10-1304 may be conducted on at least twenty-four (24) hours notice to the parents.
- (8) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the TDMHDD (Tennessee Department of Mental Health and Developmental Disabilities) state standards as applicable and at least one of the following national standards: ACA (American Correctional Association), COA (Council on Accreditation), CMS (Centers for Medicare & Medicaid Services), JCAHO (Joint Commission for Accreditation of Healthcare Organizations), CARF (Commission on Accreditation of Rehabilitation Facilities), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.
- (9) Reports.

School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

- (a) The report form must include the following information:
 1. Student's name, age and disability;
 2. Student's school and grade level;
 3. Date, time and location of the isolation or restraint;
 4. Length of time student was isolated or restrained;
 5. Names, job titles and signatures of the personnel who administered the isolation or restraint;
 6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
 7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;

(Rule 0520-01-09-.23, continued)

8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
 9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
 10. A certification that any space used for isolation is at least forty (40) square feet;
 11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;
 12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
 13. Physical injury or death to the student, school personnel or both;
 14. Medical care provided to the student, school personnel or both;
 15. Description of property damage, if relevant; and
 16. Date, time and method of parent notification.
- (b) A copy of the report form must be provided to the local education agency's director of special education who shall determine whether an Individualized Education Program (IEP) Team meeting must be convened pursuant to T.C.A. § 49-10-1304.

Authority: T.C.A. §§ 49-10-1306. **Administrative History:** Original rule filed October 20, 2009; effective January 18, 2010. Amendments filed March 21, 2012; effective August 29, 2012.



Guide to Special Education Administrative Complaints

August 1, 2015

Guide to Special Education Administrative Complaints in Tennessee

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Guide to Special Education Administrative Complaints in Tennessee

As provided for under the Individuals with Disabilities Education Act (IDEA) and Tennessee State Board of Education rules and regulations, there are three (3) dispute resolution options available to help resolve issues related to special education: Administrative Complaint, Mediation, and Due Process Hearing. Information concerning these three (3) dispute resolution options is contained in the booklet entitled *Individuals with Disabilities Education Act: Notice of Procedural Safeguards* which is available online at: <http://tn.gov/education/topic/special-education-legal-services>.

This document will detail the Administrative Complaint process. The entire process is explained and many frequently asked questions are answered. Appendices at the end of this document contain additional information.

If you have questions about anything in this document, you may contact Special Education Legal Services in the Office of the General Counsel for assistance and guidance at (615) 741-2921.

Before Filing the Administrative Complaint

Before filing an Administrative Complaint, there are a few things a concerned person may do that might resolve concerns more quickly, while at the same time strengthening the working relationship between the concerned person and the school system.

The following items are recommended as a "checklist" of steps to follow before filing an Administrative Complaint:

- ✓ Contact the teacher or service provider and discuss the concerns.
- ✓ Notify the principal and request his/her assistance.
- ✓ Request an IEP team meeting.
- ✓ Contact the Special Education Director/Supervisor of the school system. Make him/her aware of the concerns and provide the results of any contact with the teacher, principal, etc.
- ✓ Call the Tennessee Department of Education Office of General Counsel and ask to speak with the IDEA Complaint Investigator assigned to the school system.

Many times, answers to questions or advice as to how to address concerns will help keep a concern from becoming an Administrative Complaint issue. If a local resolution to the concerns is not achieved, the IDEA Complaint Investigator will assist the concerned person in filing an Administrative Complaint.

Filing the Administrative Complaint

An Administrative Complaint should be filed in writing and signed by the person filing the complaint. Administrative Complaints may be filed via e-mail. The Tennessee Department of Education (TDOE) has an Administrative Complaint form that an IDEA Complaint Investigator will send to anyone requesting a copy. The form is also available on the TDOE web site at <http://tn.gov/education/topic/special-education-legal-services>.

A person filing a complaint may wish to use the back of the form for additional information or attach additional pages to express the concerns. Sometimes a personal letter will serve as an Administrative Complaint, but this may make identifying valid complaint issues more difficult. Copies of any documents that support the allegation of a violation should be sent as well. A good rule of thumb when filing a complaint is to follow up with a telephone call to an IDEA Complaint Investigator to verify receipt and discuss the complaint. When speaking with an IDEA Complaint Investigator, he/she will answer any questions and further explain the Administrative Complaint process.

Even though the regulations state that an Administrative Complaint must be in writing, the Department of Education realizes that there may be a situation where a person is unable to put his/her concerns in writing or have a friend or family member do it for them. In these rare instances, it is possible to make a verbal complaint directly to an IDEA Complaint Investigator over the telephone.

After Filing the Administrative Complaint

When an Administrative Complaint is received, an IDEA Complaint Investigator is assigned and the following occurs within one (1) business day:

- The person filing the complaint will be sent a letter acknowledging that the Tennessee Department of Education has received the Administrative Complaint.
- This letter invites them to send any additional information or documentation to the IDEA Complaint Investigator assigned within ten (10) business days.
- A letter with a copy of the complaint will be sent to the Director of Schools and the Special Education Director/Supervisor of the school system.
- This letter requires that the school system submit a response to the allegations contained in the complaint within ten (10) days.
- Both of the letters state that, by law, Administrative Complaints have a timeline of sixty (60) calendar days from receipt of the complaint to conclusion.

Administrative Complaint Investigation Procedures

Once additional documentation and/or a response from the school system is received, the Department will begin the investigation. The investigation may require additional documents, email or telephone communications, and site visits. The IDEA Complaint Investigator will gather evidence or documentation in whatever manner is deemed appropriate.

If the complaint alleges that a school system has committed a procedural violation of the IDEA, the Department will determine whether the allegations in the complaint have a basis in fact. If the allegations are determined to have a basis in fact, the Department will issue, within ten (10) regular school business days of the finding, a letter to the school system and the person filing the complaint confirming the violation alleged in the Complaint. The letter will state whether or not the Department has determined that the procedural violation has resulted in a substantive denial of a free, appropriate public education. Procedural violations of the IDEA that do not result in a substantive denial of a free, appropriate public education must be corrected by the school system within ten (10) regular school business days of notification.

If the complaint alleges that a school system has committed a substantive violation that amounts to a denial of a free, appropriate public education, the Department will issue, within ten (10) regular school business days of the finding, a letter to the school system and the person filing the complaint confirming the violation and requiring the school system to take corrective action, including compensatory education where appropriate. If a school system has committed a violation that is determined to constitute a violation of a free, appropriate public education, it must correct the violation within ten (10) regular school business days. If the school system is unable to correct the violation within ten (10) regular school business days of notification, despite its diligent efforts, it will be granted an extension of time for a reasonable period, not to exceed an additional ten (10) regular school business days to correct the violation.

The Department will determine whether the measures taken by the school system have resulted in compliance with the IDEA. The Department will provide written notice to the school system of its determination within ten (10) regular school business days.

Violations Posted on Website

Within thirty (30) business days after closing the investigation, the Department will publish all confirmed violations and determinations of findings of violations of the IDEA on the TDOE Special Education Legal Services web site at <http://tn.gov/education/topic/special-education-legal-services>. The information will include the name of the school system, a description of the violation, a citation of the law or regulation determined to have been violated, the corrective measures, and the final determination of the Department. Information that would allow the child to be identified will be redacted prior to publishing on the website.

Issues That May Not Be Addressed By an Administrative Complaint

An IEP team makes many decisions that affect a student's education. There are, however, many decisions that an IEP team does not have the responsibility or ability to decide. These are administrative decisions that are made by the school system.

Examples of "administrative decisions" include:

- ✿ Promotion or Retention
- ✿ Grade Assignment
- ✿ School Assignment
- ✿ Teacher Assignment

One of the required participants at an IEP meeting is a LEA representative. This is usually the principal or his/her designee. This LEA representative must be able to make decisions for the school system during the IEP meeting. Sometimes the LEA representative will make administrative decisions during an IEP meeting. It may appear that the IEP team made the decision, but the LEA representative is filing the administrative decision on behalf of the school system, not on behalf of the IEP team.

There are also other issues that are not addressed by an Administrative Complaint. Allegations of abuse should be reported to a local law enforcement agency or the Department of Children Services. Allegations of discrimination or violations of Civil Rights should be reported to your local Title VI, Title IX, or Section 504 Coordinator, or the Office for Civil Rights at (404) 974-9406, unless they are related to the student's disability and special education services.

Additionally, matters that are exclusively under the control of the local school system may not be addressed by an Administrative Complaint. For example, personnel issues and general education issues are the responsibility of the local school system. A concerned party should check with the local school system and request a copy of the local School Board policy regarding filing a complaint or grievance against a school board employee.

What an Administrative Complaint Can Do

An Administrative Complaint is a way to ensure that the federal and state regulations are followed, that the rights of the parent and the child are being observed, and that the child is receiving all the special education and related services that are a part of the IEP.

Many people look at the Administrative Complaint process as being an adversarial process. In reality, it is not a contest to see who can win, but it is a way to ensure that the law is followed. If the law is followed, the child is the winner.

If a violation is found, the school system is required to complete a Corrective Action Plan, which may require documentation of completion of certain actions or activities in order to be in compliance with the regulations. An appropriate remedy to an Administrative Complaint depends on the facts pertaining to the complaint. Compensatory services may be required if services specified in an IEP are not provided to a child. Reimbursement to the parent for services provided, if found to be the system's responsibility, may be appropriate as well.

What an Administrative Complaint Cannot Do

The purpose of an Administrative Complaint is not to punish the school system. Parents do not receive punitive damages, nor are school systems fined for violations. An Administrative Complaint cannot:

- × Get a principal, teacher, bus driver, or other school system employee fired
- × Get a specific person hired
- × Get a student assigned to a specific grade, school, or teacher
- × Get grades changed (unless Modified Grading is a modification in the IEP)

Appendix A – Federal IDEA Regulations

State Complaint Procedures

§300.151 Adoption of State complaint procedures.

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

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

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

(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

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

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

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

(2) Appropriate future provision of services for all children with disabilities.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1221e-3)

§300.152 Minimum State complaint procedures.

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

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

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

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

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

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

(4) 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

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--

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

- (i) Exceptional circumstances exist with respect to a particular complaint; or
 - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and
- (2) Include procedures for effective implementation of the SEA's final decision, if needed, including--
- (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532. (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
- (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--
- (i) The due process hearing decision is binding on that issue; and
 - (ii) The SEA must inform the complainant to that effect.
- (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.
- (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1221e-3)

§300.153 Filing a complaint.

- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- (b) The complaint must include--
 - (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
 - (2) The facts on which the statement is based;
 - (3) The signature and contact information for the complainant; and
 - (4) If alleging violations with respect to a specific child--
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), available contact information for the child, and the name of the school the child is attending;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

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

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

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1221e-3)

Appendix B – Tennessee Public Chapter 598 of the Acts of 2007
Effective July 1, 2007

SECTION 3.

The department of education shall promptly investigate complaints filed regarding services to disabled students and shall enforce the Individuals with Disabilities Education Act and Tennessee special education laws. The department shall carry out its obligation to enforce such laws through the administrative complaint process in the following manner:

- (1) The department shall make available a complaint form on the departmental internet site. In addition, the department shall supply any individual a written copy of the complaint form via the United States mail when so requested. The department shall facilitate the submission of complaint forms via the internet. If a complaint is filed via the internet, the complaint shall be deemed signed so long as the name of the filer is indicated in the complaint. Anonymous complaints shall not be accepted for investigative purposes.
- (2) If the complaint alleges that a school system has committed a procedural violation of the applicable laws, the department shall determine whether the allegation has basis in fact. If determined to have a basis in fact, the department shall issue, within ten (10) regular school business days of the finding, a written finding to the school system and the person filing the complaint confirming the violation. The response shall state whether or not the department has determined that the procedural violation has resulted in a substantive denial of a free, appropriate public education.
- (3) If the complaint alleges that a school system has committed a substantive violation that amounts to a denial of a free, appropriate public education, the department shall, within ten (10) regular school business days of the finding, issue a written finding to the school district and the person filing the complaint confirming the violation and shall require the school system to take corrective action, including compensatory education where appropriate.
- (4) The department shall require a school system that has committed a procedural violation of applicable law to correct the violation within ten (10) regular school business days.
- (5) The department shall require a school system that has committed a violation that is determined to constitute a violation of a free, appropriate public education to correct the violation within ten (10) regular school business days. If the school system is unable to correct the violation within ten (10) regular school business days of notification, despite its diligent efforts, it shall be granted an extension of time for a reasonable period, not to exceed an additional ten (10) regular school business days to correct the violation.

(6) Any school system receiving notice from the department that measures are required to correct procedural or substantive violations of applicable law shall provide written notice of such corrective measures to the department and to the person filing the complaint. The department shall determine whether the measures taken by the school system has resulted in compliance with the law and the regulations. The department shall provide written notice to the school system of its determination within ten (10) regular school business days.

(7) Within thirty (30) business days after closing the investigation, the department shall publish all confirmed violations and determinations of findings of violations of statutes or regulations on its official state web site. Such publication shall include the name of the school system, a description of the violation, a citation of the law or regulation determined to have been violated, the corrective measures proposed by the school system, and the final determination of the department. The department shall publish confirmed violations and determinations in a manner that protects the identity of the student.

Appendix C – Letters

Many different letters may be used throughout the course of an Administrative Complaint investigation/resolution. IDEA Compliant Investigators make every effort to ensure that every Administrative Complaint receives the same attention to detail and that correspondence is written in a professional manner.

1. A letter is sent to notify the person filing the complaint that it was received and the Administrative Complaint process has begun.
2. A letter is sent to the school system with a copy of the complaint, instructions related to its response, and information about the investigation process.
3. A letter is issued at the conclusion of the investigation. This is the letter that would specify what, if anything, the system is required to do in order to be in compliance with federal or state regulations.
4. A letter is sent when the issues in an Administrative Complaint cannot be appropriately addressed by the Administrative Complaint process.
5. A letter is sent when a Due Process Hearing has been requested on an issue that has also been submitted in an Administrative Complaint. Being “tolled” means that the Administrative Complaint has to “wait” to see if the Due Process Hearing resolves the issues.
6. A letter is sent to the person who made the complaint, acknowledging that the IDEA Complaint Investigator received additional information and has forwarded it to the school system as a part of the original complaint.
7. A letter is sent to the school system with the additional information that was submitted by the person who made the complaint with instructions to consider the additional information as they work toward resolution.
8. A letter is sent to the school system if their response is not received within the sixty (60) calendar day timeline. Sanctions may be imposed if a school system fails to respond.
9. A letter is sent after the school system has completed any tasks that it was required to do in order to be in compliance with federal or state regulations.

Appendix D - Online Resources

IDEA - <http://idea.ed.gov/>

United States Department of Education - www.ed.gov

Tennessee Code Annotated - www.michie.com/tennessee

Tennessee Department of Education, Division of Special Populations and Student Support - <http://tn.gov/education/topic/special-education>

Tennessee State Board of Education - www.state.tn.us/sbe

Disability Rights in Tennessee - <http://www.disabilityrightstn.org>

Tennessee Disability Coalition - www.tndisability.org

Tennessee Voices for Children - www.tnvoices.org

Support and Training for Exceptional Parents - www.tnstep.org

The Arc of Tennessee - www.thearctn.org

Frequently Asked Questions

Does an Administrative Complaint have to be written?

The regulations state that it does; however, if circumstances prevent a person with a concern from filing an Administrative Complaint in writing, an IDEA Compliant Investigator may take it over the telephone or in some other appropriate way.

Can an Administrative Complaint be faxed to an IDEA Compliant Investigator?

Yes. Letters and/or e-mail complaints are also treated as Administrative Complaints if they contain all the required elements and information and specify that they are a complaint.

Can I submit an anonymous complaint?

No. According to federal and state law, an anonymous complaint cannot be accepted. The person(s) filing the complaint must sign the form and provide contact information in order for a complaint to be investigated.

Can someone who is not the parent of the child file an Administrative Complaint?

Yes. A parent, other concerned individual, or an organization may file an Administrative Complaint. However, a person or organization, other than the parent, filing a complaint would need to provide a signed release of information from the parent of the child before any information related to the child could be released to them.

Sometimes, advocates assist parents in writing/filing an Administrative Complaint. The advocate would need to have a signed release of information from the parent as well.

How soon must an Administrative Complaint be filed after an alleged violation occurs?

An Administrative Complaint must be filed within one (1) calendar year of the date the violation allegedly occurred.

Are Administrative Complaints ever resolved earlier than the sixty (60) calendar day timeline?

Yes. If the investigation is concluded and the school system has responded to the complaint, it is possible that the complaint may be resolved sooner than the sixty (60) calendar day deadline.

You received a letter that says your complaint will not be investigated. Why?

When a person filing a complaint submits an Administrative Complaint that is composed entirely of issues that are not related to special education, he/she would receive a letter explaining that the concerns could not be addressed through the Administrative Complaint process.

Some complaints contain special education issues plus some issues not related to special education. In those instances, the special education issues would be properly investigated, and the findings letter would explain which issues were not investigated.

What happens if the investigation finds a violation?

The Administrative Complaint process is a corrective action process, not a punitive process. The purpose is not to punish the school system.

If a school system is found to have violated one or more federal and/or state regulations, it will be required to complete a Corrective Action Plan. The Department will monitor the school system until it is satisfied that the corrective actions have been completed.

What can a person do if they don't like the outcome of an Administrative Complaint?

Either party has the right to request Mediation or a Due Process Hearing on the same issue(s).

You went to Mediation first and did not reach agreement. Can you file an Administrative Complaint on the same issue?

Yes, but an Administrative Complaint issue must allege a violation of an applicable rule or regulation.

You reached agreement at Mediation, but one of the parties is not following the agreement. Can you file an Administrative Complaint because they are not following the agreement?

The appropriate course of action would be to request a Due Process Hearing. A due process hearing can be requested by either party, and the Administrative Law Judge could enforce the Mediation agreement.

Can you file an Administrative Complaint on an issue that has been part of a Due Process Hearing and ruled on by the Administrative Law Judge?

No. Once an issue has been ruled on by an Administrative Law Judge, that issue cannot be taken to Mediation or filed as an Administrative Complaint.

Can you file multiple Administrative Complaints close to one another?

Yes, but they will most likely be appended to the original complaint filing one (1) complaint with multiple issues. This could benefit the person filing the complaint, in that the issue that was submitted after the original complaint would be resolved according to the sixty (60) calendar day timeline applied to the original complaint. In other words, it would be resolved more quickly than if it were submitted as a separate complaint.

If it is far enough into the sixty (60) calendar day timeline that it would be impractical to append an issue to the original complaint, a new complaint is created and a new sixty (60) calendar day timeline begins for the new complaint.

Can you file an Administrative Complaint in the summer?

Yes. Administrative Complaints have a one (1) year statute of limitations, and it is best to file an Administrative Complaint as soon after a person becomes concerned as possible. If a concern arises at the end of the school year or during ESY (Extended School Year), or if a concern from earlier in the school year does not improve by the end of school, it would be appropriate to file an Administrative Complaint in the summer. School system administrators work eleven (11) or twelve (12) months and respond to complaints year round.

Low Cost Legal Services in Tennessee

This information is provided as a service to individuals seeking additional avenues for help and information. The Department of Education does not intend this as an endorsement or recommendation for any individual, organization, or service represented on this page.

Program	Description	Contact Information
Legal Aid Society of Middle Tennessee and the Cumberlands	Free legal help to people with low income Offices in Clarksville, Columbia, Cookeville, Gallatin, Murfreesboro, Nashville, Oak Ridge, and Tullahoma	www.las.org (800) 238-1443
West Tennessee Legal Services	Provides assistance in civil cases to individuals, families, and communities Offices in Jackson, Dyersburg, Huntingdon, and Selmer	www.wtls.org (800) 372-8346
Legal Aid of East Tennessee	Provides a wide range of civil legal assistance and advocacy to elderly, abused, and low income persons Offices in Chattanooga, Cleveland, Knoxville, Johnson City, Maryville, and Morristown	www.laet.org (800) 238-1443
Memphis Area Legal Services, Inc.	Free legal assistance in civil matters to low income or elderly persons Offices in Memphis and Covington	www.malsi.org (866) 361-9001
Disability Rights In Tennessee	Provides services to people with disabilities, including legal services Offices in Knoxville, Memphis, and Nashville	www.disabilityrightstn.org (800) 342-1660
Vanderbilt Legal Clinic	Provides free representation to a limited number of individuals and organizations that cannot otherwise afford representation Office in Nashville	(615) 322-4964
University of Tennessee Legal Clinic	Provides free legal assistance to Knoxville-area students and families in education matters Office in Knoxville	(865) 974-2331

**TENNESSEE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION
ADMINISTRATIVE COMPLAINT**

**To: Office of Legal Services
Tennessee Department of Education/Division of Special Education
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243
FAX: 615-253-5567**

From:

Parent/Guardian’s Name

Address

City State Zip Code

Telephone (Home) Telephone (Work)

Child’s Name

Child’s Date of Birth Child’s Disability

This administrative complaint is filed on behalf of _____, a student at _____ School, in the _____ School System. The specific grounds/reasons for this complaint are:

Please investigate this complaint and notify me of the results. I understand that it may be necessary to release a copy of any correspondence submitted by me in relation to this complaint, my name, the name of the child, and the nature of my complaint to local school system officials in order to resolve these issues.

Signature

Date

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising part 303 to read as follows: <https://www.federalregister.gov/articles/2011/09/28/2011-22783/early-intervention-program-for-infants-and-toddlers-with-disabilities>

PART 303--EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

Subpart A--General Purpose and Applicable Regulations

Sec.

- 303.1 Purpose of the early intervention program for infants and toddlers with disabilities.
- 303.2 Eligible recipients of an award and applicability of this part.
- 303.3 Applicable regulations.

Definitions Used in This Part

- 303.4 Act.
- 303.5 At-risk infant or toddler.
- 303.6 Child.
- 303.7 Consent.
- 303.8 Council.
- 303.9 Day.
- 303.10 Developmental delay.
- 303.11 Early intervention service program.
- 303.12 Early intervention service provider.
- 303.13 Early intervention services.
- 303.14 Elementary school.
- 303.15 Free appropriate public education.
- 303.16 Health services.
- 303.17 Homeless children.
- 303.18 Include; including.
- 303.19 Indian; Indian tribe.
- 303.20 Individualized family service plan.
- 303.21 Infant or toddler with a disability.
- 303.22 Lead agency.
- 303.23 Local educational agency.
- 303.24 Multidisciplinary.
- 303.25 Native language.
- 303.26 Natural environments.
- 303.27 Parent.
- 303.28 Parent training and information center.
- 303.29 Personally identifiable information.
- 303.30 Public agency.
- 303.31 Qualified personnel.
- 303.32 Scientifically based research.
- 303.33 Secretary.
- 303.34 Service coordination services (case management).
- 303.35 State.

- 303.36 State educational agency.
- 303.37 Ward of the State.

Subpart B--State Eligibility for a Grant and Requirements for a Statewide System

General Authority and Eligibility

- 303.100 General authority.
- 303.101 State eligibility--requirements for a grant under this part.

State Conformity with Part C of the Act and Abrogation of State Sovereign Immunity

- 303.102 State conformity with Part C of the Act.
- 303.103 Abrogation of State sovereign immunity. Equipment and Construction
- 303.104 Acquisition of equipment and construction or alteration of facilities.

Positive Efforts to Employ and Advance Qualified Individuals with Disabilities

- 303.105 Positive efforts to employ and advance qualified individuals with disabilities. Minimum Components of a Statewide System
- 303.110 Minimum components of a statewide system.
- 303.111 State definition of developmental delay.
- 303.112 Availability of early intervention services.
- 303.113 Evaluation, assessment, and nondiscriminatory procedures.
- 303.114 Individualized family service plan (IFSP).
- 303.115 Comprehensive child find system.
- 303.116 Public awareness program.
- 303.117 Central directory.
- 303.118 Comprehensive system of personnel development (CSPD).
- 303.119 Personnel standards.
- 303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities.
- 303.121 Policy for contracting or otherwise arranging for services.
- 303.122 Reimbursement procedures.
- 303.123 Procedural safeguards.
- 303.124 Data collection.
- 303.125 State interagency coordinating council.
- 303.126 Early intervention services in natural environments.

Subpart C--State Application and Assurances

General

- 303.200 State application and assurances. Application Requirements

- 303.201 Designation of lead agency.
- 303.202 Certification regarding financial responsibility.
- 303.203 Statewide system and description of services.
- 303.204 Application's definition of at-risk infants and toddlers and description of services.
- 303.205 Description of use of funds.
- 303.206 Referral policies for specific children.
- 303.207 Availability of resources.
- 303.208 Public participation policies and procedures.
- 303.209 Transition to preschool and other programs.
- 303.210 Coordination with Head Start and Early Head Start, early education, and child care programs.
- 303.211 State option to make services under this part available to children ages three and older.
- 303.212 Additional information and assurances.

Assurances

- 303.220 Assurances satisfactory to the Secretary.
- 303.221 Expenditure of funds.
- 303.222 Payor of last resort.
- 303.223 Control of funds and property.
- 303.224 Reports and records.
- 303.225 Prohibition against supplanting; indirect costs.
- 303.226 Fiscal control.
- 303.227 Traditionally underserved groups.

Subsequent Applications and Modifications, Eligibility Determinations, and Standard of Disapproval

- 303.228 Subsequent State application and modifications of application.
- 303.229 Determination by the Secretary that a State is eligible.
- 303.230 Standard for disapproval of an application.
Department Procedures
- 303.231 Notice and hearing before determining that a State is not eligible.
- 303.232 Hearing Official or Panel.
- 303.233 Hearing procedures.
- 303.234 Initial decision; final decision.
- 303.235 Filing requirements.
- 303.236 Judicial review.

Subpart D--Child Find, Evaluations and Assessments, and Individualized Family Service Plans

General

- 303.300 General.
Pre-Referral Procedures--Public Awareness Program and Child Find System
- 303.301 Public awareness program--information for parents.
- 303.302 Comprehensive child find system.

Referral Procedures

- 303.303 Referral procedures.
- 303.304--303.309 [Reserved]
- Post-Referral Procedures--Screenings, Evaluations, and

Assessments

- 303.310 Post-referral timeline (45 days).
- 303.311-303.319 [Reserved]
- 303.320 Screening procedures (optional).
- 303.321 Evaluation of the child and assessment of the child and family.
- 303.322 Determination that a child is not eligible.
Individualized Family Service Plan (IFSP)
- 303.340 Individualized family service plan--general.
- 303.341 [Reserved]
- 303.342 Procedures for IFSP development, review, and evaluation.
- 303.343 IFSP Team meeting and periodic review.
- 303.344 Content of an IFSP.
- 303.345 Interim IFSPs--provision of services before evaluations and assessments are completed.
- 303.346 Responsibility and accountability.

Subpart E--Procedural Safeguards

General

- 303.400 General responsibility of lead agency for procedural safeguards.

Confidentiality of Personally Identifiable Information and Early Intervention Records

- 303.401 Confidentiality and opportunity to examine records.
- 303.402 Confidentiality.
- 303.403 Definitions.
- 303.404 Notice to parents.
- 303.405 Access rights.
- 303.406 Record of access.
- 303.407 Records on more than one child.
- 303.408 List of types and locations of information.
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AUTHORITY: 20 U.S.C. 1431 through 1444, unless otherwise noted.

Subpart A--General

Purpose and Applicable Regulations

§303.1 Purpose of the early intervention program for infants and toddlers with disabilities.

The purpose of this part is to provide financial assistance to States to--

- (a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;
 - (b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);
 - (c) Enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families;
 - (d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care; and
 - (e) Encourage States to expand opportunities for children under three years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.
- (Authority: 20 U.S.C. 1400(d)(2), 1431(a)(5), 1431(b))

§303.2 Eligible recipients of an award and applicability of this part.

- (a) Eligible recipients of an award. Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.
- (b) Applicability of this part.
 - (1) The provisions of this part apply to--
 - (i) The State lead agency and any EIS provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under Part C of the Act; and

(ii) All children referred to the Part C program, including infants and toddlers with disabilities consistent with the definitions in §§303.6 and 303.21, and their families.

(2) The provisions of this part do not apply to any child with a disability receiving a free appropriate public education or FAPE under 34 CFR part 300.

(Authority: 20 U.S.C. 1401(31), 1434, 1435(a)(10)(A))

§303.3 Applicable regulations.

(a) The following regulations apply to this part:

(1) The regulations in this part 303.

(2) The Education Department General Administrative Regulations (EDGAR), including 34 CFR Parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.

(b) In applying the regulations cited in paragraph (a)(2) of this section, any reference to--

- (1) State educational agency means the lead agency under this part; and
- (2) Education records or records means early intervention records.

(Authority: 20 U.S.C. 1221(b), 1221e-3, 1431-1444)

Definitions Used in This Part

§303.4 Act.

Act means the Individuals with Disabilities Education Act, as amended. (Authority: 20 U.S.C. 1400(a))

§303.5 At-risk infant or toddler.

At-risk infant or toddler means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual. At the State's discretion, at-risk infant or toddler may include an infant or toddler who is at risk of experiencing developmental delays because of biological or environmental factors that can be identified (including low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, a history of abuse or neglect, and being directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure).

(Authority: 20 U.S.C. 1432(1), 1432(5)(B)(i) and 1437(a)(6))

§303.6 Child.

Child means an individual under the age of six and may include an infant or toddler with a disability, as that term is defined in §303.21.

(Authority: 20 U.S.C. 1432(5))

§303.7 Consent.

Consent means that--

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in §303.25;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

(Authority: 20 U.S.C. 1439)

§303.8 Council.

Council means the State Interagency Coordinating Council that meets the requirements of subpart G of this part.

(Authority: 20 U.S.C. 1432(2))

§303.9 Day.

Day means calendar day, unless otherwise indicated.

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

§303.10 Developmental delay.

Developmental delay, when used with respect to a child residing in a State, has the meaning given that term by the State under §303.111. (Authority: 20 U.S.C. 1432(3))

§303.11 Early intervention service program.

Early intervention service program or EIS program means an entity designated by the lead agency for reporting under §§303.700 through 303.702.

(Authority: 20 U.S.C. 1416, 1431–1444)

§303.12 Early intervention service provider.

(a) Early intervention service provider or EIS provider means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of the Act, whether or not the entity or individual receives Federal funds under Part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the State under Part C of the Act.

(b) An EIS provider is responsible for--

- (1) Participating in the multidisciplinary individualized family service plan (IFSP) Team’s ongoing assessment of an infant or

toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant’s or toddler’s family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;

- (2) Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and
- (3) Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

(Authority: 20 U.S.C. 1431-1444)

§303.13 Early intervention services.

(a) General. Early intervention services means developmental services that--

- (1) Are provided under public supervision;
 - (2) Are selected in collaboration with the parents;
 - (3) Are provided at no cost, except, subject to §§303.520 and 303.521, where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
 - (4) Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant’s or toddler’s development, as identified by the IFSP Team, in any one or more of the following areas, including--
 - (i) Physical development;
 - (ii) Cognitive development;
 - (iii) Communication development;
 - (iv) Social or emotional development; or
 - (v) Adaptive development;
 - (5) Meet the standards of the State in which the early intervention services are provided, including the requirements of Part C of the Act;
 - (6) Include services identified under paragraph (b) of this section;
 - (7) Are provided by qualified personnel (as that term is defined in §303.31), including the types of personnel listed in paragraph (c) of this section;
 - (8) To the maximum extent appropriate, are provided in natural environments, as defined in §303.26 and consistent with §§303.126 and 303.344(d); and
 - (9) Are provided in conformity with an IFSP adopted in accordance with section 636 of the Act and §303.20.
- (b) Types of early intervention services. Subject to paragraph (d) of this section, early intervention services include the following services defined in this paragraph:

- (1) Assistive technology device and service are defined as follows:
 - (i) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional

capabilities of an infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

(ii) Assistive technology service means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes--

(A) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child's customary environment;

(B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;

(C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and

(F) Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

(2) Audiology services include--

(i) Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(3) Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in

understanding the special needs of the child and enhancing the child's development.

(4) Health services has the meaning given the term in §303.16.

(5) Medical services means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

(6) Nursing services include--

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) The administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) Nutrition services include--

(i) Conducting individual assessments in--

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (b)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) Occupational therapy includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include--

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(9) Physical therapy includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include--

- (i) Screening, evaluation, and assessment of children to identify movement dysfunction;
 - (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
 - (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for, movement dysfunction and related functional problems.
- (10) Psychological services include--
- (i) Administering psychological and developmental tests and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and
 - (iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.
- (11) Service coordination services has the meaning given the term in §303.34.
- (12) Sign language and cued language services include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.
- (13) Social work services include--
- (i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;
 - (ii) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;
 - (iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents;
 - (iv) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and
 - (v) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.
- (14) Special instruction includes--
- (i) The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
 - (ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to

- achieving the outcomes in the IFSP for the infant or toddler with a disability;
 - (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and
 - (iv) Working with the infant or toddler with a disability to enhance the child's development.
- (15) Speech-language pathology services include--
- (i) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
 - (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and
 - (iii) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.
- (16) Transportation and related costs include the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.
- (17) Vision services mean--
- (i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;
 - (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and
 - (iii) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.
- (c) Qualified personnel. The following are the types of qualified personnel who provide early intervention services under this part:
- (1) Audiologists.
 - (2) Family therapists.
 - (3) Nurses.
 - (4) Occupational therapists.
 - (5) Orientation and mobility specialists.
 - (6) Pediatricians and other physicians for diagnostic and evaluation purposes.
 - (7) Physical therapists.
 - (8) Psychologists.
 - (9) Registered dieticians.
 - (10) Social workers.
 - (11) Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness).
 - (12) Speech and language pathologists.

(13) Vision specialists, including ophthalmologists and optometrists.

(d) Other services. The services and personnel identified and defined in paragraphs (b) and (c) of this section do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in this section prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in paragraph (a) of this section or of another type of personnel that may provide early intervention services in accordance with this part, provided such personnel meet the requirements in §303.31. (Authority: 20 U.S.C. 1432(4))

§303.14 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. (Authority: 20 U.S.C. 1401(6))

§303.15 Free appropriate public education.

Free appropriate public education or FAPE, as used in §§303.211, 303.501, and 303.521, means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the State educational agency (SEA), including the requirements of Part B of the Act;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324. (Authority: 20 U.S.C. 1401(9))

§303.16 Health services.

- (a) Health services mean services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this part during the time that the child is eligible to receive early intervention services.
- (b) The term includes--
 - (1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
 - (2) Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.
- (c) The term does not include--
 - (1) Services that are--
 - (i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);

- (ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or

- (iii) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.

- (A) Nothing in this part limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.

- (B) Nothing in this part prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;

- (2) Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and

- (3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children. (Authority: 20 U.S.C. 1432(4))

§303.17 Homeless children.

Homeless children means children who meet the definition given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. (Authority: 20 U.S.C. 1401(11))

§303.18 Include; including.

Include or including means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

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

§303.19 Indian; Indian tribe.

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

- (b) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.).

- (c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian Tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

(Authority: 20 U.S.C. 1401(12)-(13))

§303.20 Individualized family service plan.

Individualized family service plan or IFSP means a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant’s or toddler’s family that--

- (a) Is based on the evaluation and assessment described in §303.321;
 - (b) Includes the content specified in §303.344;
 - (c) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with §303.420); and
 - (d) Is developed in accordance with the IFSP procedures in §§303.342, 303.343, and 303.345.
- (Authority: 20 U.S.C. 1401(15), 1435(a)(4), 1436)

§303.21 Infant or toddler with a disability.

- (a) Infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual--
- (1) Is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:
 - (i) Cognitive development.
 - (ii) Physical development, including vision and hearing.
 - (iii) Communication development.
 - (iv) Social or emotional development.
 - (v) Adaptive development; or
 - (2) Has a diagnosed physical or mental condition that--
 - (i) Has a high probability of resulting in developmental delay; and
 - (ii) Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.
- (b) Infant or toddler with a disability may include, at a State’s discretion, an at-risk infant or toddler (as defined in §303.5).
- (c) Infant or toddler with a disability may include, at a State’s discretion, a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part until the child enters, or is eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part must include--
- (1) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children ages three and older who receive Part C services pursuant to §303.211; and

- (2) A written notification to parents of a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619 of the Act.
- (Authority: 20 U.S.C. 1401(16), 1432(5))

§303.22 Lead agency.

Lead agency means the agency designated by the State’s Governor under section 635(a)(10) of the Act and §303.120 that receives funds under section 643 of the Act to administer the State’s responsibilities under Part C of the Act.

(Authority: 20 U.S.C. 1435(a)(10))

§303.23 Local educational agency.

- (a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.
- (b) Educational service agencies and other public institutions or agencies. The term includes the following:
- (1) Educational service agency, defined as a regional public multiservice agency--
 - (i) Authorized by State law to develop, manage, and provide services or programs to LEAs; and
 - (ii) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State.
 - (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under State law.
 - (3) Entities that meet the definition of intermediate educational unit or IEU in section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition an intermediate educational unit or IEU means any public authority other than an LEA that--
 - (i) Is under the general supervision of a State educational agency;
 - (ii) Is established by State law for the purpose of providing FAPE on a regional basis; and
 - (iii) Provides special education and related services to children with disabilities within the State.

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

(Authority: 20 U.S.C. 1401(5), 1401(19))

§303.24 Multidisciplinary.

Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to--

(a) Evaluation of the child in §§303.113 and 303.321(a)(1)(i) and assessments of the child and family in §303.321(a)(1)(ii), may include one individual who is qualified in more than one discipline or profession; and

(b) The IFSP Team in §303.340 must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with §303.343(a)(1)(iv)).

(Authority: 20 U.S.C. 1221e-3, 1435(a)(3), 1436(a)(1), 1436(a)(3))

§303.25 Native language.

(a) Native language, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means--

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

(2) For evaluations and assessments conducted pursuant to §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(b) Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

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

§303.26 Natural environments.

Natural environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of §303.126.

(Authority: 20 U.S.C. 1432, 1435, 1436)

§303.27 Parent.

(a) Parent means--

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with §303.422 or section 639(a)(5) of the Act.

(b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (a)(4) of this section to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

(Authority: 20 U.S.C. 1401(23), 1439(a)(5))

§303.28 Parent training and information center.

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

(Authority: 20 U.S.C. 1401(25))

§303.29 Personally identifiable information.

Personally identifiable information means personally identifiable information as defined in 34 CFR 99.3, as amended, except that the term "student" in the definition of personally identifiable information in 34 CFR 99.3 means "child" as used in this part and any reference to "school" means "EIS provider" as used in this part.

(Authority: 20 U.S.C. 1415, 1439)

§303.30 Public agency.

As used in this part, public agency means the lead agency and any other agency or political subdivision of the State.

(Authority: 20 U.S.C. 1435(a)(10))

§303.31 Qualified personnel.

Qualified personnel means personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services. (Authority: 20 U.S.C. 1432(4)(F))

§303.32 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to “education activities and programs” refers to “early intervention services.” (Authority: 20 U.S.C. 1435(a)(2))

§303.33 Secretary.

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

§303.34 Service coordination services (case management).

(a) General. (1) As used in this part, service coordination services mean services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the services and rights, including procedural safeguards, required under this part.

(2) Each infant or toddler with a disability and the child’s family must be provided with one service coordinator who is responsible for--

- (i) Coordinating all services required under this part across agency lines; and
- (ii) Serving as the single point of contact for carrying out the activities described in paragraphs (a)(3) and (b) of this section.

(3) Service coordination is an active, ongoing process that involves--

- (i) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this part; and
- (ii) Coordinating the other services identified in the IFSP under §303.344(e) that are needed by, or are being provided to, the infant or toddler with a disability and that child’s family.

(b) Specific service coordination services. Service coordination services include--

- (1) Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

- (2) Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;
- (3) Coordinating evaluations and assessments;
- (4) Facilitating and participating in the development, review, and evaluation of IFSPs;
- (5) Conducting referral and other activities to assist families in identifying available EIS providers;
- (6) Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner;
- (7) Conducting follow-up activities to determine that appropriate Part C services are being provided;
- (8) Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources;
- (9) Coordinating the funding sources for services required under this part; and
- (10) Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

(c) Use of the term service coordination or service coordination services. The lead agency’s or an EIS provider’s use of the term service coordination or service coordination services does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act--Medicaid), for purposes of claims in compliance with the requirements of §§303.501 through 303.521 (Payor of last resort provisions).

(Authority: 20 U.S.C. 1432(4), 1435(a)(4), 1436(d)(7), 1440)

§303.35 State.

Except as provided in §303.732(d)(3) (regarding State allotments under this part), State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(31))

§303.36 State educational agency.

(a) State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(b) The term includes the agency that receives funds under sections 611 and 619 of the Act to administer the State’s responsibilities under Part B of the Act.

(Authority: 20 U.S.C. 1401(32))

§303.37 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--

- (1) A foster child;
- (2) A ward of the State; or
- (3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §303.27. (Authority: 20 U.S.C. 1401(36))

Subpart B--State Eligibility for a Grant and Requirements for a Statewide System

General Authority and Eligibility

§303.100 General authority.

The Secretary, in accordance with Part C of the Act, makes grants to States (from their allotments under section 643 of the Act) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

(Authority: 20 U.S.C. 1433)

§303.101 State eligibility--requirements for a grant under this part.

In order to be eligible for a grant under Part C of the Act for any fiscal year, a State must meet the following conditions:

(a) Assurances regarding early intervention services and a statewide system. The State must provide assurances to the Secretary that--

- (1) The State has adopted a policy that appropriate early intervention services, as defined in §303.13, are available to all infants and toddlers with disabilities in the State and their families, including--
 - (i) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State;
 - (ii) Infants and toddlers with disabilities who are homeless children and their families; and
 - (iii) Infants and toddlers with disabilities who are wards of the State; and

(2) The State has in effect a statewide system of early intervention services that meets the requirements of section 635 of the Act, including policies and procedures that address, at a minimum, the components required in §§303.111 through 303.126.

(b) State application and assurances. The State must provide information and assurances to the Secretary, in accordance with subpart C of this part, including--

- (1) Information that shows that the State meets the State application requirements in §§303.200 through 303.212; and

(2) Assurances that the State also meets the requirements in §§303.221 through 303.227.

(c) Approval before implementation. The State must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the State's application in §§303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1434, 1435, 1437)

State Conformity with Part C of the Act and Abrogation of State Sovereign Immunity

§303.102 State conformity with Part C of the Act.

Each State that receives funds under Part C of the Act must ensure that any State rules, regulations, and policies relating to this part conform to the purposes and requirements of this part.

(Authority: 20 U.S.C. 1407(a)(1))

§303.103 Abrogation of State sovereign immunity.

(a) General. A State is not immune under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of Part C of the Act.

(b) Remedies. In a suit against a State for a violation of Part C of the Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in a suit against any public entity other than a State.

(c) Effective date. Paragraphs (a) and (b) of this section apply with respect to violations that occur in whole or part after October 30, 1990, the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(Authority: 20 U.S.C. 1403)

Equipment and Construction

§303.104 Acquisition of equipment and construction or alteration of facilities.

(a) General. If the Secretary determines that a program authorized under Part C of the Act will be improved by permitting program funds to be used to acquire appropriate equipment or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of--

- (1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities"); or

(2) Appendix A of subpart 101.19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards"). (Authority: 20 U.S.C. 1404)

Positive Efforts to Employ and Advance Qualified Individuals with Disabilities

§303.105 Positive efforts to employ and advance qualified individuals with disabilities.

Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under Part C of the Act.

(Authority: 20 U.S.C. 1405)

Minimum Components of a Statewide System

§303.110 Minimum components of a statewide system.

Each statewide system (system) must include, at a minimum, the components described in §§303.111 through 303.126.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a))

§303.111 State definition of developmental delay.

Each system must include the State's rigorous definition of developmental delay, consistent with §§303.10 and 303.203(c), that will be used by the State in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must--

(a) Describe, for each of the areas listed in §303.21(a)(1), the evaluation and assessment procedures, consistent with §303.321, that will be used to measure a child's development; and

(b) Specify the level of developmental delay in functioning or other comparable criteria that constitute a developmental delay in one or more of the developmental areas identified in §303.21(a)(1).

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(1))

§303.112 Availability of early intervention services.

Each system must include a State policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including--

(a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

(b) Infants and toddlers with disabilities who are homeless children and their families.

(Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1435(a)(2))

§303.113 Evaluation, assessment, and nondiscriminatory procedures.

(a) Subject to paragraph (b) of this section, each system must ensure the performance of--

(1) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State; and

(2) A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler.

(b) The evaluation and family-directed identification required in paragraph (a) of this section must meet the requirements of §303.321.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(3))

§303.114 Individualized family service plan (IFSP).

Each system must ensure, for each infant or toddler with a disability and his or her family in the State, that an IFSP, as defined in §303.20, is developed and implemented that meets the requirements of §§303.340 through 303.345, and that includes service coordination services, as defined in §303.34.

(Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1435(a)(4))

§303.115 Comprehensive child find system.

Each system must include a comprehensive child find system that meets the requirements in §§303.302 and 303.303.

(Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1435(a)(5))

§303.116 Public awareness program.

Each system must include a public awareness program that--

(a) Focuses on the early identification of infants and toddlers with disabilities; and

(b) Provides information to parents of infants and toddlers through primary referral sources in accordance with §303.301.

(Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1435(a)(6))

§303.117 Central directory.

Each system must include a central directory that is accessible to the general public (i.e., through the lead agency's Web site and other appropriate means) and includes accurate, up-to-date information about--

(a) Public and private early intervention services, resources, and experts available in the State;

(b) Professional and other groups (including parent support, and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and

(c) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities. (Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1435(a)(7))

§303.118 Comprehensive system of personnel development (CSPD).

Each system must include a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State. A comprehensive system of personnel development--

(a) Must include--

- (1) Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers;
- (2) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this part; and
- (3) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program.

(b) May include--

- (1) Training personnel to work in rural and inner-city areas;
- (2) Training personnel in the emotional and social development of young children; and
- (3) Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and
- (4) Training personnel who provide services under this part using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(8))

§303.119 Personnel standards.

(a) General. Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(b) Qualification standards. The policies and procedures required in paragraph (a) of this section must provide for the establishment and maintenance of qualification standards

that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.

(c) Use of paraprofessionals and assistants. Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities.

(d) Policy to address shortage of personnel. A State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraphs (a) and (b) of this section.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(9), 1435(b))

§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities.

Each system must include a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following:

- (a)(1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.
- (2) The monitoring of programs and activities used by the State to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act), to ensure that the State complies with Part C of the Act, including--
 - (i) Monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out Part C of the Act;
 - (ii) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these regulations;
 - (iii) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;
 - (iv) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one

year after the lead agency's identification of the noncompliance; and
(v) Conducting the activities in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, consistent with §§303.700 through 303.707, and any other activities required by the State under those sections.

(b) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources, consistent with subpart F of this part.

(c) The assignment of financial responsibility in accordance with subpart F of this part.

(d) The development of procedures in accordance with subpart F of this part to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.

(e) The resolution of intra- and interagency disputes in accordance with subpart F of this part.

(f) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with §303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1416, 1435(a)(10), 1442)

§303.121 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the State, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must--

(a) Include a requirement that all early intervention services must meet State standards and be consistent with the provisions of this part; and

(b) Be consistent with the Education Department General Administrative Regulations in 34 CFR part 80.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(11))

§303.122 Reimbursement procedures.

Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with subpart F of this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(12), 1440(a))

§303.123 Procedural safeguards.

Each system must include procedural safeguards that meet the requirements of subpart E of this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(13), 1439)

§303.124 Data collection.

(a) Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements in paragraph (b) of this section and §§303.700 through 303.702 and 303.720 through 303.724.

(b) The data system required in paragraph (a) of this section must include a description of the process that the State uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this part, including a description of the State's sampling methods, if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the Act and §§303.700 through 303.707 and 303.720 through 303.724.

(Approved by Office of Management and Budget under control number 1820-0550, 1820-0557 and 1820-0578)

(Authority: 20 U.S.C. 1416, 1418(a)-(c), 1435(a)(14), 1442)

§303.125 State interagency coordinating council.

Each system must include a State Interagency Coordinating Council (Council) that meets the requirements of subpart G of this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(15))

§303.126 Early intervention services in natural environments.

Each system must include policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided--

(a) To the maximum extent appropriate, in natural environments; and

(b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP

Team, only when early intervention services cannot be achieved satisfactorily in a natural environment.
(Approved by Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1435(a)(16))

Subpart C--State Application and Assurances

General

§303.200 State application and assurances.

Each application must contain--

- (a) The specific State application requirements (including certifications, descriptions, methods, and policies and procedures) required in §§303.201 through 303.212; and
 - (b) The assurances required in §§303.221 through 303.227.
- (Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1437)

Application Requirements

§303.201 Designation of lead agency.

Each application must include the name of the State lead agency, as designated under §303.120, that will be responsible for the administration of funds provided under this part. (Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1437(a)(1))

§303.202 Certification regarding financial responsibility.

Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under §303.511 and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in subpart F of this part (§§303.500 through 303.521) and are current as of the date of submission of the certification.
(Approved by Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1437(a)(2))

§303.203 Statewide system and description of services.

Each application must include --

- (a) A description of services to be provided under this part to infants and toddlers with disabilities and their families through the State's system;
- (b) The State's policies and procedures regarding the identification and coordination of all available resources within the State from Federal, State, local, and private sources as required under subpart F of this part and including--
 - (1) Policies or procedures adopted by the State as its system of payments that meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family costs or fees); and
 - (2) Methods used by the State to implement the requirements in §303.511(b)(2) and (b)(3); and

(c) The State's rigorous definition of developmental delay as required under §§303.10 and 303.111.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1432(3), 1432(4)(B), 1432(4)(C), 1435(a)(1), 1435(a)(10)(B), 1437(a)(3), 1440)

§303.204 Application's definition of at-risk infants and toddlers and description of services.

If the State provides services under this part to at-risk infants and toddlers through the statewide system, the application must include--

- (a) The State's definition of at-risk infants and toddlers with disabilities who are eligible in the State for services under Part C of the Act (consistent with §§303.5 and 303.21(b)); and
- (b) A description of the early intervention services provided under this part to at-risk infants and toddlers with disabilities who meet the State's definition described in paragraph (a) of this section.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(a)(4))

§303.205 Description of use of funds.

(a) General. Each State application must include a description of the uses for funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council and include the information required in paragraphs (b) through (e) of this section.

(b) State administration funds including administrative positions. For lead agencies other than State educational agencies (SEAs), each application must include the total--

(1) Amount of funds retained by the lead agency for administration purposes, including the amount in paragraph (b)(2) of this section; and

(2) Number of full-time equivalent administrative positions to be used to implement Part C of the Act, and the total amount of salaries (including benefits) for those positions.

(c) Maintenance and implementation activities. Each application must include a description of the nature and scope of each major activity to be carried out under this part, consistent with §303.501, and the approximate amount of funds to be spent for each activity.

(d) Direct services. Each application must include a description of any direct services that the State expects to provide to infants and toddlers with disabilities and their families with funds under this part, consistent with §303.501, and the approximate amount of funds under this part to be used for the provision of each direct service.

(e) Activities by other public agencies. If other public agencies are to receive funds under this part, the application must include--

- (1) The name of each agency expected to receive funds;
- (2) The approximate amount of funds each agency will receive; and
- (3) A summary of the purposes for which the funds will be used.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(10)(B), 1435(a)(10)(F), 1437(a)(3), 1437(a)(5))

§303.206 Referral policies for specific children.

Each application must include the State's policies and procedures that require the referral for early intervention services under this part of specific children under the age of three, as described in §303.303(b).

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1412(a)(3)(A), 1431, 1434(1), 1435(a)(2), 1435(a)(5), 1435(c)(2)(G), 1437(a)(6), 1437(a)(10), 1441)

§303.207 Availability of resources.

Each application must include a description of the procedure used by the State to ensure that resources are made available under this part for all geographic areas within the State.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(a)(7))

§303.208 Public participation policies and procedures.

(a) Application. At least 60 days prior to being submitted to the Department, each application for funds under this part (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.

(b) State Policies and Procedures. Each application must include a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these regulations, the lead agency--

- (1) Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure);
- (2) Provides notice of the hearings held in accordance with paragraph (b)(1) of this section at least 30 days before the hearings are conducted to enable public participation; and
- (3) Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers

with disabilities, EIS providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these regulations.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1231d, 1221e-3, 1437(a)(8))

§303.209 Transition to preschool and other programs.

(a) Application requirements. Each State must include the following in its application:

(1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this part to--

- (i) Preschool or other appropriate services (for toddlers with disabilities); or
- (ii) Exiting the program for infants and toddlers with disabilities.

(2) A description of how the State will meet each of the requirements in paragraphs (b) through (f) of this section.

(3)(i)(A) If the lead agency is not the SEA, an interagency agreement between the lead agency and the SEA; or
 (B) If the lead agency is the SEA, an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act.

(ii) To ensure a seamless transition between services under this part and under Part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph (a)(3)(i)(B) of this section must address how the lead agency and the SEA will meet the requirements of paragraphs (b) through (f) of this section (including any policies adopted by the lead agency under §303.401(d) and (e)), §303.344(h), and 34 CFR 300.101(b), 300.124, 300.321(f), and 300.323(b).

(4) Any policy the lead agency has adopted under §303.401(d) and (e).

(b) Notification to the SEA and appropriate LEA. (1) The State lead agency must ensure that--

(i) Subject to paragraph (b)(2) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law;

(ii) Subject to paragraph (b)(2) of this section, if the lead agency determines that the toddler is eligible for early

intervention services under Part C of the Act more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the lead agency, as soon as possible after determining the child's eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or

(iii) Subject to paragraph (b)(2) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

(2) The State must ensure that the notification required under paragraphs (b)(1)(i) and (b)(1)(ii) of this section is consistent with any policy that the State has adopted, under §303.401(e), permitting a parent to object to disclosure of personally identifiable information.

(c) Conference to discuss services. The State lead agency must ensure that--

(1) If a toddler with a disability may be eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act; and

(2) If the lead agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

(d) Transition plan. The State lead agency must ensure that for all toddlers with disabilities--

(1)(i) It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year; and

(ii) Each family of a toddler with a disability who is served under this part is included in the development of the transition plan required under this section and §303.344(h);

(2) It establishes a transition plan in the IFSP not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the toddler's third birthday; and

(3) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate--

(i) Steps for the toddler with a disability and his or her family to exit from the Part C program; and

(ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.

(e) Transition conference and meeting to develop transition plan. Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the requirements in §§303.342(d) and (e) and 303.343(a).

(f) Applicability of transition requirements. (1) The transition requirements in paragraphs (b)(1)(i) and (b)(1)(ii), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler with a disability under the age of three who is served by a State that offers services under §303.211.

(2) In a State that offers services under §303.211, for toddlers with disabilities identified in §303.209(b)(1)(i), the parent must be provided at the transition conference conducted under paragraph (c)(1) of this section:

(i) An explanation, consistent with §303.211(b)(1)(ii), of the toddler's options to continue to receive early intervention services under this part or preschool services under section 619 of the Act.

(ii) The initial annual notice referenced in §303.211(b)(1).

(3) For children with disabilities age three and older who receive services pursuant to §303.211, the State must ensure that it satisfies the separate transition requirements in §303.211(b)(6)(ii).

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1412(a)(3) and (a)(9), 1436(a)(3), 1437(a)(9))

§303.210 Coordination with Head Start and Early Head Start, early education, and child care programs.

(a) Each application must contain a description of State efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, et seq, as amended), early education and child care programs, and services under this part.

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(b) The State lead agency must participate, consistent with section 642B(b)(1)(C)(viii) of the Head Start Act, on the State Advisory Council on Early Childhood Education and Care established under the Head Start Act.

(Authority: 20 U.S.C. 1437(a)(10))

§303.211 State option to make services under this part available to children ages three and older.

(a) General. (1) Subject to paragraphs (a)(2) and (b) of this section, a State may elect to include in its application for a grant under this part a State policy, developed and implemented jointly by the lead agency and the SEA, under which a parent of a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services under this part, may choose the continuation of early intervention services under this part for his or her child after the child turns three until the child enters, or is eligible under State law to enter, kindergarten or elementary school.

(2) A State that adopts the policy described in paragraph (a)(1) of this section may determine whether it applies to children with disabilities--

(i) From age three until the beginning of the school year following the child's third birthday;

(ii) From age three until the beginning of the school year following the child's fourth birthday; or

(iii) From age three until the beginning of the school year following the child's fifth birthday.

(3) In no case may a State provide services under this section beyond the age at which the child actually enters, or is eligible under State law to enter, kindergarten or elementary school in the State.

(b) Requirements. If a State's application for a grant under this part includes the State policy described in paragraph (a) of this section, the system must ensure the following:

(1) Parents of children with disabilities who are eligible for services under section 619 of the Act and who previously received early intervention services under this part will be provided an annual notice that contains --

(i) A description of the rights of the parents to elect to receive services pursuant to this section or under Part B of the Act; and

(ii) An explanation of the differences between services provided pursuant to this section and services provided under Part B of the Act, including--

(A) The types of services and the locations at which the services are provided;

(B) The procedural safeguards that apply; and

(C) Possible costs (including the costs or fees to be charged to families as described in §§303.520 and 303.521), if any, to parents of children eligible under this part.

(2) Consistent with §303.344(d), services provided pursuant to this section will include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills.

(3) The State policy ensures that any child served pursuant to this section has the right, at any time, to receive FAPE (as

that term is defined at §303.15) under Part B of the Act instead of early intervention services under Part C of the Act.

(4) The lead agency must continue to provide all early intervention services identified in the toddler with a disability's IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the Act is made under 34 CFR 300.306. This provision does not apply if the LEA has requested parental consent for the initial evaluation under 34 CFR 300.300(a) and the parent has not provided that consent.

(5) The lead agency must obtain informed consent from the parent of any child with a disability for the continuation of early intervention services pursuant to this section for that child. Consent must be obtained before the child reaches three years of age, where practicable.

(6)(i) For toddlers with disabilities under the age of three in a State that offers services under this section, the lead agency ensures that the transition requirements in §303.209(b)(1)(i) and (b)(1)(ii), (c)(1), and (d) are met.

(ii) For toddlers with disabilities age three and older in a State that offers services under this section, the lead agency ensures a smooth transition from services under this section to preschool, kindergarten or elementary school by--

(A) Providing the SEA and LEA where the child resides, consistent with any State policy adopted under §303.401(e), the information listed in §303.401(d)(1) not fewer than 90 days before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or will no longer receive, early intervention services under this section;

(B) With the approval of the parents of the child, convening a transition conference, among the lead agency, the parents, and the LEA, not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section, to discuss any services that the child may receive under Part B of the Act; and

(C) Establishing a transition plan in the IFSP not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section.

(7) In States that adopt the option to make services under this part available to children ages three and older pursuant to this section, there will be a referral to the Part C system, dependent upon parental consent, of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence, as defined in section 320 of the Family Violence Prevention and Services Act, 42 U.S.C. 10401, et seq.

(c) Reporting requirement. If a State includes in its application a State policy described in paragraph (a) of this section, the State must submit to the Secretary, in the State's report under §303.124, the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for their children to continue to receive early intervention services under this part.

(d) Available funds. The State policy described in paragraph (a) of this section must describe the funds--including an identification as Federal, State, or local funds--that will be used to ensure that the option described in paragraph (a) of this section is available to eligible children and families who provide the consent described in paragraph (b)(5) of this section, including fees, if any, to be charged to families as described in §§303.520 and 303.521.

(e) Rules of construction. (1) If a statewide system includes a State policy described in paragraph (a) of this section, a State that provides services in accordance with this section to a child with a disability who is eligible for services under section 619 of the Act will not be required to provide the child FAPE under Part B of the Act for the period of time in which the child is receiving services under this part.

(2) Nothing in this section may be construed to require a provider of services under this part to provide a child served under this part with FAPE.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(c), 1437(a)(11))

§303.212 Additional information and assurances.

Each application must contain --

- (a) A description of the steps the State is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by section 427(b) of GEPA; and
- (b) Other information and assurances as the Secretary may reasonably require.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1228a(b), 1437(a)(11))

Assurances

§303.220 Assurances satisfactory to the Secretary.

Each application must contain assurances satisfactory to the Secretary that the State has met the requirements in §§303.221 through 303.227.

(Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1437(b))

§303.221 Expenditure of funds.

The State must ensure that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of this part, including §§303.500 and 303.501.

(Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1437(b)(1))

§303.222 Payor of last resort.

The State must ensure that it will comply with the requirements in §§303.510 and 303.511 in subpart F of this part.

(Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1437(b)(2))

§303.223 Control of funds and property.

The State must ensure that--

- (a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and
- (b) A public agency will administer the funds and property.

(Approved by Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1437(b)(3))

§303.224 Reports and records.

The State must ensure that it will--

- (a) Make reports in the form and containing the information that the Secretary may require; and
- (b) Keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(4))

§303.225 Prohibition against supplanting; indirect costs.

(a) Each application must provide satisfactory assurance that the Federal funds made available under section 643 of the Act to the State:

- (1) Will not be commingled with State funds; and
- (2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

- (1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part; and

(2)) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

(c) Requirement regarding indirect costs. (1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its Part C grant.

(2) If approved by the lead agency's cognizant Federal agency or by the Secretary, the lead agency must charge indirect costs through either--

(i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or

(ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR part 76 of EDGAR.

(3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(5))

§303.226 Fiscal control.

The State must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(6))

§303.227 Traditionally underserved groups.

The State must ensure that policies and practices have been adopted to ensure--

(a) That traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of this part; and

(b) That these families have access to culturally competent services within their local geographical areas.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1231d, 1437(b)(7))

Subsequent Applications and Modifications, Eligibility Determinations, and Standard of Disapproval

§303.228 Subsequent State application and modifications of application.

(a) Subsequent State application. If a State has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the State meets an application

requirement in this part, including any policy, procedure, method, or assurance filed under this part (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.

(b) Modification of application. An application submitted by a State that meets the requirements of this part remains in effect until the State submits to the Secretary such modifications as the State determines necessary. This section applies to a modification of an application to the same extent and in the same manner as this paragraph applies to the original application.

(c) Modifications required by the Secretary. The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if--

(1) An amendment is made to the Act or to a Federal regulation issued under the Act;

(2) A new interpretation of the Act is made by a Federal court or the State's highest court; or

(3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.

(Authority: 20 U.S.C. 1437(d)-(f))

§303.229 Determination by the Secretary that a State is eligible.

If the Secretary determines that a State is eligible to receive a grant under Part C of the Act, the Secretary notifies the State of that determination.

(Authority: 20 U.S.C. 1437)

§303.230 Standard for disapproval of an application.

The Secretary does not disapprove an application under this part unless the Secretary determines, after notice and opportunity for a hearing in accordance with the procedures in §§303.231 through 303.236, that the application fails to comply with the requirements of this part.

(Authority: 20 U.S.C. 1437(c))

Department Procedures

§303.231 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 C of the Act until providing the State--

(i) Reasonable notice; and

(ii) An opportunity for a hearing.

(2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the lead agency by certified mail with a 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 lead agency that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and
- (4) Provides the lead agency with information about the hearing procedures that will be followed.

(Authority: 20 U.S.C. 1437(c))

§303.232 Hearing Official or Panel.

- (a) If the lead agency 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. 1437(c))

§303.233 Hearing procedures.

- (a) As used in §§303.231 through 303.235, the term party or parties means any of the following:
 - (1) A lead agency that requests a hearing regarding the proposed disapproval of the State's eligibility under this part.
 - (2) The Department official who administers the program of financial assistance under this part.
 - (3) A person, group, or agency with an interest in, and having relevant information about, the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel.
- (b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.
- (c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:
 - (1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.
 - (2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.
 - (3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.

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

- (i) Narrowing 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 an evidentiary hearing;
 - (C) Further proceedings before the Hearing Official or Hearing Panel, including an evidentiary hearing or oral argument, if either is scheduled;
 - (D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and an estimation of time for each presentation; and
 - (E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel.
- (5) A prehearing or other conference held under paragraph (c)(4) of this section may be conducted by telephone conference call.
- (6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (c)(4) of this section.
- (7) Following a prehearing or other conference, the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.
- (d) The Hearing Official or Hearing Panel may require the parties to state their positions and to provide all or part of their evidence in writing.
- (e) The Hearing Official or Hearing Panel may require the parties to present testimony through affidavits and to conduct cross-examination through interrogatories.
- (f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents, information, and lists of witnesses, and to send copies to the Hearing Official or Hearing Panel.
- (g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.
- (h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.
- (i) The Hearing Official or Hearing Panel may examine witnesses.
- (j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.

- (k) The Hearing Official or Hearing Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.
- (l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.
- (m)(1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel must determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.
- (2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel.
- (n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing 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 Hearing 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 Hearing 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 must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1437(c))

§303.234 Initial decision; final decision.

- (a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the lead agency under §303.231, including any amendments to or further clarification of the issues under §303.233(c).
- (b) The initial decision of a Hearing Panel is made by a majority of Hearing Panel members.
- (c) The Hearing Official or Hearing 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 Hearing Panel within 15 days of the date the party receives the Panel's decision.
 - (e) The Hearing Official or Hearing 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 Hearing Panel within seven days of the date the party receives the initial comments and recommendations.
 - (f) The Hearing Official or Hearing 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 Hearing 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 Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.
 - (h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing 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 transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments.
 - (j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings.
 - (k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed.
- (Authority: 20 U.S.C. 1437(c))

§303.235 Filing requirements.

- (a) Any written submission by a party under §§303.230 through 303.236 must be filed with the Secretary 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. 1437(c))

§303.236 Judicial review.

If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under Part C of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary's action was based, as provided in 28 U.S.C. 2112. (Authority: 20 U.S.C. 1437(c))

Subpart D--Child Find, Evaluations and Assessments, and Individualized Family Service Plans

§303.300 General.

The statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in §303.100 must include the following components:

(a) Pre-referral policies and procedures that include--

(1) A public awareness program as described in §303.301; and

(2) A comprehensive child find system as described in §303.302.

(b) Referral policies and procedures as described in §303.303.

(c) Post-referral policies and procedures that ensure compliance with the timeline requirements in §303.310 and include--

(1) Screening, if applicable, as described in §303.320;

(2) Evaluations and assessments as described in §§303.321 and 303.322; and

(3) Development, review, and implementation of IFSPs as described in §§303.340 through 303.346.

Pre-Referral Procedures--Public Awareness Program and Child Find System

§303.301 Public awareness program--information for parents.

(a) Preparation and dissemination. In accordance with §303.116, each system must include a public awareness program that requires the lead agency to--

(1)(i) Prepare information on the availability of early intervention services under this part, and other services, as described in paragraph (b) of this section; and

(ii) Disseminate to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and

(2) Adopt procedures for assisting the primary referral sources described in §303.303(c) in disseminating the information described in paragraph (b) of this section to parents of infants and toddlers with disabilities.

(b) Information to be provided. The information required to be prepared and disseminated under paragraph (a) of this section must include--

(1) A description of the availability of early intervention services under this part;

(2) A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and

(3) A central directory, as described in §303.117.

(c) Information specific to toddlers with disabilities. Each public awareness program also must include a requirement that the lead agency provide for informing parents of toddlers with disabilities of the availability of services under section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.

(Authority: 20 U.S.C. 1435(a)(6), 1437(a)(9))

§303.302 Comprehensive child find system.

(a) General. Each system must include a comprehensive child find system that--

(1) Is consistent with Part B of the Act (see 34 CFR 300.111);

(2) Includes a system for making referrals to lead agencies or EIS providers under this part that--

(i) Includes timelines; and

(ii) Provides for participation by the primary referral sources described in §303.303(c);

(3) Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this part that will reduce the need for future services; and

(4) Meets the requirements in paragraphs (b) and (c) of this section and §§303.303, 303.310, 303.320, and 303.321.

(b) Scope of child find. The lead agency, as part of the child find system, must ensure that--

(1) All infants and toddlers with disabilities in the State who are eligible for early intervention services under this part are identified, located, and evaluated, including--

(i) Indian infants and toddlers with disabilities residing on a reservation geographically located in the State (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the State based, in part, on the information provided by them to the lead agency under §303.731(e)(1)); and

(ii) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the State; and

(iii) Infants and toddlers with disabilities that are referenced in §303.303(b); and

(2) An effective method is developed and implemented to identify children who are in need of early intervention services.

(c) Coordination. (1) The lead agency, with the assistance of the Council, as defined in §303.8, must ensure that the child find system under this part--

(i) Is coordinated with all other major efforts to locate and identify children by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, including Indian tribes that receive payments under this part, and other Indian tribes, as appropriate; and

(ii) Is coordinated with the efforts of the--

(A) Program authorized under Part B of the Act;

(B) Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V) (42 U.S.C. 701(a));

(C) Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));

(D) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);

(E) Head Start Act (including Early Head Start programs under section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);

(F) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);

(G) Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the State agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));

(H) Child care programs in the State;

(I) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

(J) Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and

(K) Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(2) The lead agency, with the advice and assistance of the Council, must take steps to ensure that--

(i) There will not be unnecessary duplication of effort by the programs identified in paragraph (c)(1)(ii) of this section; and

(ii) The State will make use of the resources available through each public agency and EIS provider in the State to implement the child find system in an effective manner.

(Authority: 20 U.S.C. 1412(a)(3)(A), 1431, 1434(1), 1435(a)(2), 1435(a)(5), 1435(c)(2)(G), 1437(a)(6), 1437(a)(10), 1441)

Referral Procedures

§303.303 Referral procedures.

(a) General. (1) The lead agency's child find system described in §303.302 must include the State's procedures for use by primary referral sources for referring a child under the age of three to the Part C program.

(2) The procedures required in paragraph (a)(1) of this section must--

(i) Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and

(ii) Meet the requirements in paragraphs (b) and (c) of this section.

(b) Referral of specific at-risk infants and toddlers. The procedures required in paragraph (a) of this section must provide for requiring the referral of a child under the age of three who--

(1) Is the subject of a substantiated case of child abuse or neglect; or

(2) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(c) Primary referral sources. As used in this subpart, primary referral sources include--

(1) Hospitals, including prenatal and postnatal care facilities;

(2) Physicians;

(3) Parents, including parents of infants and toddlers;

(4) Child care programs and early learning programs;

(5) LEAs and schools;

(6) Public health facilities;

(7) Other public health or social service agencies;

- (8) Other clinics and health care providers;
 - (9) Public agencies and staff in the child welfare system, including child protective service and foster care;
 - (10) Homeless family shelters; and
 - (11) Domestic violence shelters and agencies.
- (Authority: 20 U.S.C. 1412(a)(3)(A), 1431, 1434(1), 1435(a)(2), 1435(a)(5), 1435(a)(6), 1435(c)(2)(G), 1437(a)(6), 1437(a)(10), 1441) §§303.304–303.309 [Reserved]

Post-Referral Procedures--Screenings, Evaluations, and Assessments

§303.310 Post-referral timeline (45 days).

(a) **Except** as provided in paragraph (b) of this section, any screening under §303.320 (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child); the initial evaluation and the initial assessments of the child and family under §303.321; and the initial IFSP meeting under §303.342 must be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child.

(b) Subject to paragraph (c) of this section, the 45-day timeline described in paragraph (a) of this section does not apply for any period when--

- (1) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or
 - (2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent.
- (c) The lead agency must develop procedures to ensure that in the event the circumstances described in (b)(1) or (b)(2) of this section exist, the lead agency or EIS provider must--
- (1) Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent;
 - (2) Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph (b)(1) of this section no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and
 - (3) Develop and implement an interim IFSP, to the extent appropriate and consistent with §303.345.
- (d) The initial family assessment must be conducted within the 45-day timeline in paragraph (a) of this section if the

parent concurs and even if other family members are unavailable.

(Authority: 20 U.S.C. 1433, 1435(a), 1436(c))

§§303.311–303.319 [Reserved]

§303.320 Screening procedures (optional).

(a) General. (1) The lead agency may adopt procedures, consistent with the requirements of this section, to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under this part. If the lead agency or EIS provider proposes to screen a child, it must--

- (i) Provide the parent notice under §303.421 of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation under §303.321 at any time during the screening process; and
- (ii) Obtain parental consent as required in §303.420(a)(1) before conducting the screening procedures.

(2) If the parent consents to the screening and the screening or other available information indicates that the child is--

- (i) Suspected of having a disability, after notice is provided under §303.421 and once parental consent is obtained as required in §303.420, an evaluation and assessment of the child must be conducted under §303.321; or
- (ii) Not suspected of having a disability, the lead agency or EIS provider must ensure that notice of that determination is provided to the parent under §303.421, and that the notice describes the parent's right to request an evaluation.

(3) If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under §303.321, even if the lead agency or EIS provider has determined under paragraph (a)(2)(ii) of this section that the child is not suspected of having a disability.

(b) Definition of screening procedures. Screening procedures--

- (1) Means activities under paragraphs (a)(1) and (a)(2) of this section that are carried out by, or under the supervision of, the lead agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and
 - (2) Includes the administration of appropriate instruments by personnel trained to administer those instruments.
- (c) Condition for evaluation or early intervention services.

For every child under the age of three who is referred to the Part C program or screened in accordance with paragraph (a) of this section, the lead agency is not required to--

- (1) Provide an evaluation of the child under §303.321 unless the child is suspected of having a disability or the parent

requests an evaluation under paragraph (a)(3) of this section;
or

(2) Make early intervention services available under this part to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under §303.21.

(Authority: 20 U.S.C. 1432(4)(E)(ix), 1434(1), 1435(a)(2), 1435(a)(5) and (a)(6), 1435(c)(2)(G), 1437(a)(6), 1439(a)(6))

§303.321 Evaluation of the child and assessment of the child and family.

(a) General. (1) The lead agency must ensure that, subject to obtaining parental consent in accordance with

§303.420(a)(2), each child under the age of three who is referred for evaluation or early intervention services under this part and suspected of having a disability, receives--

(i) A timely, comprehensive, multidisciplinary evaluation of the child in accordance with paragraph (b) of this section unless eligibility is established under paragraph (a)(3)(i) of this section; and

(ii) If the child is determined eligible as an infant or toddler with a disability as defined in §303.21--

(A) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;

(B) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in paragraph (c) of this section and these assessments may occur simultaneously with the evaluation, provided that the requirements of paragraph (b) of this section are met.

(2) As used in this part--

(i) Evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of infant or toddler with a disability in §303.21. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility under this part;

(ii) Assessment means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under this part and includes the assessment of the child, consistent with paragraph (c)(1) of this section and the assessment of the child's family, consistent with paragraph (c)(2) of this section; and

(iii) Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

(3)(i) A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this part if those records indicate that the child's level of functioning in one or more of the developmental areas identified in §303.21(a)(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under §303.21. If the child's Part C eligibility is established under this paragraph, the lead agency or EIS provider must conduct assessments of the child and family in accordance with paragraph (c) of this section.

(ii) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the lead agency must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under this part even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under paragraph (b) of this section.

(4) All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

(5) Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child, in accordance with the definition of native language in §303.25.

(6) Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed, in accordance with the definition of native language in §303.25.

(b) Procedures for evaluation of the child. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this part. Procedures must include--

(1) Administering an evaluation instrument;

(2) Taking the child's history (including interviewing the parent);

(3) Identifying the child's level of functioning in each of the developmental areas in §303.21(a)(1);

(4) Gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

(5) Reviewing medical, educational, or other records.

(c) Procedures for assessment of the child and family. (1) An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the

child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following--

- (i) A review of the results of the evaluation conducted under paragraph (b) of this section;
 - (ii) Personal observations of the child; and
 - (iii) The identification of the child's needs in each of the developmental areas in §303.21(a)(1).
- (2) A family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment must--
- (i) Be voluntary on the part of each family member participating in the assessment;
 - (ii) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and
 - (iii) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(Authority: 20 U.S.C. 1435(a)(3), 1435(a)(5), 1436(a)(1)-(2))

§303.322 Determination that a child is not eligible.

If, based on the evaluation conducted under §303.321, the lead agency determines that a child is not eligible under this part, the lead agency must provide the parent with prior written notice required in §303.421, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under §303.430, such as requesting a due process hearing or mediation or filing a State complaint.

(Authority: 20 U.S.C. 1439(a)(6))

Individualized Family Service Plan (IFSP)

§303.340 Individualized family service plan--general.

For each infant or toddler with a disability, the lead agency must ensure the development, review, and implementation of an individualized family service plan or IFSP developed by a multidisciplinary team, which includes the parent, that--

- (a) Is consistent with the definition of that term in §303.20; and
- (b) Meets the requirements in §§303.342 through 303.346 of this subpart. (Authority: 20 U.S.C. 1435(a)(4), 1436)

§303.341 [Reserved]

§303.342 Procedures for IFSP development, review, and evaluation.

- (a) Meeting to develop initial IFSP--timelines. For a child referred to the Part C program and determined to be eligible under this part as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in §303.310.
- (b) Periodic review. (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine--
 - (i) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and
 - (ii) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.
- (c) Annual meeting to evaluate the IFSP. A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under §303.321 must be used in determining the early intervention services that are needed and will be provided.
- (d) Accessibility and convenience of meetings. (1) IFSP meetings must be conducted--
 - (i) In settings and at times that are convenient for the family; and
 - (ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.
- (e) Parental consent. The contents of the IFSP must be fully explained to the parents and informed written consent, as described in §303.7, must be obtained, as required in §303.420(a)(3), prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service, as required in §303.344(f)(1).

(Authority: 20 U.S.C. 1435(a)(4), 1436)

§303.343 IFSP Team meeting and periodic review.

- (a) Initial and annual IFSP Team meeting. (1) Each initial meeting and each annual IFSP Team meeting to evaluate the IFSP must include the following participants:
- (i) The parent or parents of the child.
 - (ii) Other family members, as requested by the parent, if feasible to do so.
 - (iii) An advocate or person outside of the family, if the parent requests that the person participate.
 - (iv) The service coordinator designated by the public agency to be responsible for implementing the IFSP.
 - (v) A person or persons directly involved in conducting the evaluations and assessments in §303.321.
 - (vi) As appropriate, persons who will be providing early intervention services under this part to the child or family.
- (2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:
- (i) Participating in a telephone conference call.
 - (ii) Having a knowledgeable authorized representative attend the meeting.
 - (iii) Making pertinent records available at the meeting.
- (b) Periodic review. Each periodic review under §303.342(b) must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.
- (Authority: 20 U.S.C. 1435(a)(4), 1436)

§303.344 Content of an IFSP.

- (a) Information about the child's status. The IFSP must include a statement of the infant or toddler with a disability's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments conducted under §303.321.
- (b) Family information. With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under §303.321(c)(2).
- (c) Results or outcomes. The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine--

- (1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and
- (2) Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.
- (d) Early intervention services. (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including--
- (i) The length, duration, frequency, intensity, and method of delivering the early intervention services;
 - (ii)(A) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment.
 - (B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be--
 - (1) Made by the IFSP Team (which includes the parent and other team members);
 - (2) Consistent with the provisions in §§303.13(a)(8), 303.26, and 303.126; and
 - (3) Based on the child's outcomes that are identified by the IFSP Team in paragraph (c) of this section;
 - (iii) The location of the early intervention services; and
 - (iv) The payment arrangements, if any.
- (2) As used in paragraph (d)(1)(i) of this section--
- (i) Frequency and intensity mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis;
 - (ii) Method means how a service is provided;
 - (iii) Length means the length of time the service is provided during each session of that service (such as an hour or other specified time period); and
 - (iv) Duration means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP).
- (3) As used in paragraph (d)(1)(iii) of this section, location means the actual place or places where a service will be provided.
- (4) For children who are at least three years of age, the IFSP must include an educational component that promotes

school readiness and incorporates pre-literacy, language, and numeracy skills.

(e) Other services. To the extent appropriate, the IFSP also must--

(1) Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this part; and
(2) If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

(f) Dates and duration of services. The IFSP must include--

(1) The projected date for the initiation of each early intervention service in paragraph (d)(1) of this section, which date must be as soon as possible after the parent consents to the service, as required in §§303.342(e) and 303.420(a)(3); and

(2) The anticipated duration of each service.

(g) Service coordinator. (1) The IFSP must include the name of the service coordinator from the profession most relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services, and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the term "profession" includes "service coordination."

(h) Transition from Part C services. (1) The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with §§303.209 and 303.211(b)(6), from Part C services to--

(i) Preschool services under Part B of the Act, to the extent that those services are appropriate;

(ii) Part C services under §303.211; or

(iii) Other appropriate services.

(2) The steps required in paragraph (h)(1) of this section must include--

(i) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(iii) Confirmation that child find information about the child has been transmitted to the LEA or other relevant agency, in accordance with §303.209(b) (and any policy adopted by the State under §303.401(e)) and, with parental consent if required under §303.414, transmission of additional information needed by the LEA to ensure continuity of

services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with §§303.340 through 303.345; and

(iv) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.

(Authority: 20 U.S.C. 1435(a)(10)(B), 1435(a)(16), 1436(a)(3), 1436(d), 1437(a)(9)-(10), 1440)

§303.345 Interim IFSPs--provision of services before evaluations and assessments are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in §303.321, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes--

(1) The name of the service coordinator who will be responsible, consistent with §303.344(g), for implementing the interim IFSP and coordinating with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(c) Evaluations and assessments are completed within the 45-day timeline in §303.310.

(Authority: 20 U.S.C. 1436(c))

§303.346 Responsibility and accountability.

Each public agency or EIS provider who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

(Authority: 20 U.S.C. 1436)

Subpart E--Procedural Safeguards

General

§303.400 General responsibility of lead agency for procedural safeguards.

Subject to paragraph (c) of this section, each lead agency must--

(a) Establish or adopt the procedural safeguards that meet the requirements of this subpart, including the provisions on confidentiality in §§303.401 through 303.417, parental consent and notice in §§303.420 and 303.421, surrogate

parents in §303.422, and dispute resolution procedures in §303.430;

(b) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this part; and

(c) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

(Authority: 20 U.S.C. 1439(a))

Confidentiality of Personally Identifiable Information and Early Intervention Records

§303.401 Confidentiality and opportunity to examine records.

(a) General. Each State must ensure that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.

(b) Confidentiality procedures. As required under sections 617(c) and 642 of the Act, the regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. Each State must have procedures in effect to ensure that--

(1) Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in §§303.401 through 303.417; and

(2) The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.

(c) Applicability and timeframe of procedures. The confidentiality procedures described in paragraph (b) of this section apply to the personally identifiable information of a child and the child's family that--

(1) Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and

(2) Applies from the point in time when the child is referred for early intervention services under this part until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

(d) Disclosure of information. (1) Subject to paragraph (e) of this section, the lead agency must disclose to the SEA and the LEA where the child resides, in accordance with §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act:

(i) A child's name.

(ii) A child's date of birth.

(iii) Parent contact information (including parents' names, addresses, and telephone numbers).

(2) The information described in paragraph (d)(1) of this section is needed to enable the lead agency, as well as LEAs and SEAs under Part B of the Act, to identify all children potentially eligible for services under §303.211 and Part B of the Act.

(e) Option to inform a parent about intended disclosure. (1) A lead agency, through its policies and procedures, may require EIS providers, prior to making the limited disclosure described in paragraph (d)(1) of this section, to inform parents of a toddler with a disability of the intended disclosure and allow the parents a specified time period to object to the disclosure in writing.

(2) If a parent (in a State that has adopted the policy described in paragraph (e)(1) of this section) objects during the time period provided by the State, the lead agency and EIS provider are not permitted to make such a disclosure under paragraph (d) of this section and §303.209(b)(1)(i) and (b)(1)(ii).

(Authority: 20 U.S.C. 1412(a)(8), 1412(a)(9), 1417(c), 1435(a)(5), 1437(a)(9), 1439(a)(2), 1439(a)(4), 1439(a)(6), 1442)

§303.402 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS providers pursuant to Part C of the Act, and consistent with §§303.401 through 303.417. The regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442)

§303.403 Definitions.

The following definitions apply to §§303.402 through 303.417 in addition to the definition of personally identifiable information in §303.29 and disclosure in 34 CFR 99.3:

(a) Destruction means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.

(b) Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.

(c) Participating agency means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

(Authority: 20 U.S.C. 1221e-3, 1417(c), 1435(a)(5), 1439(a)(2), 1442)

§303.404 Notice to parents.

The lead agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in §303.402, including--

(a) 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;

(b) 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;

(c) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in §§303.401 through 303.417; and

(d) A description of the extent that the notice is provided in the native languages of the various population groups in the State.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442)

§303.405 Access rights.

(a) Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to §§303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made.

(b) The right to inspect and review early intervention records under this section includes--

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;

(2) The right to request that the participating agency provide copies of the early intervention 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 early intervention 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 provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§303.406 Record of access.

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and 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 early intervention records.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

§303.407 Records on more than one child.

If any early intervention 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. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§303.408 List of types and locations of information.

Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§303.409 Fees for records.

(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, except as provided in paragraph (c) of this section.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(c) A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

(Authority: 20 U.S.C. 1417(c), 1432(4)(B), 1439(a)(2), 1439(a)(4), 1442)

§303.410 Amendment of records at a parent's request.

(a) A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

(b) The participating agency must 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 participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§303.411 Opportunity for a hearing.

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in §303.430(d)(1) provided that such hearing procedures meet the requirements of the hearing procedures in §303.413 or may request a hearing directly under the State's procedures in §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§303.412 Result of hearing.

(a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it must 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 in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention 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 early intervention records of the child under this section must--

(1) Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§303.413 Hearing procedures.

A hearing held under §303.411 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§303.414 Consent prior to disclosure or use.

(a) Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is--

(1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, 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) A lead agency or other participating agency may not disclose personally identifiable information, as defined in §303.29, to any party except participating agencies (including the lead agency and EIS providers) that are part of the State's Part C system without parental consent unless authorized to do so under--

(1) Sections 303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or

(2) One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR

99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR part 99 to Part C, the reference to--

- (i) 34 CFR 99.30 means §303.414(a);
 - (ii) "Education records" means early intervention records under §303.403(b);
 - (iii) "Educational" means early intervention under this part;
 - (iv) "Educational agency or institution" means the participating agency under §303.404(c);
 - (v) "School officials and officials of another school or school system" means qualified personnel or service coordinators under this part;
 - (vi) "State and local educational authorities" means the lead agency under §303.22; and
 - (vii) "Student" means child under this part.
- (c) The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent's right to refuse consent under §303.420.
- (Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§303.415 Safeguards.

- (a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.
 - (b) One official at each participating agency must 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 §§303.401 through 303.417 and 34 CFR part 99.
 - (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.
- (Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

§303.416 Destruction of information.

- (a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80.
- (b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, a

permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

§303.417 Enforcement.

The lead agency must have in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

Parental Consent and Notice

§303.420 Parental consent and ability to decline services.

- (a) The lead agency must ensure parental consent is obtained before--
 - (1) Administering screening procedures under §303.320 that are used to determine whether a child is suspected of having a disability;
 - (2) All evaluations and assessments of a child are conducted under §303.321;
 - (3) Early intervention services are provided to the child under this part;
 - (4) Public benefits or insurance or private insurance is used if such consent is required under §303.520; and
 - (5) Disclosure of personally identifiable information consistent with §303.414.
- (b) If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) of this section, the lead agency must make reasonable efforts to ensure that the parent--
 - (1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
 - (2) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.
- (c) The lead agency may not use the due process hearing procedures under this part or Part B of the Act to challenge a parent's refusal to provide any consent that is required under paragraph (a) of this section.
- (d) The parents of an infant or toddler with a disability--

- (1) Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with State law; and
 - (2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part.
- (Authority: 20 U.S.C. 1436(e), 1439(a)(3))

§303.421 Prior written notice and procedural safeguards notice.

- (a) General. Prior written notice must be provided to parents a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.
 - (b) Content of notice. The notice must be in sufficient detail to inform parents about--
 - (1) The action that is being proposed or refused;
 - (2) The reasons for taking the action; and
 - (3) All procedural safeguards that are available under this subpart, including a description of mediation in §303.431, how to file a State complaint in §§303.432 through 303.434 and a due process complaint in the provisions adopted under §303.430(d), and any timelines under those procedures.
 - (c) Native language. (1) The notice must be--
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language, as defined in §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
 - (2) If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that--
 - (i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (ii) The parent understands the notice; and
 - (iii) There is written evidence that the requirements of this paragraph have been met.
- (Authority: 20 U.S.C. 1439(a)(6)-(7))

Surrogate Parents

§303.422 Surrogate parents.

- (a) General. Each lead agency or other public agency must ensure that the rights of a child are protected when--
 - (1) No parent (as defined in §303.27) can be identified;
 - (2) The lead agency or other public agency, after reasonable efforts, cannot locate a parent; or
 - (3) The child is a ward of the State under the laws of that State.

- (b) Duty of lead agency and other public agencies. (1) The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for--
 - (i) Determining whether a child needs a surrogate parent; and
 - (ii) Assigning a surrogate parent to the child.
 - (2) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child.
 - (c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
 - (d) Criteria for selection of surrogate parents. (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.
 - (2) Public agencies must ensure that a person selected as a surrogate parent--
 - (i) Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
 - (ii) Has no personal or professional 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.
 - (e) Non-employee requirement; compensation. A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
 - (f) Surrogate parent responsibilities. The surrogate parent has the same rights as a parent for all purposes under this part.
 - (g) Lead agency responsibility. The lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.
- (Authority: 20 U.S.C. 1439(a)(5))

Dispute Resolution Options

§303.430 State dispute resolution options.

- (a) General. Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, State complaint procedures,

and due process hearing procedures, described in paragraphs (b) through (e) of this section.

(b) Mediation. Each lead agency must make available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in §303.431.

(c) State complaint procedures. Each lead agency must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in §§303.432 through 303.434.

(d) Due process hearing procedures. Each lead agency must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by either adopting--

(1) The Part C due process hearing procedures under section 639 of the Act that--

(i) Meet the requirements in §§303.435 through 303.438; and

(ii) Provide a means of filing a due process complaint regarding any matter listed in §303.421(a); or

(2) The Part B due process hearing procedures under section 615 of the Act and §§303.440 through 303.449 (with either a 30-day or 45-day timeline for resolving due process complaints, as provided in §303.440(c)).

(e) Status of a child during the pendency of a due process complaint. (1) During the pendency of any proceeding involving a due process complaint under paragraph (d) of this section, unless the lead agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents.

(2) If the due process complaint under paragraph (d) of this section involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

(Approved by Office of Management and Budget under control number 1820-0678 and 1820-NEW)

(Authority: 20 U.S.C. 1415(e), 1415(f)(1)(A), 1415(f)(3)(A)–(D), 1439)

Mediation

§303.431 Mediation.

(a) General. Each lead agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

(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, or to deny any other rights afforded under Part C of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.

(ii) The lead agency must select mediators on a random, rotational, or other impartial basis.

(3) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) 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) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.

(6) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator. (1) An individual who serves as a mediator under this part--

(i) May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention services or other services to the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of a lead agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.

(d) Meeting to encourage mediation. A lead agency may establish procedures to offer to parents and EIS providers that choose not to use the mediation process, an opportunity

to meet, at a time and location convenient to the parents, with a disinterested party--

(1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and

(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

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

(Authority: 20 U.S.C. 1415(e), 1439(a)(8))

State Complaint Procedures

§303.432 Adoption of State complaint procedures.

(a) General. Each lead agency must adopt written procedures for--

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in §303.434 by providing for the filing of a complaint with the lead agency; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under §§303.432 through 303.434.

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

(1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

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

(Authority: 20 U.S.C. 1439(a)(1))

§303.433 Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under §303.434 to--

(1) Carry out an independent on-site investigation, if the lead agency determines that 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) Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum--

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

(ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431;

(4) Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of Part C of the Act or of this part; and

(5) 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 lead agency's final decision.

(b) Time extension; final decision; implementation. The lead agency's procedures described in paragraph (a) of this section also must--

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

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

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

(2) Include procedures for effective implementation of the lead agency's final decision, if needed, including--

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under §303.430(d). (1) If a written complaint is received that is also the subject of a due process hearing under §303.430(d), or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--

(i) The due process hearing decision is binding on that issue; and

(ii) The lead agency must inform the complainant to that effect.

(3) A complaint alleging a lead agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency.
(Approved by Office of Management and Budget under control number 1820-NEW) (Authority: 20 U.S.C. 1439(a)(1))

§303.434 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§303.432 and 303.433.

(b) The complaint must include--

- (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for the complainant; and
- (4) If alleging violations with respect to a specific child--
 - (i) The name and address of the residence of the child;
 - (ii) The name of the EIS provider serving the child;
 - (iii) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §303.432.

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

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

(Authority: 20 U.S.C. 1439(a)(1))

States that Choose to Adopt the Part C Due Process Hearing Procedures under Section 639 of the Act

§303.435 Appointment of an impartial due process hearing officer.

(a) Qualifications and duties. Whenever a due process complaint is received under §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must--

- (1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and
- (2) Perform the following duties:
 - (i)(A) Listen to the presentation of relevant viewpoints about the due process complaint.
 - (B) Examine all information relevant to the issues.

(C) Seek to reach a timely resolution of the due process complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) Definition of impartial. (1) Impartial means that the due process hearing officer appointed to implement the due process hearing under this part--

(i) Is not an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part. (Authority: 20 U.S.C. 1439(a)(1))

§303.436 Parental rights in due process hearing proceedings.

(a) General. Each lead agency must ensure that the parents of a child referred to Part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under §303.430(d).

(b) Rights. Any parent involved in a due process hearing has the right to--

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers 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 the parent at least five days before the hearing;
- (4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
- (5) Receive a written copy of the findings of fact and decisions at no cost to the parent.

(Authority: 20 U.S.C. 1439(a))

§303.437 Convenience of hearings and timelines.

(a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties.

(c) A hearing officer may grant specific extensions of time beyond the period set out in paragraph (b) of this section at the request of either party.

(Authority: 20 U.S.C. 1439(a)(1))

§303.438 Civil action.

Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

(Authority: 20 U.S.C. 1439(a)(1))

States that Choose to Adopt the Part B Due Process Hearing Procedures under Section 615 of the Act

§303.440 Filing a due process complaint.

(a) General. (1) A parent, EIS provider, or a lead agency may file a due process complaint on any of the matters described in §303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under Part C of the Act.

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §303.443(f) apply to the timeline in this section.

(b) Information for parents. The lead agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--

- (1) The parent requests the information; or
- (2) The parent or EIS provider files a due process complaint under this section.

(c) Timeline for Resolution. The lead agency may adopt a 30- or 45-day timeline, subject to §303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under §303.123 and in its prior written notice under §303.421, the specific timeline it has adopted.

(Approved by Office of Management and Budget under control number 1820-NEW) (Authority: 20 U.S.C. 1415(b)(6), 1439)

§303.441 Due process complaint.

(a) General. (1) The lead agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include--

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the EIS provider serving the child;
- (4) In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the EIS provider serving the child;
- (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements in paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if--
(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §303.442; or
(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §303.442(a) and the time period to resolve in §303.442(b) begin again with the filing of the amended due process complaint.

(e) Lead agency response to a due process complaint. (1) If the lead agency has not sent a prior written notice under §303.421 to the parent regarding the subject matter contained in the parent's due process complaint, the lead

agency or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes--

- (i) An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint;
 - (ii) A description of other options that the IFSP Team considered and the reasons why those options were rejected;
 - (iii) A description of each evaluation procedure, assessment, record, or report the lead agency or EIS provider used as the basis for the proposed or refused action; and
 - (iv) A description of the other factors that are relevant to the agency's or EIS provider's proposed or refused action.
- (2) A response by the lead agency under paragraph (e)(1) of this section does not preclude the lead agency from asserting that the parent's due process complaint was insufficient, where appropriate.
- (f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2), 1439)

§303.442 Resolution process.

(a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint that--

- (i) Includes a representative of the lead agency who has decision-making authority on behalf of that agency; and
- (ii) May not include an attorney of the lead agency unless the parent is accompanied by an attorney.

(2) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if--

- (i) The parent and lead agency agree in writing to waive the meeting; or
- (ii) The parent and lead agency agree to use the mediation process described in §303.431.

(4) The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.

(b) Resolution period. (1) If the lead agency has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (b)(2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent's due process complaint.

(5) If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 30- or 45-day timeline adopted by the lead agency under §303.440(c) for the due process hearing described in §303.447(a) starts the day after one of the following events:

- (1) Both parties agree in writing to waive the resolution meeting.
- (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.
- (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or lead agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (a)(2) of this section, the parties must execute a legally binding agreement that is--

- (1) Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and
- (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party

may void the agreement within three business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B), 1439)

§303.443 Impartial due process hearing.

(a) General. Whenever a due process complaint is received consistent with §303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§303.440 through 303.442.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the lead agency directly responsible for the early intervention services of the infant or toddler, as determined under State statute, State regulation, or a written policy of the lead agency.

(c) Impartial hearing officer. (1) At a minimum, a hearing officer--

(i) Must not be--

(A) An employee of the lead agency or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(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 hearing officer.

(3) Each lead agency must 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.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §303.441(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent, lead agency, or EIS provider must request an impartial hearing on their due process complaint within two years of the date the parent, lead agency, or EIS provider knew or should have known about the alleged action that forms the basis of the

due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--

(1) Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or

(2) The lead agency's or EIS provider's failure to provide the parent information that was required under this part to be provided to the parent.

(Approved by Office of Management and Budget under control number 1820-NEW) (Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D), 1439)

§303.444 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§303.440 through 303.445, or an appeal conducted pursuant to §303.446, 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 infants or toddlers with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to §303.443(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must --

(1) Be given the right to open the hearing to the public; and

(2) Receive a copy of the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section at no cost.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h), 1439)

§303.445 Hearing decisions.

(a) Decision of hearing officer. (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether an infant or toddler was appropriately identified,

evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under Part C of the Act, must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child was not appropriately identified, evaluated, placed, or provided early intervention services under Part C of the Act only if the procedural inadequacies--
(i) Impeded the child's right to identification, evaluation, and placement or provision of early intervention services for the child and that child's family under Part C of the Act;
(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child's family under Part C of the Act; or
(iii) Caused a deprivation of educational or developmental benefit.

(3) Nothing in paragraph (a) of this section precludes a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under §§303.400 through 303.449.

(b) Construction clause. Nothing in §§303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the lead agency under §303.446(b), if the lead agency level appeal is available.

(c) Separate due process complaint. Nothing in §§303.440 through 303.449 precludes a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decisions to general public. The lead agency, after deleting any personally identifiable information, must make the findings and decisions available to the public.
(Authority: 20 U.S.C. 1415(f)(3)(E)-(F), 1415(h)(4), 1415(o), 1439)

§303.446 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§303.440 through 303.445 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §303.448.

(b) Appeal of decisions; impartial review. (1) The lead agency may provide for procedures to allow any party aggrieved by the findings and decision in the hearing to appeal to the lead agency.

(2) If there is an appeal, the lead agency must conduct an impartial review of the findings and decision appealed. The official conducting the review must--

(i) Examine the entire hearing record;
(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §303.444 apply;
(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings of fact and decision to the general public. The lead agency, after deleting any personally identifiable information, must make the findings of fact and decisions described in paragraph (b)(2)(vi) of this section available to the general public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §303.448.

(Authority: 20 U.S.C. 1415(g), 1415(h)(4), 1415(i)(1)(A), 1415(i)(2), 1439)

§303.447 Timelines and convenience of hearings and reviews.

(a) The lead agency must ensure that not later than either 30 days or 45 days (consistent with the lead agency's written policies and procedures adopted under §303.440(c)) after the expiration of the 30-day period in §303.442(b), or the adjusted 30-day time periods described in §303.442(c)--

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The lead agency must ensure that not later than 30 days after the receipt of a request for a review--

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1), 1439)

§303.448 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§303.440 through 303.445 who does not have the right to an appeal under §303.446(b), and any party aggrieved by the findings and decision under §303.446(b), has the right to bring a civil action with respect to the due process complaint under §303.440. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action has 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part C of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court--

- (1) Receives the records of the administrative proceedings;
- (2) Hears additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) 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 §§303.440 and 303.446 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), 1415(i)(3)(A), 1415(l), 1439)

§303.449 State enforcement mechanisms.

Notwithstanding §§303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the State from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.

(Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B), 1439)

Subpart F--Use of Funds and Payor of Last Resort

General

§303.500 Use of funds, payor of last resort, and system of payments.

(a) Statewide system. Each statewide system must include written policies and procedures that meet the requirements of the--

- (1) Use of funds provisions in §303.501; and
- (2) Payor of last resort provisions in §§303.510 through 303.521 (regarding the identification and coordination of

funding resources for, and the provision of, early intervention services under Part C of the Act within the State).

(b) System of Payments. A State may establish, consistent with §§303.13(a)(3) and 303.203(b), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as co-payments, premiums, or deductibles) required to be paid under Federal, State, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that meets the requirements of §§303.520 and 303.521.

(Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10)-(12), 1437(b), 1438, 1439(a), 1440)

Use of Funds

§303.501 Permissive use of funds by the lead agency.

Consistent with §§303.120 through 303.122 and §§303.220 through 303.226, a lead agency may use funds under this part for activities or expenses that are reasonable and necessary for implementing the State's early intervention program for infants and toddlers with disabilities including funds--

(a) For direct early intervention services for infants and toddlers with disabilities and their families under this part that are not otherwise funded through other public or private sources (subject to §§303.510 through 303.521);

(b) To expand and improve services for infants and toddlers with disabilities and their families under this part that are otherwise available;

(c)(1) To provide FAPE as that term is defined in §303.15, in accordance with Part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year;

(2) The provision of FAPE under paragraph (c)(1) of this section does not apply to children who continue to receive early intervention services under this part in accordance with paragraph (d) of this section and §303.211;

(d) With the written consent of the parents, to continue to provide early intervention services under this part, in lieu of FAPE provided in accordance with Part B of the Act, to children with disabilities from their third birthday (pursuant to §303.211) until those children enter, or are eligible under State law to enter, kindergarten; and

(e) In any State that does not provide services under §303.204 for at-risk infants and toddlers, as defined in §303.5, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of--

- (1) Identifying and evaluating at-risk infants and toddlers;

- (2) Making referrals for the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and
- (3) Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

(Authority: 20 U.S.C. 1435(a)(10)–(12), 1437(b), 1438)

Payor of Last Resort--General Provisions

§303.510 Payor of last resort.

(a) Nonsubstitution of funds. Except as provided in paragraph (b) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this part may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source (subject to §§303.520 and 303.521).

(b) Interim payments--reimbursement. If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under this part may be used to pay the provider of services (for services and functions authorized under this part, including health services, as defined in §303.16 (but not medical services), functions of the child find system described in §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in §303.321), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available in the State or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701, et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.

(Authority: 20 U.S.C. 1435(a)(10)(B), 1437(a)(2), 1440(a), 1440(c))

§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.

(a) General. Each State must ensure that it has in place methods for State interagency coordination. Under these methods, the Chief Executive Officer of a State or designee of the Officer must ensure that the interagency agreement or

other method for interagency coordination is in effect between each State public agency and the designated lead agency in order to ensure--

(1) The provision of, and establishing financial responsibility for, early intervention services provided under this part; and

(2) Such services are consistent with the requirement in section 635 of the Act and the State's application under section 637 of the Act, including the provision of such services during the pendency of any dispute between State agencies.

(b) The methods in paragraph (a) of this section must meet all requirements in this section and be set forth in one of the following:

- (1) State law or regulation;
- (2) Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or
- (3) Other appropriate written methods determined by the Governor of the State, or the Governor's designee, and approved by the Secretary through the review and approval of the State's application.

(c) Procedures for resolving disputes. (1) Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention service program. Those procedures must include a mechanism for resolution of disputes within agencies and for the Governor, Governor's designee, or the lead agency to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

(2) The method must--

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(3) If, during the lead agency's resolution of the dispute, the Governor, Governor's designee, or lead agency determines that the assignment of financial responsibility under this section was inappropriately made--

(i) The Governor, Governor's designee, or lead agency must reassign the financial responsibility to the appropriate agency; and

(ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

- (d) Delivery of services in a timely manner. The methods adopted by the State under this section must--
- (1) Include a mechanism to ensure that no services that a child is entitled to receive under this part are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and
 - (2) Be consistent with the written funding policies adopted by the State under this subpart and include any provisions the State has adopted under §303.520 regarding the use of insurance to pay for Part C services.
- (e) Additional components. Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the lead agency's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in the State's early intervention service programs.
- (Authority: 20 U.S.C. 1435(a)(10), 1437(a)(2), 1440(b))

Payor of Last Resort & System of Payments Provisions--Use of Insurance, Benefits, Systems of Payments, and Fees
§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services.

- (a) Use of public benefits or public insurance to pay for Part C services.
- (1) A State may not use the public benefits or insurance of a child or parent to pay for Part C services unless the State provides written notification, consistent with §303.520(a)(3), to the child's parents, and the State meets the no-cost protections identified in paragraph (a)(2) of this section.
 - (2) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, the State--
 - (i) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;
 - (ii) Must obtain consent, consistent with §§303.7 and 303.420(a)(4), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would--
 - (A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;
 - (B) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;
 - (C) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or
 - (D) Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

- (iii) If the parent does not provide consent under paragraphs (a)(2)(i) or (a)(2)(ii) of this section, the State must still make available those Part C services on the IFSP to which the parent has provided consent.
- (3) Prior to using a child's or parent's public benefits or insurance to pay for Part C services, the State must provide written notification to the child's parents. The notification must include--
 - (i) A statement that parental consent must be obtained under §303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child's personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid);
 - (ii) A statement of the no-cost protection provisions in §303.520(a)(2) and that if the parent does not provide the consent under §303.520(a)(2), the State lead agency must still make available those Part C services on the IFSP for which the parent has provided consent;
 - (iii) A statement that the parents have the right under §303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and
 - (iv) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).
- (4) If a State requires a parent to pay any costs that the parent would incur as a result of the State's using a child's or parent's public benefits or insurance to pay for Part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the State's system of payments policies under §303.521 and included in the notification provided to the parent under paragraph (a)(3) of this section; otherwise, the State cannot charge those costs to the parent.
- (b) Use of private insurance to pay for Part C services. (1)(i) The State may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with §§303.7 and 303.420(a)(4), to use private insurance to pay for Part C services for his or her child or the State meets one of the exceptions in paragraph (b)(2) of this section. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained--

(A) When the lead agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(B) Each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

(ii) If a State requires a parent to pay any costs that the parent would incur as a result of the State's use of private insurance to pay for early intervention services (such as co-payments, premiums, or deductibles), those costs must be identified in the State's system of payments policies under §303.521; otherwise, the State may not charge those costs to the parent

(iii) When obtaining parental consent required under paragraph (b)(1)(i) of this section or initially using benefits under a child or parent's private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section, the State must provide to the parent a copy of the State's system of payments policies that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

(2) The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding private health insurance coverage for early intervention services under Part C of the Act, that expressly provides that --

(i) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;

(ii) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and

(iii) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy.

(3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section, regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the State may reestablish a new baseline of State and local expenditures under §303.225(b) in the next Federal fiscal year following the effective date of the statute.

(c) Inability to pay. If a parent or family of an infant or toddler with a disability is determined unable to pay under the State's definition of inability to pay under §303.521(a)(3) and does not provide consent under paragraph (b)(1), the lack of consent may not be used to delay or deny any services under this part to that child or family.

(d) Proceeds or funds from public insurance or benefits or from private insurance. (1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25. (2) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act, those funds are considered neither State nor local funds under §303.225(b). (3) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under §303.225.

(e) Funds received from a parent or family member under a State's system of payments. Funds received by the State from a parent or family member under the State's system of payments established under §303.521 are considered program income under 34 CFR 80.25. These funds--

(1) Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));

(2) Must be used for the State's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

(3) Are considered neither State nor local funds under §303.225(b).

(Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10), 1439(a))

§303.521 System of payments and fees.

(a) General. If a State elects to adopt a system of payments in §303.500(b), the State's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include--

(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;

(2) The basis and amount of payments or fees;

(3) The State's definition of ability to pay (including its definition of income and family expenses, such as

extraordinary medical expenses), its definition of inability to pay, and when and how the State makes its determination of the ability or inability to pay;

(4) An assurance that--

(i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section);

(ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child's family such that, if the parent or family meets the State's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost.

(iii) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and

(iv) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;

(5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and

(6) Provisions that permit, but do not require, the lead agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or co-payments.

(b) Functions not subject to fees. The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in §§303.301 through 303.303.

(2) Evaluation and assessment, in accordance with §303.320, and the functions related to evaluation and assessment in §303.13(b).

(3) Service coordination services, as defined in §§303.13(b)(11) and 303.33.

(4) Administrative and coordinative activities related to--

(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345; and

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.

(c) States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three. If a State has in effect a State law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and

toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both Parts B and C of the Act.

(d) Family fees. (1) Fees or costs collected from a parent or the child's family to pay for early intervention services under a State's system of payments are program income under 34 CFR 80.25. A State may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the State's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.

(2) Fees collected under a system of payments are considered neither State nor local funds under §303.225(b).

(e) Procedural Safeguards. (1) Each State system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the State's determination of the parent's ability to pay, may do one of the following:

(i) Participate in mediation in accordance with §303.431.

(ii) Request a due process hearing under §303.436 or 303.441, whichever is applicable.

(iii) File a State complaint under §303.434.

(iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this part, including the right to pursue, in a timely manner, the redress options described in paragraphs (e)(3)(i) through (e)(3)(iii) of this section.

(2) A State must inform parents of these procedural safeguard options by either--

(i) Providing parents with a copy of the State's system of payments policies when obtaining consent for provision of early intervention services under §303.420(a)(3); or

(ii) Including this information with the notice provided to parents under §303.421.

(Authority: 20 U.S.C. 1432(4)(B), 1439(a), 1440)

Subpart G--State Interagency Coordinating Council §303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under Part C of the Act must establish a State Interagency Coordinating Council (Council) as defined in §303.8.

(b) The Council must be appointed by the Governor. The Governor must ensure that the membership of the Council reasonably represents the population of the State.

(c) The Governor must designate a member of the Council to serve as the chairperson of the Council or require the Council to do so. Any member of the Council who is a representative

of the lead agency designated under §303.201 may not serve as the chairperson of the Council.

(Authority: 20 U.S.C. 1441(a))

§303.601 Composition.

(a) The Council must be composed as follows:

- (1)(i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.
 - (ii) At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged six years or younger.
 - (2) At least 20 percent of the members must be public or private providers of early intervention services.
 - (3) At least one member must be from the State legislature.
 - (4) At least one member must be involved in personnel preparation.
 - (5) At least one member must--
 - (i) Be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and
 - (ii) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.
 - (6) At least one member must--
 - (i) Be from the SEA responsible for preschool services to children with disabilities; and
 - (ii) Have sufficient authority to engage in policy planning and implementation on behalf of the SEA.
 - (7) At least one member must be from the agency responsible for the State Medicaid and CHIP program.
 - (8) At least one member must be from a Head Start or Early Head Start agency or program in the State.
 - (9) At least one member must be from a State agency responsible for child care.
 - (10) At least one member must be from the agency responsible for the State regulation of private health insurance.
 - (11) At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.
 - (12) At least one member must be a representative from the State child welfare agency responsible for foster care.
 - (13) At least one member must be from the State agency responsible for children's mental health.
- (b) The Governor may appoint one member to represent more than one program or agency listed in paragraphs (a)(7) through (a)(13) of this section.
- (c) The Council may include other members selected by the Governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no school operated

or funded by the BIE in the State, from the Indian Health Service or the tribe or tribal council.

(d) No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

(Authority: 20 U.S.C. 1231d, 1441(b), 1441(f))

§303.602 Meetings.

- (a) The Council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary.
- (b) The meetings must--
- (1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;
 - (2) To the extent appropriate, be open and accessible to the general public; and
 - (3) As needed, provide for interpreters for persons who are deaf and other necessary services for Council members and participants. The Council may use funds under this part to pay for those services.

(Authority: 20 U.S.C. 1441(c))

§303.603 Use of funds by the Council.

- (a) Subject to the approval by the Governor, the Council may use funds under this part to--
- (1) Conduct hearings and forums;
 - (2) Reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);
 - (3) Pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;
 - (4) Hire staff; and
 - (5) Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act.
- (b) Except as provided in paragraph (a) of this section, Council members must serve without compensation from funds available under Part C of the Act.

(Authority: 20 U.S.C. 1441(d))

§303.604 Functions of the Council--required duties.

- (a) Advising and assisting the lead agency. The Council must advise and assist the lead agency in the performance of its responsibilities in section 635(a)(10) of the Act, including--
- (1) Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;
 - (2) Assignment of financial responsibility to the appropriate agency;
 - (3) Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency

collaboration regarding child find under §§303.115 and 303.302, monitoring under §303.120 and §§303.700 through 303.708, financial responsibility and provision of early intervention services under §§303.202 and 303.511, and transition under §303.209; and

(4) Preparation of applications under this part and amendments to those applications.

(b) Advising and assisting on transition. The Council must advise and assist the SEA and the lead agency regarding the transition of toddlers with disabilities to preschool and other appropriate services.

(c) Annual report to the Governor and to the Secretary. (1) The Council must--

(i) Prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under Part C of the Act operated within the State; and

(ii) Submit the report to the Secretary by a date that the Secretary establishes.

(2) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Authority: 20 U.S.C. 1441(e)(1))

§303.605 Authorized activities by the Council.

The Council may carry out the following activities:

(a) Advise and assist the lead agency and the SEA regarding the provision of appropriate services for children with disabilities from birth through age five.

(b) Advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

(c) Coordinate and collaborate with the State Advisory Council on Early Childhood Education and Care for children, as described in section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other State interagency early learning initiatives, as appropriate.

(Authority: 20 U.S.C. 1435(a)(10), 1441(e)(2))

Subpart H—Federal and State Monitoring and Enforcement;; Reporting; and Allocation of Funds

Federal and State Monitoring and Enforcement

§303.700 State monitoring and enforcement.

(a) The lead agency must--

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each EIS program using the categories identified in §303.703(b);

(3) Enforce this part consistent with §303.704, using appropriate enforcement mechanisms, which must include, if

applicable, the enforcement mechanisms identified in §303.704(a)(1) (technical assistance) and §303.704(a)(2) (imposing conditions on the lead agency's funding of an EIS program or, if the lead agency does not provide Part C funds to the EIS program, an EIS provider), §303.704(b)(2)(i) (corrective action or improvement plan) and §303.704(b)(2)(iv) (withholding of funds, in whole or in part by the lead agency), and §303.704(c)(2) (withholding of funds, in whole or in part by the lead agency); and

(4) Report annually on the performance of the State and of each EIS program under this part as provided in §303.702.

(b) The primary focus of the State's monitoring activities must be on--

(1) Improving early intervention results and functional

outcomes for all infants and toddlers with disabilities; and

(2) Ensuring that EIS programs meet the program

requirements under Part C of the Act, with a particular

emphasis on those requirements that are most closely

related to improving early intervention results for infants and

toddlers with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this

section, the State must use quantifiable indicators and such

qualitative indicators as are needed to adequately measure

performance in the priority areas identified in paragraph (d)

of this section, and the indicators established by the

Secretary for the State performance plans.

(d) The lead agency must monitor each EIS program located

in the State, using quantifiable indicators in each of the

following priority areas, and using such qualitative indicators

as are needed to adequately measure performance in those

areas:

(1) Early intervention services in natural environments.

(2) State exercise of general supervision, including child find,

effective monitoring, the use of resolution sessions (if the

State adopts Part B due process hearing procedures under

§303.430(d)(2)), mediation, and a system of transition

services as defined in section 637(a)(9) of the Act.

(e) In exercising its monitoring responsibilities under

paragraph (d) of this section, the State must ensure that

when it identifies noncompliance with the requirements of

this part by EIS programs and providers, the noncompliance is

corrected as soon as possible and in no case later than one

year after the State's identification of the noncompliance.

(Approved by Office of Management and Budget under

control number 1820-0578)

(Authority: 20 U.S.C. 1416(a), 1442)

§303.701 State performance plans and data collection.

(a) General. Each State must have in place a performance

plan that meets the requirements described in section 616 of

the Act; is approved by the Secretary; and includes an

evaluation of the State's efforts to implement the

requirements and purposes of Part C of the Act, a description of how the State will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §303.700(d).

(b) Review of State performance plan. Each State must review its State performance plan at least once every six years and submit any amendments to the Secretary.

(c) Data collection. (1) Each State must collect valid and reliable information as needed to report annually to the Secretary under §303.702(b)(2) on the indicators established by the Secretary for the State performance plans.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects data for a particular indicator through State monitoring or sampling, the State must collect and report data on those indicators for each EIS program at least once during the six-year period of a State performance plan.

(3) Nothing in Part C of the Act or these regulations may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.

(Approved by Office of Management and Budget under control number 1820-0578)

(Authority: 20 U.S.C. 1416(b), 1442)

§303.702 State use of targets and reporting.

(a) General. Each State must use the targets established in the State's performance plan under §303.701 and the priority areas described in §303.700(d) to analyze the performance of each EIS program in implementing Part C of the Act.

(b) Public reporting and privacy. (1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must-- (A) Report annually to the public on the performance of each EIS program located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make the State's performance plan under §303.701(a), annual performance reports under paragraph (b)(2) of this section, and the State's annual reports on the performance of each EIS program under paragraph (b)(1)(i)(A) of this section available through public means, including by posting on the Web site of the lead agency, distribution to the media, and distribution to EIS programs.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i)(A) of this section, collects data through State monitoring or sampling, the State must include in its public report on EIS programs under paragraph (b)(1)(i)(A) of this

section the most recently available performance data on each EIS program and the date the data were collected.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.

(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

(Approved by Office of Management and Budget under control number 1820-0578)

(Authority: 20 U.S.C. 1416(b)(2)(B)-(C), 1442)

§303.703 Secretary's review and determination regarding State performance.

(a) Review. The Secretary annually reviews the State's performance report submitted pursuant to §303.702(b)(2).

(b) Determination.

(1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State--

(i) Meets the requirements and purposes of Part C of the Act;

(ii) Needs assistance in implementing the requirements of Part C of the Act;

(iii) Needs intervention in implementing the requirements of Part C of the Act; or

(iv) Needs substantial intervention in implementing the requirements of Part C of the Act.

(2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

(ii) The hearing described in paragraph (b)(2)(i) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Secretary should not make the determination described in paragraph (b)(1)(iii) or (b)(1)(iv) of this section.

(Authority: 20 U.S.C. 1416(d), 1442)

§303.704 Enforcement.

(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under §303.703(b)(1)(ii) in implementing the requirements of Part C of the Act, the Secretary takes one or more of the following actions:

(1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance

from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. This technical assistance may include--

- (i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;
 - (ii) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;
 - (iii) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and
 - (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.
- (2) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part C of the Act.
- (b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under §303.703(b)(1)(iii) in implementing the requirements of Part C of the Act, the following apply:
- (1) The Secretary may take any of the actions described in paragraph (a) of this section.
 - (2) The Secretary takes one or more of the following actions:
 - (i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.
 - (ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended (GEPA), 20 U.S.C. 1234f, if the Secretary has reason to believe that the State cannot correct the problem within one year.
 - (iii) Seeks to recover funds under section 452 of GEPA, 20 U.S.C. 1234a.
 - (iv) Withholds, in whole or in part, any further payments to the State under Part C of the Act.
 - (v) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.
 - (c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part C of

the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by the lead agency or an EIS program in the State, the Secretary takes one or more of the following actions:

- (1) Recovers funds under section 452 of GEPA, 20 U.S.C. 1234a.
 - (2) Withholds, in whole or in part, any further payments to the State under Part C of the Act.
 - (3) Refers the case to the Office of Inspector General of the Department of Education.
 - (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.
 - (d) Report to Congress. The Secretary reports to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.
- (Authority: 20 U.S.C. 1416(e)(1)-(3), 1416(e)(5), 1442)

§303.705 Withholding funds.

- (a) Opportunity for hearing. Prior to withholding any funds under Part C of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the lead agency involved, pursuant to the procedures in §§303.231 through 303.236.
- (b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part C of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part C of the Act should not be suspended.
- (c) Nature of withholding. (1) Limitation. If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2) or (e)(3) of the Act, the Secretary may determine--
 - (i) That such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under §303.703(b)(1); or
 - (ii) That the lead agency must not make further payments of funds under Part C of the Act to specified State agencies, EIS programs or, if the lead agency does not provide Part C funds to the EIS program, EIS providers that caused or were involved in the Secretary's determination under §303.703(b)(1).
- (2) Withholding until rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified--

- (i) Payments to the State under Part C of the Act must be withheld in whole or in part; and
- (ii) Payments by the lead agency under Part C of the Act must be limited to State agencies and EIS providers whose actions did not cause or were not involved in the Secretary's determination under §303.703(b)(1).

(Authority: 20 U.S.C. 1416(e)(4), 1416(e)(6), 1442)

§303.706 Public attention.

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to §303.704, the State must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to section 616(e) of the Act and §303.704 of the regulations to the attention of the public within the State, including by posting the notice on the Web site of the lead agency and distributing the notice to the media and to EIS programs.

(Authority: 20 U.S.C. 1416(e)(7), 1442)

§303.707 Rule of construction.

Nothing in this subpart may be construed to restrict the Secretary from utilizing any authority under GEPA, 20 U.S.C. 1221 et seq., and its regulations in 34 CFR parts 76, 77, 80, and 81, including the imposition of special conditions under 34 CFR 80.12, to monitor and enforce the requirements of the Act.

(Authority: 20 U.S.C. 1416(g), 1442)

§303.708 State enforcement.

Nothing in this subpart may be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of the Act.

(Authority: 20 U.S.C. 1416(a)(1)(C), 1442)

Reports--Program Information

§303.720 Data requirements--general.

(a) The lead agency must annually report to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The lead agency must submit the report to the Secretary in the manner prescribed by the Secretary.

(Approved by Office of Management and Budget under control number 1820-0557)

(Authority: 20 U.S.C. 1418, 1435(a)(14), 1442)

§303.721 Annual report of children served--report requirement.

(a) For the purposes of the annual report required by section 618 of the Act and §303.720, the lead agency must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report must include--

(1) The number and percentage of infants and toddlers with disabilities in the State, by race, gender, and ethnicity, who

are receiving early intervention services (and include in this number any children reported to it by tribes, tribal organizations, and consortia under §303.731(e)(1));

(2) The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and

(3) The number and percentage of at-risk infants and toddlers (as defined in section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.

(b) If a State adopts the option under section 635(c) of the Act and §303.211 to make services under this part available to children ages three and older, the State must submit to the Secretary a report on the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for those children to continue to receive early intervention services.

(c) The number of due process complaints filed under section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

(Approved by Office of Management and Budget under control number 1820-0557)

(Authority: 20 U.S.C. 1418(a)(1)(B), (C), (F), (G), and (H), 1435(a)(14), 1435(c)(3), 1442)

§303.722 Data reporting.

(a) Protection of identifiable data. The data described in section 618(a) of the Act and in §303.721 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.

(b) Sampling. The Secretary may permit States and outlying areas to obtain data in section 618(a) of the Act through sampling.

(Approved by Office of Management and Budget under control number 1820-0557)

(Authority: 20 U.S.C. 1418(b), 1435(a)(14), 1442)

§303.723 Annual report of children served--certification.

The lead agency must include in its report a certification signed by an authorized official of the agency that the information provided under §303.721 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.

(Approved by Office of Management and Budget under control number 1820-0557)

(Authority: 20 U.S.C. 1418(a)(3), 1435(a)(14), 1442)

§303.724 Annual report of children served--other responsibilities of the lead agency.

In addition to meeting the requirements of §§303.721 through 303.723, the lead agency must conduct its own child

count or use EIS providers to complete its child count. If the lead agency uses EIS providers to complete its child count, then the lead agency must--

- (a) Establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services;
 - (b) Establish dates by which those EIS providers must report to the lead agency to ensure that the State complies with §303.721(a);
 - (c) Obtain certification from each EIS provider that an unduplicated and accurate count has been made;
 - (d) Aggregate the data from the count obtained from each EIS provider and prepare the report required under §§303.721 through 303.723; and
 - (e) Ensure that documentation is maintained to enable the State and the Secretary to audit the accuracy of the count. (Approved by Office of Management and Budget under control number 1820-0557)
- (Authority: 20 U.S.C. 1418(a), 1435(a)(14), 1442)

Allocation of Funds

§303.730 Formula for State allocations.

- (a) Reservation of funds for outlying areas. From the sums appropriated to carry out Part C of the Act for any fiscal year, the Secretary may reserve not more than one percent for payments to American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands in accordance with their respective needs for assistance under Part C of the Act.
- (b) Consolidation of funds. The provisions of the Omnibus Territories Act of 1977, Pub. L. 95-134, permitting the consolidation of grants to the outlying areas, do not apply to the funds provided under Part C of the Act.

(Authority: 20 U.S.C. 1443(a))

§303.731 Payments to Indians.

- (a) General. (1) The Secretary makes payments to the Secretary of the Interior under Part C of the Act, which the Secretary of the Interior must distribute to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450b), or consortia of those entities, for the coordination of assistance in the provision of early intervention services by States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior.
- (2) A tribe, tribal organization, or consortium of those entities is eligible to receive a payment under this section if the tribe, tribal organization, or consortium of those entities is on a reservation that is served by an elementary or secondary school operated or funded by the Secretary of the Interior.

(3) The amount of the payment to the Secretary of the Interior under this section for any fiscal year is 1.25 percent of the aggregate amount available to all States under Part C of the Act.

- (b) Allocation. For each fiscal year, the Secretary of the Interior must distribute the entire payment received under paragraph (a)(1) of this section by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total number of those children served by all tribes, tribal organizations, or consortia.
- (c) Information. To receive a payment under this section, the tribe, tribal organization, or consortium must submit the appropriate information to the Secretary of the Interior to determine the amounts to be distributed under paragraph (b) of this section.

(d) Use of funds. (1) The funds received by a tribe, tribal organization, or consortium must be used to assist States in child find, screening, and other procedures for the early identification of Indian children under three years of age and for parent training. The funds also may be used to provide early intervention services in accordance with Part C of the Act. These activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Education, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The tribe, tribal organization, or consortium must, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) Reports. (1) To be eligible to receive a payment under paragraph (b) of this section, a tribe, tribal organization, or consortium must make a biennial report to the Secretary of the Interior of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act.

(2) The Secretary of the Interior must provide a summary of this information (including confirmation that each tribe, tribal organization, or consortium has provided to the Secretary of

the Interior the assurance required under paragraph (e)(1) of this section) on a biennial basis to the Secretary along with such other information as required of the Secretary of the Interior under Part C of the Act. The Secretary may require additional information from the Secretary of the Interior.

(3) Within 90 days after the end of each fiscal year the Secretary of the Interior must provide the Secretary with a report on the payments distributed under this section. The report must include--

- (i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;
 - (ii) The amount of each payment; and
 - (iii) The date of each payment.
- (f) Prohibited uses of funds. None of the funds 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. 1443(b))

§303.732 State allotments.

(a) General. Except as provided in paragraphs (b) and (c) of this section, for each fiscal year, from the aggregate amount of funds available under Part C of the Act for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) Minimum allocations. Except as provided in paragraph (c) of this section, no State may receive less than 0.5 percent of the aggregate amount available under this section or \$500,000, whichever is greater.

(c) Ratable reduction. (1) If the sums made available under Part C of the Act for any fiscal year are insufficient to pay the full amount that all States are eligible to receive under this section for that year, the Secretary ratably reduces the allotments to those States for such year.

(2) If additional funds become available for making payments under this section, allotments that were reduced under paragraph (c)(1) of this section will be increased on the same basis the allotments were reduced.

(d) Definitions. For the purpose of allotting funds to the States under this section--

(1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under §303.731, to the outlying areas under §303.730, and any amount to be reserved for State incentive grants under §303.734;

(2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and

(3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1443(c))

§303.733 Reallotment of funds.

If a State (as defined in §303.35) elects not to receive its allotment, the Secretary reallots those funds among the remaining States (as defined in §303.732(d)(3)), in accordance with §303.732(c)(2). (Authority: 20 U.S.C. 1443(d))

§303.734 Reservation for State incentive grants.

(a) General. For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 of the Act exceeds \$460,000,000, the Secretary reserves 15 percent of the appropriated amount exceeding \$460,000,000 to provide grants to States that are carrying out the policy described in section 635(c) of the Act and in §303.211 (including a State that makes Part C services available under §303.211(a)(2)), in order to facilitate the implementation of that policy.

(b) Amount of grant. (1) General. Notwithstanding section 643(c)(2) and (c)(3) of the Act, the Secretary provides a grant to each State under this section in an amount that bears the same ratio to the amount reserved under paragraph (a) of this section as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under paragraph (a) of this section.

(2) Maximum amount. No State may receive a grant under paragraph (a) of this section for any fiscal year in an amount that is greater than 20 percent of the amount reserved under that paragraph for the fiscal year.

(c) Carryover of amounts pursuant to section 643(e)(3) of the Act. (1) First succeeding fiscal year. Pursuant to section 421(b) of GEPA, 20 U.S.C. 1221 et seq., amounts under a grant provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which those amounts were appropriated must remain available for obligation and expenditure during the first succeeding fiscal year.

(2) Second succeeding fiscal year. Amounts under a grant provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which those amounts were appropriated must be returned to the Secretary and used to make grants to States under section 633 of the Act (from their allotments identified in §§303.731 through 303.733) during the second succeeding fiscal year.

(Authority: 20 U.S.C. 1443)

Special Education Disability

Tennessee Specific Eligibility Standards as Referenced in the Rulemaking Hearing Rules of the State Board Of Education Chapter 0520-1-9

Tennessee State Department of Education

Revised 2014

Questions pertaining to the Specific Eligibility Standards should be directed to Theresa Nicholls at Theresa.Nicholls@tn.gov.

AUTISM

1. Definition

Autism means a developmental disability, which significantly affects verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. The term does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disturbance, as defined in this section.

The term of Autism also includes students who have been diagnosed with an Autism Spectrum Disorder such as Autism, Pervasive Developmental Disorder—Not Otherwise Specified (PDD-NOS) or Asperger's Syndrome when the child's educational performance is adversely affected. Additionally, it may also include a diagnosis of a Pervasive Developmental Disorder such as Rett's or Childhood Disintegrative Disorder. Autism may exist concurrently with other areas of disability.

After age three (3), a child could be diagnosed as having Autism if the child manifests the above characteristics. Children with Autism demonstrate the following characteristics prior to age 3:

- (1) difficulty relating to others or interacting in a socially appropriate manner;
- (2) absence, disorder, or delay in verbal and/or nonverbal communication; and
- (3) one or more of the following:
 - (a) insistence on sameness as evidenced by restricted play patterns, repetitive body movements, persistent or unusual preoccupations, and/or resistance to change
 - (b) unusual or inconsistent responses to sensory stimuli.

2. Evaluation

The characteristics identified in the Autism Definition are present.

Evaluation Procedures

Evaluation of Autism shall include the following:

- (1) parental interviews including developmental history
- (2) behavioral observations in two or more settings (can be two settings within the school);
- (3) physical and neurological information from a licensed physician, pediatrician or neurologist who can provide general health history to evaluate the possibility of other impacting health conditions;
- (4) evaluation of speech/language/communication skills, cognitive/developmental skills, adaptive behavior skills and social skills; and
- (5) documentation, including observation and/or assessment, of how Autism Spectrum Disorder adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Autism Spectrum Disorders:

- (1) the parent;
- (2) the child's general education classroom teacher (with a child of less than school age, an individual qualified to teach a child of his/her age);
- (3) a licensed special education teacher;
- (4) a licensed school psychologist, licensed psychologist, licensed psychological examiner (under the direct supervision of a licensed psychologist), licensed senior psychological examiner, or licensed psychiatrist;
- (5) a licensed physician, neurologist, pediatrician or primary health care provider; and
- (6) a certified speech/language teacher or specialist; and
- (7) other professional personnel as needed, such as an occupational therapist, physical therapist or guidance counselor.

DEAF-BLINDNESS

1. Definition

Deaf-Blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs by addressing any one of the impairments. A child with deaf-blindness shall have at least one of the following:

- (1) a child who meets criteria for Deafness/Hearing Impairment and Visual Impairment;
- (2) a child who is diagnosed with a degenerative condition or syndrome which will lead to Deaf-Blindness, and whose present level of functioning is adversely affected by both hearing and vision deficits; or
- (3) a child with severe multiple disabilities due to generalized central nervous system dysfunction, and who exhibits auditory and visual impairments or deficits which are not perceptual in nature.

2. Evaluation

The characteristics identified in the Deaf-Blindness Definition are present.

Evaluation Procedures

- a. Evaluation of Deaf-Blindness shall include the required Evaluation Procedures for Hearing Impairment/Deafness and Visual Impairment and include the following:
 - (1) Deafness/Hearing Impairment Procedures
 - (a) audiological evaluation;
 - (b) evaluation of speech and language performance;
 - (c) school history and levels of learning or educational performance;
 - (d) observation of the child's auditory functioning and classroom performance; and
 - (e) documentation, including observation and or assessment, of how Deafness/Hearing Impairment adversely impacts the child's educational performance in his/her learning environment.
 - (2) Visual Impairment Procedures
 - (a) Eye exam and evaluation completed by an ophthalmologist or optometrist that documents the eye condition with the best possible correction and includes a description of etiology, diagnosis, and prognosis of the Visual Impairment evaluation;
 - (b) a written functional vision and media assessment, completed or compiled by a licensed teacher of students with visual impairments that includes:
 - i. observation of visual behaviors at school, home, or other environments;
 - ii. educational implications of eye condition based upon information received from eye report;
 - iii. assessment and/or screening of expanded core curriculum skills (orientation and mobility, social interaction, visual efficiency, independent living, recreation and leisure, career education, assistive technology, and compensatory skills) as well as an evaluation of the child's reading and writing skills, needs, appropriate reading and writing media, and current and future needs for Braille; and
 - iv. school history and levels of educational performance.
 - (c) documentation, including observation and/or assessment, of how Visual Impairment adversely affects educational performance in the classroom or learning environment.
- b. Evaluation of a child with a suspected degenerative condition or syndrome which will lead to Deaf-Blindness shall include a medical statement confirming the existence of such a condition or syndrome and its prognosis.
- c. Additional evaluation of Deaf-Blindness shall include the following:
 - (1) expanded core curriculum skills assessment that includes Deafness/Hearing Impairment;
 - (2) assessment of speech and language functioning including the child's mode of communication;
 - (3) assessment of developmental and academic functioning; and
 - (4) documentation, including observation and/or assessment, of how Deaf-Blindness adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Deaf- Blindness:

- (1) the parent;
- (2) the child's general education classroom teacher;
- (3) a licensed special education teacher;
- (4) a licensed physician or audiologist;
- (5) a licensed speech/language teacher or specialist;
- (6) an ophthalmologist or optometrist;
- (7) a licensed teacher of students with Visual Impairments; and
- (8) other professional personnel, as indicated (e.g., low vision specialist, orientation and mobility instructor, school psychologist)

DEAFNESS

1. Definition

Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. The child has:

- (1) an inability to communicate effectively due to Deafness; and/or
- (2) an inability to perform academically on a level commensurate with the expected level because of Deafness; and/or
- (3) delayed speech and/or language development due to Deafness.

2. Evaluation

The characteristics identified in the Deafness Definition are present.

Evaluation Procedures

Evaluation of Deafness shall include the following:

- (1) audiological evaluation;
- (2) evaluation of speech and language performance;

- (3) school history and levels of learning or educational performance;
- (4) observation of classroom performance; and
- (5) documentation, including observation and/or assessment, of how Deafness adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Deafness:

- (1) the parent;
- (2) the child's general education classroom teacher;
- (3) a licensed special education teacher;
- (4) a licensed physician or audiologist;
- (5) a licensed speech/language teacher or specialist; and
- (6) other professional personnel, as indicated.

DEVELOPMENTAL DELAY

1. Definition

Developmental Delay refers to children aged three (3) through nine (9) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical, cognitive, communication, social or emotional, or adaptive development that adversely affects a child's educational performance. Other disability categories shall be used if they are more descriptive of a young child's strengths and needs. Local school systems have the option of using Developmental Delay as a disability category. Initial eligibility as Developmental Delay shall be determined before the child's seventh birthday.

2. Evaluation

The characteristics identified in the Developmental Delay Definition are present.

Evaluation Procedures

Evaluation of Developmental Delay shall include the following:

- a. Evaluation through an appropriate multi-measure diagnostic procedure, administered by a multi-disciplinary assessment team in all of the following areas (not only areas of suspected delays):
 - (1) physical development, which includes fine and gross motor skills combined;
 - (2) cognitive development;
 - (3) communication development, which includes receptive and expressive language skills combined;
 - (4) social/emotional development; and
 - (5) adaptive development.
- b. Demonstration of significant delay in one or more of the above areas which is documented by:
 - (1) performance on a standardized developmental evaluation instrument which yields a 1.5 standard deviations below the mean; or when standard scores for the instrument used are not available, a 25% delay based on chronological age in two or more of the developmental areas; or
 - (2) performance on a standardized developmental evaluation instrument which yields 2.0 standard deviations below the mean; or when standard scores for the instrument used are not available, a 40% delay based on chronological age in one of the developmental areas; and
 - (3) when one area is determined to be deficit by 2.0 standard deviations or 40% of the child's chronological age, the existence of other disability categories that are more descriptive of the child's learning style shall be ruled out.
- c. Evaluation by appropriate team member(s) of the following:
 - (1) documentation of identifiable atypical development;
 - (2) measurement of developmental skills using individually administered procedures;
 - (3) examination of developmental strengths and needs of the child gathered from observation(s);
 - (4) observation by a qualified professional in an environment natural for the child which may include the school, child-care agency, and/or home/community to document delayed or atypical development,
 - (5) interview with the parent to discuss and confirm the noted strengths and needs in the child's development;
 - (6) a review of any existing records or data, and
 - (7) documentation, including observation and/or assessment, of how Developmental Delay adversely impacts the child's educational performance in his/her learning environment.
- d. After the age of seven, when reevaluation for continued eligibility is determined appropriate by the IEP Team, the reevaluation shall include at a minimum a multi-measure diagnostic procedure which includes a comprehensive psycho-educational assessment that measures developmental skills, cognitive functioning, and/or additional areas as determined appropriate by the IEP Team.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Developmental Delay:

- (1) the parent;
- (2) the child's general education classroom teacher (with a child of less than school age, an individual qualified to teach a child of his/her age),
- (3) a licensed early childhood special education teacher or special education teacher with pre-school experience and one or more of the following persons:
 - (a) a licensed school psychologist, licensed psychologist, licensed senior psychological examiner, or licensed psychological examiner;
 - (b) a licensed speech/language specialist;
 - (c) a licensed related services and medical specialists; and
 - (d) other personnel, as indicated.

EMOTIONAL DISTURBANCE

1. Definition

Emotional Disturbance means a disability exhibiting one or more of the following characteristics to a marked degree and over an extended period of time (during which time documentation of informal assessments and interventions are occurring) that adversely affects a child's educational performance:

1. inability to learn which cannot be explained by limited school experience, cultural differences, or intellectual, sensory, or health factors;
2. inability to build or maintain satisfactory interpersonal relationships with peers and school personnel;
3. inappropriate types of behavior or feelings when no major or unusual stressors are evident;
4. general pervasive mood of unhappiness or depression;
5. tendency to develop physical symptoms or fears associated with personal or school problems.

The term may include other mental health diagnoses. The term does not apply to children who are socially maladjusted, unless it is determined that they have an Emotional Disturbance. Social maladjustment includes, but is not limited to, substance abuse related behaviors, gang-related behaviors, oppositional defiant behaviors, and/or conduct behavior problems.

2. Evaluation

The characteristics identified in the Emotional Disturbance Definition are present.

Evaluation Procedures

Evaluation of Emotional Disturbance shall include a multifaceted evaluation for initial placement that includes, but is not limited to, the following:

- (1) visual or auditory deficits ruled out as the primary cause of atypical behavior(s);
- (2) physical conditions ruled out as the primary cause of atypical behavior(s);
- (3) specific behavioral data which includes
 - (a) documentation of previous interventions, and
 - (b) evaluation of the locus of control of behavior to include internal and external factors;
- (4) direct and anecdotal observations over time and across various settings by three or more licensed professionals;
- (5) individual assessment of psycho-educational strengths and weaknesses, which include
 - (a) intelligence, behavior, and personality factors, and
 - (b) take into account any exceptionality of the individual in the choice of assessment procedures; individual educational assessment (criterion- or norm-referenced) including direct measures of classroom performance to determine the student's strengths and weaknesses;
- (6) review of past educational performance;
- (7) comprehensive social history/assessment collected directly from the child's parent/guardian, custodial guardian, or if necessary, from an individual with intimate knowledge of the child's circumstances, history, or current behaviors which includes:
 - (a) family history,
 - (b) family-social interactions,
 - (c) developmental history,
 - (d) medical history (including mental health), and
 - (e) school history (including attendance and discipline records); and
- (8) documentation, including observation and/or assessment, of how Emotional Disturbance adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Emotional Disturbance:

- (1) the parent;
- (2) the child's general education classroom teacher(s);
- (3) a licensed special education teacher;
- (4) a licensed school psychologist, licensed psychologist, licensed psychological examiner (under the direct supervision of a licensed psychologist), licensed senior psychological examiner, or licensed psychiatrist; and

- (5) other professional personnel (i.e., mental health service providers, and school social workers), as indicated.

FUNCTIONAL DELAY

1. Definition

Functional Delay means a continuing significant disability in intellectual functioning and achievement which adversely affects the student's ability to progress in the general school program, but adaptive behavior in the home or community is not significantly impaired and is at or near a level appropriate to the student's chronological age, including:

- a. significantly impaired intellectual functioning which is two or more standard deviations below the mean, and difficulties in these areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning:
 - (1) limited English proficiency;
 - (2) cultural factors;
 - (3) medical conditions that impact school performance;
 - (4) environmental factors;
 - (5) communication, sensory or motor disabilities.
- b. deficient academic achievement which is at or below the fourth percentile in two or more total or composite scores in the following areas:
 - (1) basic reading skills;
 - (2) reading fluency skills;
 - (3) reading comprehension;
 - (4) mathematics calculation;
 - (5) mathematics problem solving;
 - (6) written expression.
- c. home or school adaptive behavior scores that fall above the level required for meeting Intellectual disability eligibility standards.

2. Evaluation

The characteristics identified in the Functional Delay Definition are present.

Evaluation Procedures

Evaluation of Functional Delay shall include the following:

- a. Intelligence evaluation with an individual, standardized test of cognition or intellectual ability which takes into consideration the following:
 - (1) selection of test instrument(s) that are sensitive to cultural, linguistic or sensory factors;
 - (2) interpretation of test scores which take into account:
 - (a) the standard error of measurement for the test at the 68th percent confidence level, and
 - (b) factors that may affect test performance; including:
 - i. limited English proficiency;
 - ii. cultural factors;
 - iii. medical conditions that impact school performance;
 - iv. environmental factors;
 - v. communication, sensory or motor disabilities; and
 - (c) determination that test performance due to these factors is not the primary reason for significantly impaired scores on measures of intellectual functioning.
- b. Achievement evaluation with individual, standardized achievement test(s) in the areas of:
 - (1) basic reading skills,
 - (2) reading fluency skills,
 - (3) reading comprehension,
 - (4) mathematics calculation,
 - (5) mathematics problem solving, and
 - (6) written expression;
- c. Home or school adaptive behavior assessment which is evaluated by individual, standardized instruments and determined by scores as appropriate; and
- d. Documentation, including observation and/or assessment, of how Functional Delay adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Functional Delay:

- (1) the parent;
- (2) the child's general education classroom teacher;
- (3) a licensed special education teacher;
- (4) a licensed school psychologist, licensed psychologist, licensed senior psychological examiner, or licensed psychological examiner; and
- (5) other professional personnel, as indicated.

HEARING IMPAIRMENT

1. Definition

Hearing Impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include Deafness.

A child shall have one or more of the following characteristics:

- (1) inability to communicate effectively due to a Hearing Impairment;
- (2) inability to perform academically on a level commensurate with the expected level because of a Hearing Impairment;
- (3) delayed speech and/or language development due to a Hearing Impairment.

2. Evaluation

The characteristics identified in the Hearing Impairment Definition are present.

Evaluation Procedures

Evaluation of Hearing Impairment shall include the following:

- (1) audiological evaluation;
- (2) evaluation of speech and language performance;
- (3) school history and levels of learning or educational performance;
- (4) observation of classroom performance; and
- (5) documentation, including observation and/or assessment, of how Hearing Impairment adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Hearing Impairment:

- (1) the parent;
- (2) the child's general education classroom teacher (with a child of less than school age, an individual qualified to teach a child of his/her age);
- (3) a licensed special education teacher;
- (4) an audiologist or licensed physician;
- (5) a licensed speech/language teacher or specialist; and
- (6) other professional personnel, as indicated

INTELLECTUALLY GIFTED

1. Definition

—Intellectually Gifted means a child whose intellectual abilities and potential for achievement are so outstanding the child's educational performance is adversely affected. "Adverse affect" means the general curriculum alone is inadequate to appropriately meet the student's educational needs.

2. Evaluation

The characteristics identified in the Intellectually Gifted Definition are present.

Evaluation Procedures

Evaluation of Intellectually Gifted shall include the following:

- a. Assessment through a multi-modal identification process, wherein no singular mechanism, criterion or cut-off score is used for determination of eligibility that includes evaluation and assessment of:
 - (1) educational performance
 - (2) creativity/characteristics of intellectual giftedness, and;
 - (3) cognition/intelligence;
- b. Individual evaluation procedures that include appropriate use of instruments sensitive to cultural, linguistic, and environmental factors or sensory impairments;
- c. Multiple criteria and multiple assessment measures in procedures followed for screening and comprehensive assessment that include:
 - (1) Systematic Child Find and Individual Screening:
 - (a) systematic child-find for students who are potentially gifted to include at least one grade level screening, and
 - (b) individual screening of these students in grades K-12 in the areas of:
 - i. educational performance, and
 - ii. creativity/characteristics of giftedness; and
 - (c) a team review of individual screening results to determine need for referral for comprehensive assessment;
 - (2) Comprehensive Assessment:
 - (a) individual evaluation of cognition or intellectual ability;
 - (b) individual evaluation of educational performance and creativity/ characteristics of giftedness, the need for expanded assessment and evaluation in each of these areas to be based on results of Individual Screening; and regardless of specific criteria used to determine or identify the student with Intellectual Giftedness;
 - (c) completion of assessment procedures in the three component areas (cognition, educational performance and creativity/ characteristics of giftedness) for program and services planning; and
 - (d) documentation, including observation and/or assessment, of how Intellectual Giftedness

adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

- a. Information shall be gathered from the following persons in the evaluation of Intellectual Giftedness:
 - (1) the parent;
 - (2) the child's referring teacher, or a general classroom teacher qualified to teach a child of his/her age, who is familiar with the student (with a child of less than school age, an individual qualified to teach a child of his/her age, who is familiar with the child); and when appropriate, in collaboration with the ESL teacher, when the child is an English Language Learner;
 - (3) a licensed special education teacher and/or a licensed teacher who meets the employment standards in gifted education;
 - (4) a licensed school psychologist, licensed psychological examiner, licensed senior psychological examiner, or licensed psychologist;
 - (5) other professional personnel, as indicated.
- b. At least one of the evaluation participants [(2), (3), (4), or (5)] must be trained in the characteristics of gifted children.

INTELLECTUAL DISABILITY

1. Definition

Intellectual disability is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affect a child's educational performance.

2. Evaluation

The characteristics as identified in the Intellectual disability Definition are present.

Evaluation Procedures

Evaluation of Intellectual disability shall include the following:

- a. Assessment of intelligence/cognitive abilities, adaptive behaviors at school and in the home, and developmental assessment as follows:
 - (1) intellectual functioning, determined by appropriate assessment of intelligence/cognitive abilities which results in significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the test at the 68th percent confidence level, on an individually administered, standardized measure of intelligence;
 - (a) significantly impaired adaptive behavior in the home or community determined by:
 - (b) a composite score on an individual standardized instrument to be completed with or by the child's principal caretaker which measures two standard deviations or more below the mean. Standard scores shall be used. A composite age equivalent score that represents a 50% delay based on chronological age can be used only if the instrument fails to provide a composite standard score, and
 - (c) additional documentation, when appropriate, which may be obtained from systematic documented observations, impressions, developmental history by an appropriate specialist in conjunction with the principal caretaker in the home, community, residential program or institutional setting; and
 - (2) significantly impaired adaptive behavior in the school, daycare center, residence, or program as determined by:
 - (a) systematic documented observations by an appropriate specialist, which compare the child with other children of his/her chronological age group. Observations shall address age-appropriate adaptive behaviors. Adaptive behaviors to be observed in each age range include:
 - i. birth to 6 years – communication, self-care, social skills, and physical development;
 - ii. 6 to 13 years – communication, self-care, social skills, home living, community use, self-direction, health and safety, functional academics, and leisure;
 - iii. 14 to 21 years – communication, self-care, social skills, home-living, community use, self-direction, health and safety, functional academics, leisure, and work; and
 - (b) when appropriate, an individual standardized instrument may be completed with the principal teacher of the child. A composite score on this instrument shall measure two standard deviations or more below the mean. Standard scores shall be used. A composite age equivalent score that represents a 50% delay based on chronological age can be used only if the instrument fails to provide a composite standard score; and
 - (3) Assessments and interpretation of evaluation results in evaluation standards 2.a.(1), 2.a.(2), and 2.a.(3) shall take into account factors that may affect test performance, including:
 - (a) limited English proficiency;
 - (b) cultural factors;

- (c) medical conditions that impact school performance;
 - (d) environmental factors;
 - (e) communication, sensory or motor disabilities; and
 - (f) difficulties in these areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning, home, and school adaptive behavior.
- b. Developmental history which indicates delays in cognitive/intellectual abilities (intellectual impairment) manifested during the developmental period (birth to 18) as documented in background information and history and a current demonstration of delays present in the child's' natural (home and school) environment.
- c. Documentation, including observation and/or assessment of how Intellectual disability adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Intellectual disability:

- (1) the parent;
- (2) the child's general education classroom teacher;
- (3) a licensed special education teacher;
- (4) a licensed school psychologist, licensed psychologist, licensed senior psychological examiner, or licensed psychological examiner; and
- (5) other professional personnel, as indicated.

MULTIPLE DISABILITIES

1. Definition

Multiple Disabilities means concomitant impairments (such as Intellectual disability- Deafness, Intellectual disability-Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one of the impairments. The term does not include Deaf-Blindness.

2. Evaluation

The characteristics as identified in the Multiple Disabilities Definition are present.

Evaluation Procedures

Evaluation of Multiple Disabilities shall include the following:

- a. Evaluation, following the procedures for each disability;
- b. Determination of eligibility based on the definition and standards for two or more disabilities;
- c. The nature of the combination of the student's disabilities require significant developmental and educational programming that cannot be accommodated with special education programs by addressing any one of the identified disabilities; and
- d. Documentation, including observation and/or assessment, of how Multiple Disabilities adversely impact the child's educational performance in his/her environment.

Evaluation Participants

Information shall be gathered from those persons designated for each disability included in the evaluation of Multiple Disabilities

ORTHOPEDIC IMPAIRMENT

1. Definition

Orthopedic Impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g. club foot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).

2. Evaluation

The characteristics as identified in the Orthopedic Impairment Definition are present.

Evaluation Procedures

Evaluation of Orthopedic Impairment shall include the following:

- (1) Medical evaluation of the child's Orthopedic Impairment by a licensed physician;
- (2) Social and physical adaptive behaviors (mobility and activities of daily living) which relate to Orthopedic Impairment; and
- (3) Documentation, including observation and/or assessment, of how Orthopedic Impairment adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Orthopedic Impairment:

- (1) the parent;
- (2) the child's general education classroom teacher(s);
- (3) a licensed special education teacher
- (4) a licensed physician; and
- (5) other professional personnel as indicated (i.e., Occupational Therapist, Physical Therapist, or Assistive Technology Specialist).

OTHER HEALTH IMPAIRMENT

1. Definition

Other Health Impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia; and Tourette's Syndrome that adversely affects a child's educational performance.

A child is —Other Health Impairedll who has chronic or acute health problems that require specially designed instruction due to:

- (1) impaired organizational or work skills;
- (2) inability to manage or complete tasks;
- (3) excessive health related absenteeism; or
- (4) medications that affect cognitive functioning.

2. Evaluation

The characteristics as identified in the Other Health Impairment Definition are present.

Evaluation Procedures

Evaluation of Other Health Impairment shall include the following:

- a. The evaluation report used for initial eligibility shall be current within one year and include the following:
 - (1) an evaluation from a licensed health services provider* that includes:
 - (a) medical assessment and documentation of the student' s health;
 - (b) any diagnoses and prognoses of the child's health impairments;
 - (c) information, as applicable, regarding medications; and
 - (d) special health care procedures, special diet and/or activity restrictions.
*TCA and the Board of Examiners in Psychology clearly give health services provider designated psychologists the legal and ethical authority to assess, diagnose, and treat ADHD. A psychological evaluation does not replace the need for a medical evaluation as described in (1) (a).
 - (2) a comprehensive psycho-educational assessment which includes measures that document the student's educational performance in the following areas:
 - (a) pre-academics or academic skills,
 - (b) adaptive behavior,
 - (c) social/emotional development,
 - (d) motor skills,
 - (e) communication skills, and
 - (f) cognitive ability
- b. documentation, including observation and/or assessment, of how Other Health Impairment adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Other Health Impairment:

- (1) the parent;
- (2) the child's general education classroom teacher;
- (3) a licensed special education teacher;
- (4) a licensed medical health services provider (such as licensed physician, physician's assistant or nurse practitioner);
- (5) a licensed school psychologist, licensed psychological examiner, licensed senior psychological examiner, or licensed psychologist; and
- (6) other professional personnel as indicated.

SPECIFIC LEARNING DISABILITIES

1. Definition

"Specific Learning Disability" The term Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affects a child's educational performance. Such term includes conditions such as perceptual disabilities (e.g., visual processing), brain injury that is not caused by an external physical force, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment, Hearing Impairment, Orthopedic Impairment; Intellectual disability; Emotional Disturbance; limited English proficiency; environmental or cultural disadvantage.

2. Evaluation

The characteristics as identified in the Specific Learning Disabilities Definition are present.

a. Evaluation for Specific Learning Disabilities shall meet the following nine standards:

- (1) evidence that underachievement in a child was not due to a lack of appropriate (the child's State-approved grade level standards) scientifically-validated instruction (instruction that has been researched using rigorous, well-designed, objective, systematic, and peer-reviewed studies) in reading and math;
- (2) evidence that prior to, or as a part of, the referral process, the child was provided appropriate instruction in general education settings;
- (3) evidence that instruction was delivered by appropriately trained personnel;
- (4) data-based documentation of repeated formal assessment of student progress during instruction (progress monitoring data) that has been collected and recorded frequently (a minimum of one data point per week in each area of academic concern);
- (5) evidence that progress monitoring data was provided to the child's parents at a minimum of once every four and one-half (4.5) weeks;
- (6) evidence that, when provided scientifically-validated instruction and appropriate interventions and learning experiences, the child did not achieve at a proficiency level or rate consistent with State-approved grade level standards or with the child's age, in one or more of the following areas:
 - (a) oral expression,
 - (b) listening comprehension,
 - (c) written expression,
 - (d) basic reading skills,
 - (e) reading fluency skills,
 - (f) reading comprehension,
 - (g) mathematics calculation, and
 - (h) mathematics problem solving;
- (7) evidence that the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to State-approved grade-level standards, the child's age, or intellectual development that is determined to be relevant to the identification of a Specific Learning Disability (as defined in the definition of Specific Learning Disabilities); and
- (8) evidence that the child's learning problems are not primarily due to Visual Impairment, Hearing Impairment, Orthopedic Impairment; Intellectual disability; Emotional Disturbance; limited English proficiency; environmental or cultural factors; motivational factors; or situational trauma (i.e., temporary, sudden, or recent change in the child's life);

b. A child whose characteristics meet the definition of a child having a Specific Learning Disability may be identified as a child eligible for Special Education services if:

- (1) all the requirements of standards 2.a.(1) – 2.a. (8) have been met;
- (2) the evidence and documentation is evaluated and results verify that the characteristics exhibited by the child meet the definition of a Specific Learning Disability; and
- (3) documentation, including observation and/or assessment, of how Specific Learning Disabilities adversely impacts the child's educational performance in his/her learning environment.

Evaluation Procedures

Evaluation and identification of students with Specific Learning Disabilities may be conducted using either a State-Approved Responsiveness to Intervention (RTI) Method of Identification or the State-Approved IQ/Achievement Discrepancy Method of Identification as described in Procedural Addenda A and B, respectively, of the Specific Learning Disabilities Standards.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of a Specific Learning Disability:

- (1) the parent;
- (2) the child's general education classroom teacher;
- (3) a licensed special education teacher; a licensed school psychologist, licensed psychological examiner, licensed senior psychological examiner, or licensed psychologist;
- (4) at least one person qualified to conduct an individual diagnostic evaluation {e.g., licensed special education teacher, licensed speech-language teacher/pathologist or licensed remedial reading teacher/specialist}; and
- (5) other professional personnel as indicated (e.g., Optometrist or Ophthalmologist).

PROCEDURAL ADDENDUM A

The Responsiveness to Intervention (RTI) Method of Identification

SPECIFIC LEARNING DISABILITIES

1. Definition

RTI is a set of systematic and data-based instructional processes for identifying, defining, and resolving students' academic and/or behavioral problems. RTI is a multi-tiered approach that provides services and interventions to struggling learners at increasing levels of intensity. The RTI approach must use a systematic process with a continuum of intervention options to determine if the child responds to scientific, research-based interventions.

2. Evaluation

- (1) A Response to Intervention Method of Identification may be used for the identification of students with Specific Learning Disabilities when the following requirements are met:
 - (a) districts and/or schools must receive state approval from the Tennessee Department of Education, Division of Special Education, Office of Assessment, 710 James Robertson Parkway, Nashville, Tennessee, 37243 before using the RTI Method of Identification for Specific Learning Disabilities; and
 - (b) the submitted plan must include, at a minimum, completion of the Tennessee RTI Action Plan template at the Division of Special Education website on the Special Education Assessment page: <http://state.tn.us/education/speced/seassessment.shtml>.
 - (c) The Tennessee RTI Action Plan follows the standards of excellence presented in the IRIS Center for Training Enhancements, RTI Online Modules located at <http://iris.peabody.vanderbilt.edu/resources.html>, particularly [Module 4: RTI: Putting it all Together](#), and [Module 5: RTI: Considerations for School Leaders](#).
- (2) A State-approved RTI Method of Identification must include:
 - (a) high-quality instruction and positive behavioral supports provided by appropriately trained personnel;
 - (b) scientifically-validated interventions appropriate for suspected area of disability;
 - (c) frequent, ongoing progress monitoring to evaluate the effectiveness of the interventions and inform instruction that includes:
 - i. data-based documentation to illustrate the student's response to the intervention(s);
 - ii. data-based documentation of intervention integrity, fidelity to design, and intensity; and
 - iii. periodic collaborative student support team review of student outcome data taking into account Local Education Agency-determined decision points.
 - (d) documentation of parental input; and, as appropriate, the child's input; and
 - (e) documentation that the child's learning problems are not primarily due to:
 - i. lack of appropriate instruction in reading and math;
 - ii. limited English proficiency;
 - iii. Visual Impairment;
 - iv. Hearing Impairment;
 - v. Orthopedic Impairment;
 - vi. Intellectual disability;
 - vii. Emotional Disturbance;
 - viii. environmental or cultural factors;
 - ix. motivational factors; and
 - x. situational trauma.
- (3) Evaluation using a State-approved RTI Method of Identification must include:
 - (a) data demonstrating the student's non-responsiveness to scientifically-validated interventions supported by comprehensive, curriculum-based data;
 - (b) documentation that rules out other disabilities or factors including the administration of a linguistically and culturally-fair individual, standardized scale of intelligence (short-form measures of cognitive ability established by the State as valid and reliable may be used); and
 - (c) a comprehensive psycho-educational evaluation when the assessment results from the previous standards listed in (3)(a) and (3)(b) are inconclusive.

PROCEDURAL ADDENDUM B
The IQ/Achievement Discrepancy Method of Identification

SPECIFIC LEARNING DISABILITIES

1. Definition

The IQ/Achievement Discrepancy Method of Identification concludes there is a severe discrepancy between educational performance and predicted achievement that is based on the best measure of cognitive ability. A severe discrepancy between educational performance and predicted achievement that is based on the best measure of cognitive ability is defined by at least 1.5 Standard Deviations (considering Standard Error of the Estimate) when utilizing regression-based discrepancy analyses described in Tennessee's guidelines for evaluation of Specific Learning Disabilities in the SLD Assessment Resource Packet: <http://www.state.tn.us/education/speced/seassessment/>.

2. Evaluation

- (1) The IQ/Achievement Discrepancy Method of Identification must include documentation that all the standards in the Specific Learning Disabilities Evaluation Section 2.a.(1) – 2.a.(8) and Evaluation Section 2.b.(1) through 2.b.(3) have been met.
- (2) Evaluation using the IQ/Achievement Discrepancy Method of Identification must also include:
 - (a) an individual standardized multi-factored assessment of cognitive ability;
 - (b) an individual standardized assessment of academic achievement;
 - (c) documentation of performance on all of the following:
 - i. group or individually administered achievement tests; and
 - ii. criterion-referenced assessments or curriculum/performance-based assessments;
 - (d) at least two documented observations of the child's educational performance in the general education classroom including:
 - i. an indirect observation by the child's general education classroom teacher, and
 - ii. a direct observation by a professional other than the person providing the indirect observation (observations shall address the child's academic behaviors, academic performance, and relevant work samples);
 - (e) documentation of parental input; and, as appropriate, the child's input; and
 - (f) documentation that the child's learning problems are not primarily due to:
 - i. lack of appropriate instruction in reading and math;
 - ii. limited English proficiency;
 - iii. Visual Impairment;
 - iv. Hearing Impairment;
 - v. Orthopedic Impairment;
 - vi. Intellectual disability;
 - vii. Emotional Disturbance;
 - viii. environmental or cultural factors;
 - ix. motivational factors; and
 - x. situational trauma.

SPEECH OR LANGUAGE IMPAIRMENT

1. Definition

Speech or Language Impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child's educational performance.

Speech or Language Impairment include demonstration of impairments in the areas of language, articulation, voice, or fluency.

- (1) Language Impairment – A significant deficiency not consistent with the student's chronological age in one or more of the following areas:
 - (a) a deficiency in receptive language skills to gain information;
 - (b) a deficiency in expressive language skills to communicate information;
 - (c) a deficiency in processing (auditory perception) skills to organize information.
- (2) Articulation Impairment – A significant deficiency in ability to produce sounds in conversational speech not consistent with chronological age.
- (3) Voice Impairment – An excess or significant deficiency in pitch, intensity, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism.
- (4) Fluency Impairment – Abnormal interruption in the flow of speech by repetitions or prolongations of a sound, syllable, or by avoidance and struggle behaviors.

Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition and/or dialectic differences.

2. Evaluation

The characteristics as identified in the Speech or Language Definition are present.

Evaluation Procedures

Evaluation of Speech or Language Impairments shall include the following:

- a. Language Impairment – a significant deficiency in language shall be determined by:
 - (1) an analysis of receptive, expressive, and/or composite test scores that fall at least 1.5 standard deviations below the mean of the language assessment instruments administered;
and
 - (2) a minimum of two measures shall be used, including criterion-referenced and/or norm-referenced instruments, functional communication analyses, and language samples. At least one standardized comprehensive measure of language ability shall be included in the evaluation process.
Evaluation of language abilities shall include the following:
 - (a) hearing screening;
 - (b) receptive language: vocabulary, syntax, morphology;
 - (c) expressive language: mean length of utterance, syntax, semantics, pragmatics, morphology;
and
 - (d) auditory perception: selective attention, discrimination, memory, sequencing, association, and integration.
 - (3) documentation, including observation and/or assessment, of how Language Impairment adversely impacts his/her educational performance in his/her learning environment.
- b. Articulation Impairment – a significant deficiency in articulation shall be determined by one of the following:
 - (1) articulation error(s) persisting one year beyond the highest age when 85% of students have acquired the sounds based upon current developmental norms;
 - (2) evidence that the child's scores are at a moderate, severe, or profound rating on a measure of phonological processes; or
 - (3) misarticulations that interfere with communication and attract adverse attention. Evaluation of articulation abilities shall include the following:
 - (a) appropriate formal/informal instrument(s);
 - (b) stimulability probes;
 - (c) oral peripheral examination; and
 - (d) analysis of phoneme production in conversational speech.
 - (4) documentation, including observation and/or assessment, of how Articulation Impairment adversely impacts his/her educational performance in his/her learning environment.
- c. Voice Impairment – evaluation of vocal characteristics shall include the following:
 - (1) hearing screening;
 - (2) examination by an otolaryngologist;
 - (3) oral peripheral examination; and
 - (4) documentation, including observation and/or assessment, of how Voice Impairment adversely impacts his/her educational performance in his/her learning environment.
- d. Fluency Impairment – evaluation of fluency shall include the following:
 - (1) hearing screening;
 - (2) information obtained from parents, students, and teacher(s) regarding non-fluent behaviors/attitudes across communication situations;
 - (3) oral peripheral examination; and
 - (4) documentation, including observation and/or assessment, of how Fluency Impairment adversely impacts his/her educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of a Speech or Language Impairment:

- (1) the parent;
- (2) the child's general education classroom teacher;
- (3) a licensed school speech-language pathologist, a licensed speech-language pathologist, a licensed speech-language therapist, and a speech-language teacher if working under the direction of a licensed school speech-language pathologist or licensed speech-language pathologist;
- (4) a licensed special education teacher, when appropriate;
- (5) a licensed otolaryngologist (for voice impairments only); and
- (6) other professional personnel, as indicated.

TRAUMATIC BRAIN INJURY

1. Definition

Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or

more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Traumatic Brain Injury may include all of the following:

- (1) an insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and
- (2) the insult to the brain induces a partial or total functional disability and results in one or more of the following:
 - (a) Physical impairments such as, but not limited to:
 - i. speech, vision, hearing, and other sensory impairments,
 - ii. headaches,
 - iii. fatigue,
 - iv. lack of coordination,
 - v. spasticity of muscles,
 - vi. paralysis of one or both sides,
 - vii. seizure disorder.
 - (b) Cognitive impairments such as, but not limited to:
 - i. attention or concentration,
 - ii. ability to initiate, organize, or complete tasks,
 - iii. ability to sequence, generalize, or plan,
 - iv. flexibility in thinking, reasoning or problem solving,
 - v. abstract thinking,
 - vi. judgment or perception,
 - vii. long-term or short term memory, including confabulation,
 - viii. ability to acquire or retain new information,
 - ix. ability to process information/processing speed.
 - (c) Psychosocial impairments such as, but not limited to:
 - i. impaired ability to perceive, evaluate, or use social cues or context appropriately that affect peer or adult relationships,
 - ii. impaired ability to cope with over-stimulation environments and low frustration tolerance,
 - iii. mood swings or emotional lability,
 - iv. impaired ability to establish or maintain self-esteem,
 - v. lack of awareness of deficits affecting performance,
 - vi. difficulties with emotional adjustment to injury (anxiety, depression, anger, withdrawal, egocentricity, or dependence),
 - vii. impaired ability to demonstrate age-appropriate behavior,
 - viii. difficulty in relating to others,
 - ix. impaired self-control (verbal or physical aggression, impulsivity),
 - x. inappropriate sexual behavior or disinhibition,
 - xi. restlessness, limited motivation and initiation,
 - xii. intensification of pre-existing maladaptive behaviors or disabilities.

The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

2. Evaluation

The characteristics as identified in the Traumatic Brain Definition are present.

Evaluations Procedures

Evaluation of Traumatic Brain Injury shall include the following:

- (1) appropriate medical statement obtained from a licensed physician;
- (2) parent/caregiver interview;
- (3) educational history and current levels of educational performance;
- (4) functional assessment of cognitive/communicative abilities;
- (5) social adaptive behaviors which relate to Traumatic Brain Injury;
- (6) physical adaptive behaviors which relate to Traumatic Brain Injury; and
- (7) documentation, including observation and/or assessment of how Traumatic Brain Injury adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Traumatic Brain Injury:

- (1) the parent;
- (2) the child's general education teacher;
- (3) a licensed special education teacher;
- (4) a licensed physician; and
- (5) other professional personnel, as indicated.

VISUAL IMPAIRMENT

1. Definition

Visual Impairment including blindness means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Visual Impairment includes at least one of the following:

- (1) visual acuity in the better eye or both eyes with best possible correction:
 - (a) legal blindness – 20/200 or less at distance and/or near;
 - (b) low vision – 20/50 or less at distance and/or near.
- (2) visual field restriction with both eyes:
 - (a) legal blindness – remaining visual field of 20 degrees or less;
 - (b) low vision – remaining visual field of 60 degrees or less;
 - (c) medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually.
- (3) other Visual Impairment, not perceptual in nature, resulting from a medically documented condition.

2. Evaluation

The characteristics as identified in the Visual Impairment Definition are present.

Evaluation Procedures

Evaluation of Visual Impairment shall include the following:

- (1) evaluation by an ophthalmologist or optometrist that documents the eye condition with the best possible correction;
- (2) a written functional vision and media assessment, completed or compiled by a licensed teacher of students with visual impairments that includes:
 - (a) observation of visual behaviors at school, home, or other environments;
 - (b) educational implications of eye condition based upon information received from eye report;
 - (c) assessment and/or screening of expanded core curriculum skills (orientation and mobility, social interaction, visual efficiency, independent living, recreation and leisure, career education, assistive technology, and compensatory skills) as well as an evaluation of the child's reading and writing skills, needs, appropriate reading and writing media, and current and future needs for braille;
 - (d) school history and levels of educational performance; and
- (3) documentation, including observation and/or assessment, of how Visual Impairment adversely impacts the child's educational performance in his/her learning environment.

Evaluation Participants

Information shall be gathered from the following persons in the evaluation of Visual Impairment:

- (1) the parent;
- (2) the child's general education classroom teacher; and
- (3) a licensed teacher of students with Visual Impairments;
- (4) a licensed special education teacher;
- (5) an ophthalmologist or optometrist;
- (6) other professional personnel, as indicated (e.g., low vision specialist, orientation and mobility instructor, school psychologist).

REGRESSION TABLE

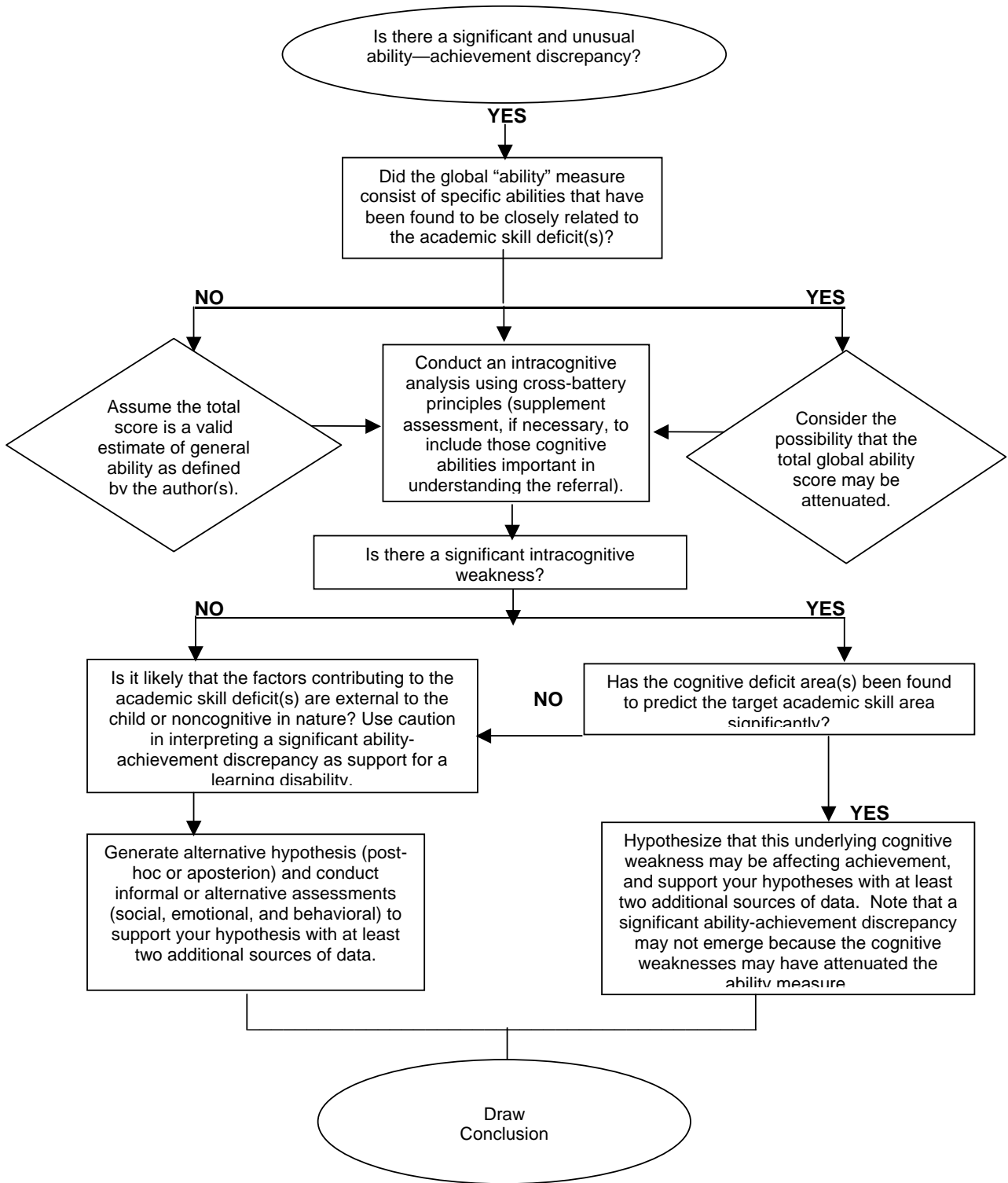
(Updated 11/03)

	(16)	(18)	(20)	Size of Discrepancy (1.5 SD x SEe) Correlation Between Ability Score and Achievement
	.7	.6	.5	
Obtained Ability Score	Expected Achievement			<p style="text-align: center;">Table Instructions</p> <p>Use the .7 column for the regression score and a 16 discrepancy when these tests of intelligence are used:</p> <ul style="list-style-type: none"> ▪ WJ-III General Intellectual Ability ▪ WJ-III Thinking Ability ▪ CAS Full Scale ▪ WISC-IV Full Scale IQ ▪ WISC-IV Verbal Comprehension ▪ SB-V Full Scale IQ ▪ SB-V Verbal IQ ▪ WAIS-III Verbal IQ ▪ WAIS-III FSIQ ▪ WAIS-III Verbal Comprehension ▪ UNIT Reasoning Quotient <p>Use the .6 column for the regression score and an 18 discrepancy when these tests of intelligence are used:</p> <ul style="list-style-type: none"> ▪ WPPSI-III VIQ and FSIQ ▪ WISC-IV Perceptual Reasoning ▪ WISC-III VIQ, VC, and FSIQ ▪ WAIS-III PIQ ▪ SB-V Nonverbal IQ ▪ K-ABC Verbal Intelligence and Mental Processing Composite Scales ▪ DTLA-4 Verbal Composite ▪ DTLA-4 General Mental Ability ▪ DAS Verbal Ability and General Conceptual Ability Scales ▪ KAIT Crystallized Scale and Fluid Scale ▪ UNIT FSIQ; UNIT Symbolic Quotient <p>Use the .5 column for the regression score and a 20 discrepancy when these tests of intelligence are used:</p> <ul style="list-style-type: none"> ▪ WPPSI-III PIQ ▪ WISC-III PIQ and PO ▪ WAIS-III PO ▪ K-ABC Simultaneous and Nonverbal Scales ▪ DTLA-4 Nonverbal Composite ▪ DAS Nonverbal Reasoning Ability and Spatial Ability Scales ▪ TONI-3 ▪ C-TONI
130	121	118	115	
129	120	117	115	
128	120	117	114	
127	119	116	114	
126	118	116	113	
125	118	115	113	
124	117	114	112	
123	116	114	112	
122	115	113	111	
121	115	113	111	
120	114	112	110	
119	113	111	110	
118	113	111	109	
117	112	110	109	
116	111	110	108	
115	111	109	108	
114	110	108	107	
113	109	108	107	
112	108	107	106	
111	108	107	106	
110	107	106	105	
109	106	105	105	
108	106	105	104	
107	105	104	104	
106	104	104	103	
105	104	103	103	
104	103	102	102	
103	102	102	102	
102	101	101	101	
101	101	101	101	
100	100	100	100	
99	99	99	100	
98	99	99	99	
97	98	98	99	
96	97	98	98	
95	97	97	98	
94	96	96	97	
93	95	96	97	
92	94	95	96	
91	94	95	96	
90	93	94	95	
89	92	93	95	
88	92	93	94	
87	91	92	94	
86	90	92	93	
85	90	91	93	
84	89	90	92	
83	88	90	92	
82	87	89	91	
81	87	89	91	
80	86	88	90	
79	85	87	90	
78	85	87	89	
77	84	86	89	
76	83	86	88	
75	83	85	88	
74	82	84	87	
73	81	84	87	
72	80	83	86	
71	80	83	86	
70	79	82	85	

Table is modified version of that provided by Gary Hessler, Ph.D.-Malcomb Intermediate School District, Michigan

Regression Table

**FLOWCHART
FOR INTERPRETING ABILITY-ACHIEVEMENT DISCREPANCIES**



SLD Flowcha

SECTION 3

Educational Advocacy for Parents

Receiving an appropriate education is every child's right. Children with disabilities are no exception. While IDEA and others help guarantee these rights, laws do not enforce themselves. Parents have an important role as partners in assuring that children with disabilities receive appropriate services.

Learning and sharing assists parents in becoming effective advocates for children.

Parents' Rights under IDEA

IDEA guarantees a child's rights to a "free appropriate public education." It also includes many rights to which a parent is entitled.

Your Rights Summarized

Your rights and those of your child with a disability may be summed up in the following key terms:

Notice - Before your child is tested or placed in a special educational program, you have the right to be notified of what the school plans to do.

Consent - You must give your consent before special tests are conducted and before your child is placed in a special educational program.

Evaluation - You have a right to have a full evaluation of your child's individual educational needs.

Records - You have a right to know what records are kept on your child and a right to see them.

Confidentiality of Information - With the exception of certain individuals (school officials, for example, and teachers with legitimate educational interests,) no one may see your child's records unless you give your written permission for each request.

Least Restrictive Environment - You have a right to have your child educated with children who are nondisabled to the maximum extent appropriate.

Hearings - If at any point along the way you do not agree with the way the school is serving your child, you have the right to request a hearing. This means that you may seek a formal review if you and the school cannot reach an agreement concerning the identification, evaluation, placement or educational program of your child. The citations at the left side of the page refer to the specific section of the Federal Regulations that have been paraphrased.

Notice

As a parent you have a right to:

300.503(a) (1)(2)...Prior written notice must be given in a reasonable time before the public agency-(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

300.503(b) (3)...A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.

300.503(c)(1)(i)(ii)...The notice must be written in language understandable to the general public; and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly feasible not to do so.

300.503(c) (2)(ii)(iii)...That the parent understands the content of the notice; and that there is written evidence that the requirements have been met.

300.503(a) (4)...A statement that the parent 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.

300.503(a) (5)...Sources for parents to contact to obtain assistance in understanding the provisions of this part;

Consent

Your written consent is necessary before the school may:

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

300.300(b)(1)...A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before initial provision of special education and related services to the child.

300.300(c)(1)(i)...Each public agency must obtain informed parental consent, in accordance with 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

300.300(d)(2)...In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements

effective procedures to ensure that a parent's refusal to consent does not result in failure to provide the child with FAPE.

300.622(a) (2)...Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials participating agencies providing or paying for transition services in accordance with 300.321(b)(3).

Evaluation and Placement Procedures

300.301(a)...Each public agency must conduct a full and individual initial evaluation, before the initial provision of special education and related services to a child with a disability.

300.301(b)...either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

300.301(c)(1)(i)...The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation;

300.302... The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

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

300.303(b) (1)...May not occur more than once a year, unless the parent and the public agency agree otherwise: and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that reevaluation is unnecessary.

300.304(b)(1)(i)(ii)...In conducting the evaluation, the public agency must-(1) Use a variety of assessment tools and strategies to gather relevant functional, development, and academic information provided by the parent, that may assist in determining-(i) whether the child is a child with a disability under 300.8; and (ii) The content of the child's IEP, including information related to enabling the child to involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities):

300.304(c)(1)(i)(ii)...Each public agency must ensure that—(1) Assessments and other evaluation materials used to assess a child under this part- (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) Are provided and administered in that child's native language or other mode of communication and in the form most likely to

yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

300.304(c)(iv)...Are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of the assessments.

300.304(c)(4)...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:

300.304(c)(7)...Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

- An term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, or revised in a meeting in accordance with 300.320-300.324, and that must include-(1) A statement of the child's present levels of academic achievement and functional performance, including-(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non disabled children); or (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; (2)(i) A statement of measurable goals, including academic and functional goals designed to—(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child's other educational needs that result from the child's disability:
- 300.321 The public agency must ensure that the IEP Team for each child with a disability includes-(1) The parents of the child;(2) Not less than one regular education teacher of the child (if the child is, or maybe, participating in the regular education environment): (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider for the child: (4) A representative of the public agency who-(i) Is qualified to provide, or supervise the provision of , specially designed instruction to meet the unique needs of children with disabilities;(ii) is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(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) Whenever appropriate, the child with the disability.

300.327...Consistent with 300.501(c), each public agency must 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.

Independent Educational Evaluation

300.502(a) (1)...The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable independent educational evaluation for the independent educational evaluation as set forth in (e) of this section.

300.502(i)...Independent Educational Evaluation means an evaluation conducted by a qualified examiner who is 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 300.103.

300.502(b)(2)...If a parent request an independent educational evaluation at public expense, the agency must, without unnecessary delay, either-(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to 300.207 through 300.513 that the evaluation obtained by the parent did not meet criteria.

300.502(b)(5)...A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Records

You have the right to:

300.613(a)...Each participating agency must 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 must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to 300.507 or 300.530 through 300.532, or resolution session pursuant to 300.510, 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 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 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.

300.613(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.

300.614...Each participating agency must 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)

300.616... Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

300.617...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 the records. (b) A participating agency may not charge a fee to search for or to retrieve information under this part.

300.618(a)... A parent who believes that information in the educational 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 must 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 must inform the parent of the refusal and advise the parent of the right to a hearing under 300.619.

300.619...The agency must, 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.

300.620...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 for the child, it must amend the information accordingly and so inform the parent in writing.

Confidentiality of Information

300.32...Personally identifiable means information that contains—(a) The name of the child, the child's parent, or other family member. (b) The address of the child; (c) A personal identifier, such as the child's social security number or student number; or (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

300.623(a)...Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

300.623(b)...One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

300.623(c)...All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under 300.123 and 34 CFR part 99.

300.623(d)...Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

300.624(a)...The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Least Restrictive Environment

Your child has the right to:

300.114(a)(2)(i)...Each public agency must ensure that-(i) To the maximum extent appropriate, children with disabilities including children in public and private institutions or other care facilities, are educated with children who are non disabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

300.115(a)(b)(1)(2)...Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and 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 300.38 (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.

300.117...In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 300.107, each public agency must ensure that the child with a disability participates with non disabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of the child. The public agency must ensure that each child with the disability has supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

Your child's educational placement must be:

300.116(a)... In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must 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 300.114 through 300.118 (b) The child's placement-(1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is 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 non disabled;

Hearings

300.507(a)(1)...A parent or a public agency may file a due process complaint on any of the matters described in 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

300.507(a)(2)...The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in time allowed by the State law, except that the exceptions to the timeline described in 300.511(f) apply to the timeline in this section.

0520-01-09-18(1)... Special education due process cases shall be heard by administrative law judges employed by the secretary of the state. Administrative law judges shall have jurisdiction to hear complaints arising under the Disabilities with Disabilities Education Act, 20 U.S.C. 1400, et seq., as from time to time amended, and Rules of the State Board of Education. The administrative office of the courts shall provide legal training in special education law to the administrative law judges assigned to hear special education due process cases sufficient to comport with the requirements of 20 U.S.C.1415, as from time to time amended.

0520-01-09-18(2)...When a hearing is requested, the director of schools shall immediately contact the Division of Special Education.

0520-01-09-20 Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with T.C.A. 4-5-322 and T.C.A. or in a district court of the United States without regard to the amount of the controversy.

300.510(a)...(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 300.511, the LEA must convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that-(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

Hearing Officers

An impartial hearing officer will be assigned to preside over any such hearing and arrive at a decision. To insure impartiality, a hearing officer may not be:

300.511(i)(A)...Must not be-(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or (B) A person having a personal professional interest that conflicts with the person's objectivity of the hearing;

300.511(3)...Each public agency must keep a list of persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Hearing Rights

Rights to which both you and the school are entitled include the right to:

300.512(a)(1)...Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

300.512(a)(2)...Present evidence and confront, cross-examine, and compel the attendance of witnesses;

300.512(a)(3)...Prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five business days before the hearing;

300.512(a)(5)...Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

300.512(c)(1)...Parents involved in hearings must be given the right to –(1) Have the child who is the subject of the hearing present;

300.515(a)(1)(2)...The public agency must ensure that not later than 45 days after the expiration of the 30 day period under 300.510(b), or the adjusted time periods described in 300.510(c)-(1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties.

Appeals

If your hearing was held by the State and you are not satisfied:

300.516(b)...Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by the State law.

Surrogate Parents

Each school must guarantee that rights of children are protected when:

300.519(a)(1)(2)(3)...Each public agency must ensure that the rights of a child are protected when—(1) No parent (as defined in 300.30) can be identified; (2) The public agency, after reasonable efforts, cannot locate a parent; (3) The child is a ward of the State under the laws of that State; or (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6))

300.519(b)(1) The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—(1) For determining whether a child needs a surrogate parent; and (2) For assigning a surrogate parent to the child.

300.519(g)(1)(2)...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.

Complaint Forms

**TENNESSEE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION
ADMINISTRATIVE COMPLAINT**

To: Office of General Counsel
Tennessee Department of Education/Division of Special
Education
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243
FAX 615-253-5567

From: _____
Parent/Guardian's Name

Address

City State Zip Code

Telephone (Home) Telephone (Work)

Child's Name

Child's Date of Birth Child's Disability

This administrative complaint is filed on behalf of _____, a student at _____ School, in the _____ School System.

The specific grounds/reasons for this complaint are:

Please investigate this complaint and notify me of the results. I understand that it may be necessary to release a copy of any correspondence submitted by me in relation to this complaint, my name, the name of the child, and the nature of my complaint to local school system officials in order to resolve these issues.

Signature

Date

ED 5247 REV. 11.1.13

U.S. Department of Education
Office for Civil Rights
DISCRIMINATION COMPLAINT FORM

This form is not required to file a complaint with the Office for Civil Rights (OCR); however, the information requested on items 1 through 7 and on item 12 must be provided in writing, whether or not the form is used. Please type or print all information and use additional pages if more space is needed. Complaints can now be filed on-line at: <http://www.ed.gov/about/offices/list/complatintintro.html>

1. Name of person filing this complaint:

NAME (Mr./Ms.): _____
(Last) (First) (Middle)
ADDRESS: _____
CITY & STATE: _____
(Zip Code)
PHONE NO: _____ (Home)
(Area Code) (Number)
_____ (Work)
(Area Code) (Number)

2. Name of person allegedly discriminated against (if other than person filing):

NAME (Mr./Ms.): _____
(Last) (First) (Middle)
ADDRESS: _____
CITY & STATE: _____
(Zip Code)
PHONE NO: _____ (Home)
(Area Code) (Number)
_____ (Work)
(Area Code) (Number)

3. OCR engages in resolution activities on discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education. It also engages in such activities for certain public entities that are subject to the provisions of Title II of the Americans with Disabilities Act (ADA). Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

NAME OF INSTITUTION: _____
ADDRESS: _____
CITY & STATE: _____
(Zip Code)
DEPT/SCHOOL: _____

Please indicate the relationship of the person identified in item 2 to the above institution:
student, employee or other (please specify) _____

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, and/or age. Please indicate the basis or bases for the discrimination alleged in this complaint:

For example:
Discrimination based on race: black;
Discrimination base on disability: learning disability.

5. Please describe the alleged discriminatory act(s). Please include the dates of the alleged discrimination, the names of persons involved and, as available, the names of any persons who witnessed the acts.

6. Please state the facts which you believe indicate that the acts were discriminatory on the basis or bases you specified in item 4.

7. What is the most recent date that the alleged discrimination occurred?

If this date is more than 180 days ago, you may request a waiver of the filing requirement. Please do so here and explain why you waited until now to file your complaint.

8. Have you attempted to resolve the allegations contained in this complaint with the institution through an internal grievance procedure?

YES _____ NO _____

If you answered yes, please describe the allegations in your grievance, identify the date you filed your grievance, and tell us the status of the grievance. If possible, please provide us with a copy of your grievance filed with the institution and any responses from the institution.

9. If the allegations contained in this complaint have been filed with any other Federal, state or local agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to engage in complaint resolution activities based upon the specific allegations of your complaint and the actions taken by the other agency or court.

AGENCY OR COURT: _____

DATED FILED: _____

CASE NUMBER OR REFERENCE: _____

RESULTS OF INVESTIGATION/FINDINGS BY AGENCY OR COURT:

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information is not required, but it will be helpful to us.

NAME (Mr./Ms.): _____

(Last) (First) (Middle)

ADDRESS: _____

CITY & STATE: _____

(Zip Code)

PHONE NO: _____ (Home)

(Area Code) (Number)

_____ (Work)

(Area Code) (Number)

11. OCR has an expedited complaint resolution process called Early Complaint Resolution (ECR). In this process, we attempt to help the complainant and the institution reach an agreement through mediation to settle the complaint. Both the complainant and the institution must want to take part in the mediation. The complainant, the institution, or OCR may end the ECR process at any time if it appears that an agreement cannot be reached. If this happens, we will use other approaches to resolve the complaint allegations. One of the primary benefits of ECR is that it may be possible to resolve your complaint quickly. More information about the ECR process is contained in the enclosed document, "Information About OCR's Complaint Resolution Procedures."

If OCR feels that mediation of your complaint is appropriate, are you interested in having OCR mediate your complaint?

YES _____ NO _____

If you answered yes and OCR determines ECR may be appropriate, we will contact you to discuss our ECR procedures in detail.

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

(Date) (Signature)

Please send us copies of any written materials or other documents which you think will help us understand your complaint.

Please mail the completed Discrimination Complaint Form to: The U.S. Department of Education, Office for Civil Rights, Regional Office in your area. Also, please enclose your signed consent form(s) with the Discrimination Complaint Form. See "Information About OCR's Complaint Resolution Procedures" for information about the consent forms. If you have any questions about how to complete this form or properly file your complaint, please call the appropriate regional office. Thank you.

Tennessee Residents send this form to:

**Office for Civil Rights
U.S. Department of Education - Region V
61 Forsyth St, Ste 19T70
Atlanta GA 30303**

Intake calls: 404.502.6350

Keeping Records

1. REVIEWING YOUR CHILD'S RECORDS

You should know what is in the records the school system keeps on your child. You should review your child's education records, know what is in the files, and have a copy of these records at home. Under the Family Education Rights and Privacy Act (FERPA), you have a right to know where all your child's records are maintained. Additionally, you have a right to request that all your child's records be brought to one location to enable you to view all of your child's records. If you need to have a copy of your child's records to enable you to thoroughly review them, you have a right to a copy of all those records. It is wise to view your child's record on at least an annual basis. Remember, anything that the school system maintains or creates about you child is a "record" under FERPA, and you have a right to know that it exists, view it and have a copy of it. That includes such things as all evaluations (including observations), IEPs, meeting minutes (before they are typed), all disciplinary records including in-school suspensions as well as out-of-school suspensions. Additionally, it includes even teacher's notes and test protocols. If it is a record you have a right to access to. It is a wise parent who exercises those rights! Remember, knowledge is power! The more informed you are about your son or daughter, the more enabled you are to an equal participant at your child's education planning meetings.

If you have never looked at the education records, use the next page as a guide. Don't forget to get a copy of the information you need to make your home file complete.

Use this form as a guide to help you look at your child's school files/record.

ITEMS TO NOTE FOR RECORD REVIEW

CHILD: _____ SCHOOL: _____

AGE: _____ GRADE/PROGRAM: _____

DATE RECORDS REQUESTED: _____ DATE SCHOOL ANSWERED: _____

DATE RECORDS REVIEWED: _____ SCHOOL STAFF PRESENT: _____

NUMBER OF FILES REVIEWED (AND NAMES, LOCATIONS)

Record Review

- _____ Is identifying data (names, ages, etc.) correct and up-to-date?
- _____ Are evaluations current (no more than three years old)?
- _____ Do the evaluations reflect strengths as well as weaknesses, and recommendations?
- _____ Do the evaluations provide information for programming such as recommendations or do they simply give numerical scores?

Do the records include

- _____ psychological evaluations
- _____ PT evaluations
- _____ OT evaluations
- _____ Speech/Language evaluations
- _____ academic achievement reports
- _____ standardized test results
- _____ current and past IEP's
- _____ medical records (if necessary)
- _____ behavioral records such as evaluations, behavior incident reports, suspensions (in-school as well as out of school)
- _____ vocational evaluation (interest, skills, aptitude)
- _____ parent letters and comments that you have requested they put in your child's file

Other _____

DATE RECORD CORRECTIONS REQUESTED _____

DATE APPROVED/DENIED _____

COPIES REQUESTED _____

DATE RECEIVED _____

2. KEEPING YOUR OWN RECORDS

Good record keeping is an important step in making sure your child receives an appropriate education. You should keep records to document your requests for service, services provided, evaluations, and any other information concerning your child's special needs. This includes observations of your child's behavior and development at home, at play, with friend and relatives, in school or any other situation. It means keeping written notes of when you are contacted by a professional or when you telephone, write or visit with a medical, educational or other professional.

1. Start keeping a notebook listing the names, addresses, phone numbers of people you contact. Write down the questions you ask and the answers you receive.
2. Keep a copy of all your child's school records in the book.
3. Keep copies of all letters you write to school personnel, advocates and other people involved with your child.
4. Put as much in writing as you can and ask other to do the same.
5. Get copies of your child's educational rights including getting the school system's discipline policies, getting the school systems "Rights Brochure" as well as their 504 plan and rights and their ADA plan and rights. Get other records of rights such as state laws and rules, federal laws, procedures, etc.

Writing down every step you take to get your child the service he needs can be the evidence which finally makes change happen! It will be to your advantage to keep accurate records of whom you spoke to, when you spoke with him, what s/he said, how long you waited between the question and the answer, will be to your advantage. Keep a "telephone log" of calls. Follow up requests and agreements with a letter.

KEEPING A HOME FILE

No two Home Files will be alike. We can suggest the types of material that should be kept in your home file, but your child's individual needs will make the content of the file individual. Organize your file in a way that will make it easy for you to find the information. For example, your home file could be organized into sections containing similar type of information (such as IEPs) filed together..

Many school districts require a birth certificate and proof of current immunization before a child can be enrolled in school. These should be the first two items for your home file.

You will probably also need information about current health care and dental care needs. Medical information which relates to your child's educational needs should definitely be included.

You should also include all school records including all forms with your signature, academic achievement reports, evaluations, all individualized education programs (IEP's), and in the case of an older child, any vocational assessments that have been done.

In addition, your home file should include samples of your child's work and any other accomplishments which show progress. Examples might include certificates for completing courses such as CPR, letters from employers, certificates of award from competitions, perfect attendance awards, and other items.

Another important section of your home file is a communication log. This should include a page describing any conversation (telephone or in person) with teacher, therapist, school administrator, related service or medical personnel regarding your child. Be sure to date it, and include the name as well as the title of the person you spoke with.

You should also keep a copy of all letters to and from the school system or other agencies involved with your child.

HOME FILE CHECKLIST

COPY OF:

- _____ 1. Birth Certificate
- _____ 2. Immunization Record
- _____ 3. Medical Records
- _____ 4. School Records
 - _____ (a) Academic Achievement Reports (tests, report cards, transcripts)
 - _____ (b) Psychological Evaluations
 - _____ (c) PT, OT, Speech/Language Evaluations
 - _____ (d) Current and Past IEP's
 - _____ (e) Behavioral/Social Evaluations and behavioral incident reports
 - _____ (f) Vocational Evaluations
(interest, skills, aptitude)
- _____ 5. Samples of child's work and other accomplishments
- _____ 6. Communication Logs
- _____ 7. Correspondence
- _____ 8. other, as you see the need

DOCUMENTATION

&

LETTER WRITING

LETTER WRITING

Letter writing is a very important part of getting and maintaining good special education services for your child. People remember letters; they may forget a telephone call. And there can be no "misunderstanding" of what you said or requested if that request is in writing.

Requests for services, discussions or problems, questions about programs or services, and documentation of agreements made during meetings should all be done in writing.

Letters do not need to be fancy or typewritten. They must include:

1. the date you wrote the letter
2. the name and address of the person the letter is written to and his/her title (principal, etc.)
3. your child's name and some background information
4. an explanation of the problem or issue
5. your request
6. if documenting a meeting, a list of what you understood to be said or agreed upon.
7. a "thank-you" to the person for helping you
8. a "time limit" for a response or answer
9. your full name, address, and phone number

And don't forget to keep a copy. If you can't find a copy machine (check the post office or library), use carbon paper. Carbons can be used between sheets of paper for either a typewritten or handwritten letter.

WHO DO I WRITE?

If you are documenting a meeting, write the letter to the person who was in charge of the meeting. If you are making a request, write the person who can give you an answer. For example, the classroom teacher can't tell you why the school system doesn't offer physical therapy, the person in charge of special education programs can.

If you are trying to solve a problem, write the first letter to the location of the problem. For example, if the problem is in the classroom, you write the teacher; if in the school building, you write the principal; if with the special education program, you write the person in charge of you district's special education program. If you have not received a response to the first letter in your "time limit", then write the next letter (with a copy of the first letter enclose) to the supervisor immediately above the location of the problem.

If you are trying to get testing, a change in your child's program, or other issues concerning the I.E.P., write and send a copy of the letter to the special education department.

DON'T FORGET TO KEEP A COPY!

SAMPLE LETTERS

The following are samples of letters that you might need to write to a principal, teacher, or other school system staff. Use these letters as a guide to help with your own letter writing. REMEMBER to date and keep a copy of every letter you write.

Sample Letter Requesting an Assistive Technology Evaluation

Your Name
Your Address

Date

Name of Principal
Name of School
Address of School

Dear (Name of Principal):

I am the parent of ____ (Child's name) _____. As we have discussed recently, I am interested in finding specific information that will enable my son to make educational progress and close the gap between him and his same age peers. Because my son's disabilities are very unique, it is not always easy to find appropriate instructional interventions.

One of the provisions of IDEA is to consider if a child has need of assistive technology in order to participate fully in the general education curriculum and to remediate areas that are affected by the child's disability. I feel that an assistive technology evaluation is necessary at this time. I am requesting that an assistive technology evaluation be done by someone with experience in identifying appropriate learning strategies for children with ____ (add your child's disability, for example, Autism, Learning Disability, Auditory Processing Deficit) ____.

When the determination is made in regard to the evaluator you plan to use and the date(s) of the evaluation, please send me written notice that includes that information.

(If you know have been in touch with an organization specializing in Assistive Technology that you would like the school to consider using, include this paragraph, otherwise leave this information out.)

In case it would be helpful to you, I received information that the *(add the name of the Assistive Technology Center you have worked with)*, has had success working with children with ____ *(your child's name)* ____ disabilities. They can be reached at ____ *(add that Centers phone number)* ____, if you are interested in talking with them.

Thank you for your assistance with this matter. I look forward to hearing from you within the next ten days. Please maintain a copy of this letter of request in my child's permanent school record.

Sincerely,

Your name
Your telephone number

Copy: (list of all people who will be sent a copy of this letter)

LETTER REQUESTING RECORDS

(Your Name)
(Your Address)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (Name of Principal):

I am writing to request a copy of my child, (child's name), special education records.

I am requesting all of his/her records including:

1. All IEPs
2. All evaluation reports and recommendation
3. Integrated assessment reports
4. Behavior reports/observations/grade reports
(optional)
5. All disciplinary records.

Please send me these records by mail as soon as possible.

OR

I will come by the (school office) to pick them up on (date).

Please maintain this letter in my child's permanent school records. Thank you for your help with this matter.

Sincerely,

(Your Name)
(Your Telephone Number)

Copy: (List all people you send a copy of this letter to.)

LETTER REQUESTING AN IEP TEAM MEETING

(Your Name)
(Your Address)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (Principal):

I am the parent of (child's name). I am requesting an IEP Team be held as soon as possible to review, and revise if necessary, my child's IEP. Please contact me with written notice that specifies when this meeting is scheduled, who will be in attendance and all evaluations that will be used to make any determinations at this IEP Team meeting. I am available to meet at the following days and times:

January 21, after 2:00 p.m.
January 24, after school
January 26, after 5:00 p.m.
January 27, between 9:00 a.m. and 1:00 p.m.

(Remember, the school must hold an IEP Team within 10 days of receiving your written request unless you waive the 10 day requirement.)

Please maintain this letter in my child's permanent school record. Thank you for your help with this matter.

Sincerely,

(Your Name)
(Your Telephone Number)

Copy: (List all people who will receive a copy of this letter.)

LETTER REQUESTING INDEPENDENT EVALUATION

(Your Name)
(Your Address)

(Date)

(Name of Special Education Supervisor)
(Name of School/office)
(Address of School/office)

Dear (Special Education Supervisor):

I am the parent of (child's name). I disagree with the school system's evaluation of my child. Because I do not agree, I am requesting an independent evaluation paid for by the school system. Please send me your written policies regarding independent evaluations.

I am requesting that (Name of Independent Evaluator) do this evaluation and would be happy to make the arrangements for this evaluation.

or

I am requesting assistance in identifying sources for this evaluation.

I will send you the results. Please contact me in regard to billing instructions.

I look forward to hearing from you within the next 14 days.

Please maintain this letter in my child's permanent school records. Thank you for your help with this matter.

Sincerely,

(Your Name)
(Your Telephone)

Copy: (List all people you will send a copy of this letter to.)

LETTER REQUESTING REEVALUATION

(Your Name)
(Your Address)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (Name of Principal):

I am the parent of (name of child). I feel that my child should be reevaluated (name specific disability areas of concern, if you have them) because

- * his special education evaluation is over three years old;
- * his special needs have changed (illness, accident, improvement, etc.) or,
- * other reason you feel your child should be reevaluated.

Please assist me in scheduling a reevaluation. Please also send me written notice regarding the type of evaluation including the specific name of the test you expect to do as well as the name and credentials of the evaluator you choose. I look forward to hearing from you with the next ten days. Please maintain this request in my child's permanent school record.

Sincerely,

(Your Name)
(Your Telephone Number)

Copy: (List all the people you will send a copy of this letter to.)

LETTER REQUESTING ADDITIONAL TESTING

(Your Name)
(Your Address)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (Name of Principal):

I am the parent of name of child). I have reviewed the results of the school system's evaluation of my child and feel that he was *

- * not evaluated in every area of suspected disability, or;
- * not evaluated by someone with experience testing students with my child's disability.

I believe more testing is needed*

- * in the following area (list), or;
- * by someone familiar with my child's exceptionality.

Thank you for your help. I look forward to hearing from you within the next ten days. When the determination is made as to the evaluation instrument to be used and/or the name of the evaluator you plan to use, please send me written notice which includes this information. Please maintain a copy of this letter in my child's permanent school record.

Sincerely,

(Your Name)
(Your Telephone)

Copy: (List all the people who will be sent a copy of this letter.)

LETTER REQUESTING AN EVALUATION

(Date)

(Your name)

(Your address)

(Name of Principal)

(Name of School)

(Address of School)

Dear (name of principal):

I am the parent of (first and last name of child), a student in (name of teacher)'s class. My child is having problems with schoolwork, and I feel (she/he) may have special educational needs. Please consider this letter as a formal referral for a comprehensive psychoeducational evaluation to see if (she/he) might qualify for special education and related services.

I am aware of the 60 calendar day timeline from consent to the meeting of the IEP team to discuss if my child is eligible for services. I look forward to meeting with you to sign the required consent that will begin the evaluation timeline.

I am also aware that RTI as a whole school intervention and diagnostic process is to be used when evaluating for a specific learning disabilities; however, at this point, we have no specific suspicion about the category of eligibility under which my child might qualify. Therefore, I am requesting to sign consent for evaluation without delay and ensure that my (son/daughter) is evaluated in all areas of suspected disability in a timely manner.

Please contact me within the next five days if you need any further consent or if you have any questions. I would also ask that you maintain this letter in my child's permanent record.

Thank you for your help.

Sincerely,

(your signature)

(your telephone number)

Cc: (list people to whom you are sending copies)

Dear Parent/Guardian/Surrogate:

On ____/____/____ (date), _____ was referred for a comprehensive assessment for determination of eligibility and need of special educational services. This referral is based upon a review of current classroom performance, past educational records, and/or screening information. We are requesting permission to assess you child in order to provide additional information to help us plan a more effective educational program. Also, as the parent of a child who may be eligible for special education, the *Notice of Procedural Safeguards* brochure is being provided for your information.

The reason(s) to request your permission to assess your child is (are):

- child is working above grade level or below grade level in one or more basic skills
- child's behavior is inconsistent with that expected for children of student's age
- child's rate of progress has increased decreased
- child's speech/language skills are inconsistent with those expected for children of student's age
- child has entered our school system with an out of date and/or incomplete evaluation
- parent preschool referral

The areas/ procedures to be considered for your child's assessment are checked below. The extent of the assessment will depend upon the severity of the problem.

- | | |
|--|--|
| <input type="checkbox"/> 1. Vision/Hearing Screening | <input type="checkbox"/> 10. Audiological Evaluation |
| <input type="checkbox"/> 2. Classroom Observation | <input type="checkbox"/> 11. Functional Vision Assessment |
| <input type="checkbox"/> 3. Academic Achievement | <input type="checkbox"/> 12. Personality Assessment |
| <input type="checkbox"/> 4. Intellectual Functioning | <input type="checkbox"/> 13. Vocational Assessment |
| <input type="checkbox"/> 5. Speech/Language Skills | <input type="checkbox"/> 14. Assistive Technology Assessment |
| <input type="checkbox"/> 6. Gross/Fine Motor Skills | <input type="checkbox"/> 15. Self-Help/Adaptive Behavior |
| <input type="checkbox"/> 7. Visual/Auditory Skills | <input type="checkbox"/> 16. Functional Behavior Assessment |
| <input type="checkbox"/> 8. School and/or Home Behaviors | <input type="checkbox"/> 17. Other _____ |
| <input type="checkbox"/> 9. Early Childhood Development | <input type="checkbox"/> 18. Other _____ |

Please sign this form and return it to the school. Your signature shall not be construed as consent for placement in any special education program. When the assessment has been completed, you will be invited to an IEP team meeting in order to discuss the findings, determine your child's eligibility for special education services and, if need, plan an appropriate educational program for your child. If you have any information you would like to share pertaining to your child's assessment, please forward it to the person named below or bring it to the meeting.

I HAVE REVIEWED THE BROCHURE CONCERNING *THE NOTICE OF PROCEDURAL SAFEGUARDS*

- Yes No

Please check one of the following:

- I give permission for an individual assessment.
- I do not give permission for an individual assessment.

Date ____/____/____ Signature of Parent or Guardian _____
 Phone _____ Address _____

If you have any questions, you may contact one of the following:

Name	Department/Position	Telephone Number
------	---------------------	------------------

School _____ Teacher _____
 Date Received From Parent ____/____/____ Grade _____

SAMPLE Harassment LETTER

(This letter is typically sent to the Principal and carbon copied to all other people within the school system who have knowledge of the discrimination/harassment and those who are in positions of authority who have the ability to intervene.)

Dear Mr. _____,

I have made several attempts to discuss with you and other school staff my concerns about the discrimination and verbal and physical harassments that are happening to my (daughter/son) _____ at _____ school name _____.

This harassment continues to disrupt the ability for *my* (daughter/son) to receive their education without disruption. I am notifying you as a representative of the school district which receives federal financial assistance that there must be a plan put in place to stop this harassment and to ensure my child's safety and well-being at school.

As you are aware my (daughter/son) has a disability and is eligible to receive services under and (IEP or 504) plan. I am attaching a detailed account of the incidents that have happened and my attempts to resolve the issue. Please contact me with information regarding possible solutions to this situation and/or a time and date to meet. If you do not have the authority to make decisions that will ensure that this harassment stops so that my (daughter/son) can receive their education without harassment, please forward this to the person in your system who does have that authority.

This is an attempt to resolve this issue in the quickest, least adversarial way possible. I appreciate your prompt response.

Sincerely,

Parent Name

cc:

attachment: List of harassment incidents

FUNCTIONAL BEHAVIOR ASSESSMENT REFERRAL

Student _____ SS# _____
Grade _____ Teacher _____ DOB _____
School _____ Today's Date _____
Referring Person _____ Position _____
Current Service _____ Hours/Week _____
Agencies Involved _____

Reason for Referral _____

Frequency of Problem Behavior _____

Duration of Problem Behavior _____

Length of time exhibited _____

Interventions used that have not worked _____

Interventions currently being used _____

Functional Behavior Assessment will be done _____ (date)

Functional Behavior Assessment will not be done (reason)

_____ (date)

FUNCTIONAL BEHAVIOR ASSESSMENT (FBA) INSTRUCTIONS

Referral

The decision whether or not to perform an FBA should be made by the IEP team. If an FBA is NOT to be done, explanation/reasons should be detailed on a separate sheet.

Teacher Interview

Behaviors need to be very specific. Make sure what you list as a behavior is something that you can *see* and *count*. Don't forget to list student strengths as well as weaknesses. Question 9 (the 'student's favorite things to do') deals with desired reinforcers, not misbehavior.

Parent Interview

This can be done by phone or in person.

Student-Assisted Interview

If the student's reading and writing level does not allow him/her to read the questions, an adult having good rapport with the child should read them and write the answers. Record student comments, affect, and disposition at 'interviewer comments'.

Functional Behavior Assessment form

These pages are to be completed by the assessment team after student observations have been made, interviews conducted, and all information gathered and interpreted. Be sure to list strengths as well as weaknesses. List all team members. Attach all student observations to the FBA form. (Various observation forms are included at the end of the packet. Systems should choose the most appropriate form for each observation.)

Hypothesis

This page should be completed after the FBA form is finished. *Specific strategies* to teach 'positive behaviors' A-D are not included on this page.

FUNCTIONAL BEHAVIOR ASSESSMENT

Student _____ SS# _____
Grade _____ Teacher _____ DOB _____
School _____ Today's Date _____
Person completing form _____ Position _____
Current Service _____ Hours/Week _____
Certification _____ Date of Last Eval. _____

Relevant medical information:

Relevant social history:

Student communicates by:

List student's strengths and weaknesses:

Academic:

Social:

Describe the problem behavior(s):

Frequency and duration of problem behavior(s):

When and where does the problem behavior(s) occur?

_____ With a certain person? Who? _____

_____ Certain area of the school? Specify _____

_____ Certain time of the day? (e.g. subject, lunch, recess, hall, bathroom)

Specify _____

_____ Certain activity? (e.g. whole vs. small group, seatwork, transition)

Specify _____

_____ In response to direct request or instruction

_____ In response to reprimand

_____ When left alone

_____ When ignored

_____ When denied certain activity/privilege

_____ When routine is changed unexpectedly

Other:

Describe what actually happened (the consequences) as a result of the problem behavior(s):

As a result of the problem behavior(s), the student:

Got:

_____ Attention

_____ Activity/Tangible

_____ Sensory Stimulation

Avoided:

_____ Difficult task

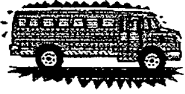
_____ Teacher/Adult demand

_____ Certain activity/person

Academic skills that need to be addressed in order for this student to be successful include:

Members of Assessment Team

Position



ABC DATA COLLECTION



Student: _____ Date: _____ Time of Occurrence: _____

Location of Occurrence: _____ Person Completing Report: _____

WHAT WAS THE BEHAVIOR PROBLEM?

- What did the student DO? _____
- What did the student SAY? _____

PRIOR TO THE BEHAVIOR...

- What was I (the teacher) DOING? - _____
 - What was I SAYING? _____
 - WHAT was I teaching? _____ HOW was I teaching it? _____
 - What were the EXPECTATIONS? _____
- AND have you seen the student reliably perform those expectations? (describe) _____

- WHO was in the room? _____
- WHO was in close proximity to the student? _____
- AND what was he/she doing? _____
- What were other PEERS doing (PRIOR TO behavior)? _____
- What was/were OTHER ADULT(S)/ EDUCATIONAL ASSISTANT(S) doing? _____

AFTER THE BEHAVIOR OCCURRED...

- What did I (the teacher) DO? _____
- What did I (the teacher) SAY? _____
- Did I MOVE? _____ If so, closer or away from the student? _____
- What did peers DO? _____ What did peers SAY? _____
- Did they MOVE? _____ If so, , closer or away from the student? _____
- What did other adults/educational assistants DO? _____
- What did other adults/educational assistants SAY? _____
- Did they MOVE? _____ If so, closer or away from the student? _____
- What did the student DO IN RESPONSE? _____
- Did anyone get HURT? _____ Was there any DAMAGE to PROPERTY? _____
- How LONG did the behavior LAST? _____

(COMPLETE ONE FOR EACH OCCURRENCE)

RESOURCES

R-1 Support & Training for Exceptional Parents

NATIONAL RESOURCES

Ad-In (ADD Info)

475 Hillside Ave
Needham MA 02494
(781) 455-9895

American Foundation for the Blind

11 Penn Plaza
New York, NY 10001
(800) 232-5463
(212) 502-7600

Association for Persons with Severe Handicaps (TASH)

29 W. Susquehanna Ave.S.210
Baltimore, MD 21204
(410) 828-8274
(410) 828-1306 (TTY)
web site: www.tash.org

Autism Society of America

7910 Woodmont Ave
Bethesda MD 20814
(800) 328-8476
(301) 657-0881

Brain Injury Association

105 North Alfred Street
Alexandria, VA 22314
(703) 236-6000
(800) 444-6443
www.biausa.org

Children with Attention Deficit Disorder (CHADD)

8181 Professional Place
Landover, MD 20785
(800) 233-4050
(301) 306-7070

Children's Defense Fund

25 E. Street NW
Washington, DC 20001
(202) 628-8787
(800) 233-1200
www.childrensdefense.org

Epilepsy Foundation of America (EFA)

4351 Garden City Dr.
Landover MD 20785
(301) 459-3700
(800) 332-1000
(800) 332-2070 (text)

ERIC Clearinghouse on Disabilities and Gifted Ed

Council for Exceptional Children
1110 N Glebe Rd
Arlington VA 22201
(800) 328-0272 (TTY)
www.eric.org

Federation of Families for Children's Mental Health

1101 King St, 420
Alexandria VA 22314
(703) 684-7722
(800) 969-NMHA
www.ffcmh.org

International Rett Syndrome Association

9121 Piscataway Rd S2B
Clinton MD 20735
(301) 856-3334
(800) 818-7388

Learning Disabilities Association

4156 Library Road
Pittsburgh, PA 15234
(412) 341-1515
(800) 300-6710

Muscular Dystrophy Association

3300 E. Sunrise Dr.
Tuscon, AZ 85718
(520) 529-2000
(800) 572-1717

National Organization for Rare Disorders (NORD)

100 Rt. 37
PO Box 8923
New Fairfield CT 06812
(800) 999-6673
(203) 746-6518
www.rarediseases.org

American Association for the Deaf

814 Thayer Ave, Ste 250
Silver Spring, MD 20910
(301) 587-1788
(301) 587-1789 (TTY)

American Society for the Deaf Blind

814 Thayer Ave, 302
Silver Spring, MD 20910
(301)588-6545 (TTY only)

National Autism Hotline/Autism Services Center

605 Ninth St
Huntington, WV 25701
(304) 525-8014

National Information Center for Children and Youth with Disabilities (NICHCY)

PO Box 1492
Washington, DC 20013
(800) 695-0285
(voice & TTY)
www.nichcy.org

National Easter Seals Society

230 W Monroe, 1800
Chicago, IL 60606
(800) 221-6827
(312) 726-6200
(312) 726-4258 (Text)
www.easter/seals

National Information Center on Deafness

Gallaudet University
800 Florida Ave. N.E.
Washington DC 20002
(202) 651-5051(voice)
(202) 651-5052 (TDD)

National Down Syndrome Congress

1370 Center Dr, Ste.102
Atlanta, GA 30338
(800) 232-6372
(770) 604-9500
www.ndscenter.org

National Down Syndrome Society

666 Broadway
New York NY 10012
(800) 221-4602
(212) 460-9330
Fax: (212) 979-2873

National Father's Network

Kindering Center
16120 NE 8th St
Bellevue WA 98008-3937
(425) 747-4004
www.fathersnetwork.org

National Multiple Sclerosis Society

733 3rd Ave, 6th Floor
New York NY 10017
(800) 344-4867
(212) 986-3240
www.nationalmssociety.org

American Assoc. on Intellectual and Developmental Disabilities

444 N Capitol St, NW, Ste. 846
Washington, DC 20001
(202) 387-1968
www.aaid.org

National Alliance for the Mentally Ill (NAMI)

2107 Wilson Bd, 300
Arlington, VA 22201
(703) 524-7600
(800) 950-6264
www.nami.org

Office of Special Education and Rehabilitation Services

U.S. Dept. Of Education
Switzer Building, Rm 3132
330 C Street, S.W.
Washington DC
20202-2524
(202) 205-8241

Office of Special Programs(OSEP)

U.S. Dept of Education
Switzer Bldg. 330 C St.
Room 3006
Washington DC 20202
(202) 205-5465

**Orton Dyslexia Society
Chester Bldg Ste 382**

8600 LaSalle Rd
Baltimore MD 21286
(800) 222-3123
(410) 296-0232

Recording for the Blind & Dyslexic

20 Roszel Rd
Princeton NJ 08540
(609) 452-0606
(800) 221-4792
www.rfb.org

Social Security Hotline

(800) 772-1213
(800) 325-0778 (TTY)

Spina Bifida Association of America

4590 MacArthur Blvd. NW,
Suite 250
Washington DC 20007
(800) 621-3141
(202) 944-3285

The Arc

National Headquarters
500 E. Border St 300
PO Box 1047
Arlington, TX 76010
(817) 261-6003
(800) 433-5255

United Cerebral Palsy

1660 L St, NW, S700
Washington DC 20036
(800) 872-5827
(202) 973-7197 (TTY)
www.ucp.org

National Council on Disabilities

1331 F St, NW, S-1050, 850
Washington DC 20004
(202) 272-2004
(202) 272-2074 (TTY)
www.ncd.gov

Center for the Study of Autism

PO Box 4538
Salem OR 97302
(503) 363-9110

Association for Children with Down Syndrome

2616 Martin Ave
Bellmore NY 11710
(516) 933-4700

American Epilepsy Society

342 North Main
West Hartford CT 06117
(860) 586-7505
www.aesnet.org

Alexander Graham Bell Assoc for the Deaf

3417 Volta PI NW
Washington DC 20007
(202) 337-5220(voice & text)
www.agbell.org

Auditory Learning Center

304 E Jones St
Raleigh NC 27601
(919) 828-1218(Voice & TTY)

Tourette Syndrome

4240 Bell Blvd
Bayside NY 11361
(718) 224-2999
(800) 237-0717
www.tsa-usa.org

National Assoc for Parents of the Visually Impaired

PO Box 317
Watertown MA 02471
(800) 562-6265
(617) 972-7441
www.napvi.org

TENNESSEE RESOURCES

Attention Deficit Disorder Support Group (ADDsUP)

PO Box 120173
Nashville TN 37212
(615) 292-5947

The Arc of Tennessee

151 Athens Way, Ste. 100
Nashville TN 37228
(615) 248-5878
(800) 835-7077
www.thearctn.org

Autism Society of East TN (ASAETC)

123 Center Park Drive
Knoxville TN 37922
(865) 247-5082
www.asaetc.org

Autism Tennessee (Middle TN)

955 Woodland Street
Nashville TN 37206
(615) 385-2077
(866) 508-4987
autismtn.org

Autism Resources of the Mid-South (West TN)

(formerly Autism Society of the Mid-South)
879 Willow Tree Circle Ste. 116
Cordova TN 38018
(901) 509-3027
autismresourcesmidsouth.org

Brain Injury Assoc. of TN

955 Woodland St.
Nashville TN 37206
(615) 248-2541
www.braininjurytn.org

Bridges *(formerly League for the Hearing Impaired)*

935 Edgehill Ave.
Nashville TN 37203
(615) 248-8828

(866) 385-6524
bridgesfordeafandhh.org

Center for Independent Living of Middle TN

955 Woodland St.
Nashville TN 37206
(615) 292-5803
www.cilmtn.org

CHADD of Tennessee

Children and Adults with ADHD
www.chadd.org/Support/Directory

Chattanooga Autism Center, Inc.

1400 McCallie Ave., Ste. 100
Chattanooga TN 37404
(423) 531-6961
www.chattanoogaautismcenter.org

Community Rehabilitation Agencies of TN (CMRA)

40 Rutledge St.
Nashville TN 37210
(615) 736-6090
www.cmraonline.org

Center for Dyslexia

MTSU Box: Box 397
200 N. Baird Lane
Murfreesboro TN 37132
(615)-494-8880
www.mtsu.edu/dyslexia/

Disability Rights TN

(formerly DLAC)
2 International Plaza, Ste. 825
Nashville TN 37217
(615) 298-1080
(800) 342-1660
www.disabilityrightstn.org

Down Syndrome Assoc. of Middle TN

PO Box 1182
Mt. Juliet TN 37121
(615) 386-9002
somethingextra.org

Down Syndrome Assoc. of Memphis & the Mid- South

2893 S. Mendenhall Rd., Ste. 3
Memphis TN 38115
(901) 547-7588
www.dsamemphis.org

East TN Technology Access Center (ETTAC)

116 Childress Street
Knoxville TN 37920
(865) 219-0130
www.ettac.org

Easter Seals Society of TN

750 Old Hickory Blvd. #2-260
Brentwood TN 37027
(615) 292-6640
www.easterseals.com/tennessee

Epilepsy Foundation of Middle & West TN

95 White Bridge Rd., Ste. 215
Nashville TN 37205
(615) 269-7091
www.epilepsytn.org

Epilepsy Foundation of East TN

1715 E Magnolia Ave.
Knoxville TN 37917
(865) 522-4991
www.epilepsy.com/east-tennessee

Ignite Dyslexia Awareness

1650 Murfreesboro Road, Ste. 136
Franklin TN 37067
(615)-550-7118
www.ignitedyslexia.com

International Dyslexia Association – TN Branch

6731 Ridgerock Lane
Knoxville TN 37909
(877) 836-6432
www.tnida.org

LifeLine, Inc.

Lisa Mattheiss, Executive Director
1400 McCallie Avenue
Suite 112
Chattanooga, TN 37404
423-622-4007
lisa.mattheiss@lifelinefamilies.org
www.LifeLineFamilies.org

**Learning Disabilities
Association of East TN**

PO Box 1254
Knoxville TN 37901
(423) 671-8800

**Learning Disabilities
Association of Greater
Memphis**

5587 Murray Rd. Ste.101
Memphis TN 38119
(901) 763-1430
(901) 763-1437 fax#

**Mental Health Association
of TN**

416 21st Ave S, Ste. 201
Nashville TN 37212
(615) 269-5355

**Muscular Dystrophy MDA of
Middle TN**

50 Vantage Way Ste. 101
Nashville TN 37228
(615) 777-6649

**National Hemophilia
Foundation-Memphis**

499 South Patterson, Ste. 202
Memphis TN 38111
(901) 458-6727

**National Multiple Sclerosis
Society-Mid South TN**

214 Overlook Circle, Ste. 153
Brentwood TN 37027
(615) 269-9055
(800) 344-4867

**Parents Encouraging
Parents (PEP)**

311 23rd Ave North
Nashville TN 37203
(615) 340-5669

The STAR Center

1119 Old Humboldt Rd
Jackson TN 38305
(901) 668-3888
www.star-center.org

**Support and Training for
Exceptional Parents (STEP)**

712 Professional Plaza
Greeneville TN 37745
(423) 639-0125
(800) 280-STEP (voice & text)
www.tnstep.org

Technology Access Center

475 Metroplex Dr. Ste. 301
Nashville TN 37211
(615) 248-6733
(800) 368-4651
tacnashville.org

TennCare Hotline

(800) 342-3145
www.tn.gov/tenncare

TennCare Consumers

Advocacy Hotline
(800) 758-1638
www.tn.gov/tenncare

Tennessee Disability Coalition

955 Woodland St.
Nashville TN 37206
(615) 383-9442
www.tndisability.org

**Tennessee Disability
Pathfinder**

Kennedy Family Outreach
Center
1810 Edgehill Ave
Nashville TN 37212
(800)-640-INFO
kc.vanderbilt.edu/pathfinder

**TN Early Intervention System
District # 1**

1110 Seminole Drive
Johnson City TN 37604
(800) 852-7157
(423) 434-4401

**TN Library Service for the
Blind and Physically Handicapped**

403 7th Ave N
Nashville TN 37243
(615) 741-3915
(800) 342-3308
www.tn.gov/tsla/lbph

**Tri State Disability
Resource Center**

5800 Bldg.
5708 Uptain Rd., Ste. 350
Chattanooga TN 37411
(800) 868-8724
www.4trac.org

Project TRESDS

*(for children with visual &
hearing loss)*

Peabody Box 328
230 Appleton Pl
Nashville TN 37203
(800) 288-2266
(615) 322-8279
vkc.mc.vanderbilt.edu/vkc

**United Cerebral Palsy of
Mid-South**

4189 Leroy Ave.
Memphis TN 38108
(901) 761-4277

**United Cerebral Palsy
Middle TN**

1200 9th Ave. N Ste. 110
Nashville TN 37208
(615) 242-4091
www.ucpamidtn.org

**UT Boling Center for
Developmental Disabilities**

711 Jefferson Ave
Memphis TN 38105
(901) 448-6511
(888) 572-2249
www.uthsc.edu/bcdd

National Disability Websites

Disability Related Sites

Autism
 Emotional Disabilities
 Hearing Impairments
 Learning Disabilities
 Mental Retardation
 Orthopedic Impairment
 Other Health Impairments
 Preschool Delays
 Speech/Language Impairments
 Traumatic Brain Impairments
 Visual Impairments
 Misc. Disorders, Diseases, etc,
 not specifically classified under IDEA

General Resources

Advocacy
 Community Youth Programs
 Disabilities in General
 Disabled Parents
 Education
 Health
 Miscellaneous
 National Councils/Committees
 Prevention
 Services

Autism

Autism Research Institute
<http://www.autism.com>

Autism Society of America
www.autism-society.org

Online Asperger Syndrome Information
 and Support
<http://www.udel.edu/bkirby/asper>

Emotional Disabilities

Bazelon Center for Mental Health Law
<http://www.bazelon.org>

Center for Mental Health Services
<http://www.mentalhealth.org>

Federation of Families for Children's
 Mental Health
<http://www.ffcmh.org>

Mental Health
<http://www.mentalhealth.com>

National Alliance for the Mentally III
 (NAMI)
<http://www.nami.org>

National Anxiety Foundation
<http://lexington-on-line.com/naf.html>

National Institute of Mental Health
<http://www.nimh.nih.gov>

National Mental Health Association
<http://www.nmha.org>

National Tourettes Syndrome Association
<http://www.tsa-usa.org/>

Obsessive Compulsive Foundation
<http://www.ocfoundation.org>

Sidran Traumatic Stress Foundation
<http://www.sidran.org>

Stanley Center for the Innovative Treatment
 of Bi-Polar Disorder
<http://www.wpic.pitt.edu/stanley>

Hearing Impairments

Alexander Graham Bell Association for the
 Deaf & Hard of Hearing
<http://www.agbell.org>

American Association of the Deaf-Blind
<http://www.tr.wou.edu/dblink/aadb.htm>

American Deafness and Rehabilitation
 Association
www.adara.org

D-B Link (Deaf-Blind)
<http://www.tr.wou.edu/dblink>

National Information Center on Deafness-
 Northridge University
<http://ncod.csun.edu>

National Institute on Deafness &
 Communication Disorders Info Clearinghse
<http://www.nidcd.nih.gov>

Learning Disabilities

International Dyslexia Association
<http://www.interdys.org>
 LDONLINE (Learning Disabilities)
<http://www.ldonline.org>

Learning Disabilities Association of America
<http://www.lidaamerica.org>

National Center for Learning Disabilities
<http://www.nclcd.org>

National Fragile X Foundation
<http://www.fragilex.org>

Online Asperger Syndrome Information
 and Support
<http://www.udel.edu/bkirby/asperger>

Mental Retardation

Bazelon Center for Mental Health Law
<http://www.bazelon.org>

National Association of Developmental
 Disabilities Council
<http://www.naddc.org/>

National Down Syndrome Society
<http://www.ndss.org>

National Fragile X Foundation
<http://www.fragilex.org>

Prader-Willy Syndrome Association USA
<http://www.pwsausa.org>

The ARC
<http://www.thearc.org>

Orthopedic Impairments

The Association for Persons with Severe
 Handicaps (TASH)
<http://www.tash.org>

Dystonia Medical Research Foundation
<http://www.dvstonia-foundation.org/>

Juvenile Arthritis Foundation
http://www.arthritis.org/communities/children_young_adults.asp

Muscular Dystrophy Association
<http://www.mdausa.org>

National Institute of Arthritis &
 Musculoskeletal & Skin Diseases, NIH
<http://www.nih.gov/niams>

National Spinal Cord Injury Association
<http://www.erols.com/nscia/index.html>

Spina Bifida Association of America
<http://www.sbaa.org>

United Brachial Plexus - ERBS Palsy
<http://www.ubpn.org/ubpnweb.nsf>

United Cerebral Palsy Association of America
<http://www.ucpa.org/>

Williams Syndrome Association
<http://www.williams-syndrome.org>

Other Health Impairments

American Diabetes Association
<http://www.diabetes.org>

American Epilepsy Society
<http://www.aesnet.org>

American Lung Association
<http://www.lungusa.org>

Asthma Education Network
<http://www.healthtalk.com/aen/index.html>

Children and Adults with Attention Deficit
 Hyperactivity Disorders (CHADD)
<http://www.chadd.org>

Cystic Fibrosis Foundation
<http://www.cff.org/>
 Epilepsy Foundation of America
<http://www.epilepsyfoundation.org>

Juvenile Arthritis Foundation
http://www.arthritis.org/communities/children_young_adults.asp

Leukemia-Lymphoma Society of America
http://www.leukemia-lymphoma.org/hm_lls

Muscular Dystrophy Association
<http://www.mdusa.org>

National Association of Developmental
 Disabilities Council
<http://www.naddc.org/>

National Attention Deficit Disorder
 Association
<http://www.add.org>

National Cancer Institute
<http://www.nci.nih.gov>

National Center for Neurogenic and
 Communication Disorders
<http://cnet.shs.arizona.edu>

National Down Syndrome Society
<://www.ndss.org>

National Heart, Lung and Blood Institute
<http://www.nhlbi.nih.gov/index.htm>

National Institute of Arthritis and
 Musculoskeletal and kin Diseases, N.I.H.
<http://www.nih.gov/niams>

National Institute of Diabetes & Digestive &
 Kidney Diseases
<http://www.niddk.nih.gov/>

National Institute of Neurological Disorders
 and Stroke
<http://www.ninds.nih.gov>

National Institute on Alcohol Abuse and
 Alcoholism
<http://www.niaaa.nih.gov>

National Institute on Allergy and Infectious
 Diseases
<http://www.niaid.nih.gov/default.htm>

National Organization for Rare Disorders
 (NORD)
<http://www.rarediseases.org>

National Organization on Fetal Alcohol
 Syndrome
<http://www.nofas.org>

National Pediatric and Family HIV Resource
 Center
<http://www.pedhiv aids.org/>

Prader-Willy Syndrome Association USA
<http://www.pwsausa.org>

Williams Syndrome Association
<http://www.williams-syndrome.org>

Preschool Delays

National Association of Developmental
 Disabilities Council
<http://www.naddc.org/>

Speech/Language Impairments

American Speech and Hearing Association
 (ASHA)
www.asha.org

**National Aphasia Association Disabilities
 Council**
<http://www.aphasia.org>

**National Center for Neurogenic and
 Communication Disorders**
<http://cnet.shs.arizona.edu>

Stuttering Foundation of America
<http://www.stutterSFA.org>

Traumatic Brain Impairments

Brain Injury Association of America
<http://www.biausa.org>

Visual Impairments

**American Association of the Deaf-
 Blind**
<http://www.tr.wou.edu/dblink/aadb.htm>

American Foundation for the Blind
<http://www.afb.org>

D-B Link (Deaf-Blind)
<http://www.tr.wou.edu/dblink>

Guide Dogs of America
www.guidedogsofamerica.org

**Lions Foundation (click on projects
 link for eye glasses program)**
<http://www.lions.org>

National Eye Institute
<http://www.nei.nih.gov>

**Misc. Disorders, Diseases, etc.,
 not specifically classified under IDEA**

**American Anorexia Bulimia
 Association**
<http://www.aabainc.org>

American Liver Foundation
www.liverfoundation.org

**Association for Persons with Severe
 Handicaps (TASH)**
<http://www.tash.org>

Easter Seal Society
<http://www.easter-seals.org>

**March of Dimes Birth Defects
 Foundation**
<http://www.modimes.org>

**National Association of
 Developmental
 Disabilities Council**
<http://www.naddc.org/>

**National Heart, Lung and Blood
 Institute**
<http://www.nhlbi.nih.gov/index.htm>

**National Institute of Arthritis and
 Musculoskeletal and Skin Diseases,
 National Institutes of Health**
<http://www.nih.gov/niams>

**National Institute of Diabetes &
 Digestive & Kidney Diseases**
<http://www.niddk.nih.gov/>

**National Institute of Neurological
 Disorders and Stroke**
<http://www.ninds.nih.gov>

National Institute on Alcohol Abuse and Alcoholism
<http://www.niaaa.nih.gov>

National Institute on Allergy and Infectious Diseases
<http://www.niaid.nih.gov/default.htm>

National Organization for Albinism
<http://www.albinism.org>

National Organization for Rare Disorders (NORD)
<http://www.rarediseases.org>

National Organization on Fetal Alcohol Syndrome
<http://www.nofas.org>

National Pediatric and Family HIV Resource Center
<http://www.pedhiv aids.org/>

National Reyes Syndrome Foundation
<http://www.bright.net/~reyessyn>

Sidran Traumatic Stress Foundation
<http://www.sidran.org>

Shriners Hospitals (Directory info)
<http://www.shrinershq.org>

Supplemental Security Income (SSI)
<http://www.ssa.gov>

Trace Research & Developmental Center on Communication, Control, & Computer Access for Handicapped Individuals
<http://trace.wisc.edu/>

General Resources

Advocacy

Ability
<http://www.abilityv.org.uk/index1.html>

Administration for Children & Families Administration on Developmental Disabilities
<http://www.acf.dhhs.gov/>

Advocates Across America
<http://www.axa.org>

Bazelon Center for Mental Health Law
<http://www.bazelon.org>

ChildrenwithDisabilities
<http://www.childrenwithdisabilities.nchrs.org>

Consortium for Citizens with

Disabilities
<http://www.c-c-d.org>

National Alliance for the Mentally III (NAMI)
<http://www.nami.org>

National Association of Developmental Disabilities Council
<http://www.naddc.org/>

National Council on Disability
<http://www.ncd.gov>

National Down Syndrome Society
<http://www.ndss.org>

National Organizations: Health and Disability Law
<http://www.therapistfinder.net/national/leqal.html>

Sidran Traumatic Stress Foundation
<http://www.sidran.org>

The ARC
<http://www.thearc.org>

Community Youth Programs

Boy Scouts of America
<http://www.bsa.scouting.org/>

Girl Scouts of the USA
<http://www.gsusa.org>

Special Olympics
<http://www.specialolympics.org/>

Wheelchair Sports, USA
<http://www.wsusa.org>

Disabilities in General

Clearinghouse on Disability Information, Office of Special Education & Rehabilitation Services
<http://www.ed.gov/offices/OSERS>

Easter Seal Society
<http://www.easter-seals.org>
March of Dimes Birth Defects Foundation
<http://www.modimes.org>

National Organizations: Disability in General
<http://www.therapistfinder.net/national/general.html>

Parent Center Technical Assistance ALLIANCE
<http://www.taalliance.org>

Disabled Parents

Disabled Parents
<http://www.disabledparents.net>

Looking Glass
<http://www.lookingglass.org>
Education

ChildrenwithDisabilities
<http://www.childrenwithdisabilities.ncjrs.org/>

Council on Exceptional Children (CEC)
<http://www.cec.sped.org>

Division TEACCH (Treatment & Education of Autistic & Related Communication Handicapped Children)
<http://www.unc.edu/depts/teacch>

Literacy Volunteers of America, Inc.
<http://www.literacyvolunteers.org>
National Association for Education of Young Children
<http://www.naeyc.org/>

National Association of Private Schools for Exceptional Children
<http://www.napsec.com>

National Association of School Psychologists (NASP)
<http://nasponline.org/index2.html>

National Center for Family Literacy
<http://www.familit.org>

National Clearinghouse for ESL (English as a Second Language) Literacy Education Center for Applied Linguistics
<http://www.cal.org>

National Clearinghouse on Post Secondary Education for Individuals with Disabilities
<http://www.acenet.edu/Programs/HEALTH/home.cfm>

National Head Start Association
<http://www.nhsa.org>

National Information Center for Children & Youth with Disabilities (NICHCY)
<http://www.nichcy.org>

Raven's Online Guide to Special Education (wide variety of subjects)
<http://coe.west.asu.edu/students/rflagle/97-598/sped1.htm>

Special Education (wide variety of

subjects)
<http://specialed.about.com/education/specialed/mlibrary.htm>

Special Needs Network (Military Families)
<http://mfrfc.calib.com/snn/index.cfm>

U.S. Department of Education
<http://www.ed.gov>

Health

Administration for Children & Families
Administration on Developmental Disabilities
<http://www.acf.dhhs.gov/>

American Pain Foundation
<http://www.painfoundation.org>
Centers for Disease Control and Prevention
<http://www.cdc.gov>

ChildrenwithDisabilities

<http://www.childrenwithdisabilities.ncjrs.org/>

Easter Seal Society
<http://www.easter-seals.org>

March of Dimes Birth Defects Foundation
<http://www.modimes.org>

National Health Information Center
<http://www.health.gov/nhic>

National Institute of Child Health and Human Development
<http://www.nichd.nih.gov>

Web MD
(Search engine for medical definitions/tests/etc.)
<http://www.webmd.com>

Miscellaneous

Ability
<http://www.abilityv.org.uk/index1.html>

Adoptive Families of America
<http://www.adoptivefam.org>

Family Child Development Center
<http://www.fcfdc.org>

Families USA
<http://www.familiesusa.org/>

National Center for Grandparent Support PACER Center
<http://www.pacer.org>

National Project on Self Determination
<http://www.self-determination.ora/index.htm>

National Resource Network for Child & Family Mental Health Services at the Washington Business Group On Health
<http://www.nmha.org>

Special Needs Network (Military Families)
<http://mfrfc.calib.com/snn/index.cfm>

Supplemental Security Income (SSI)
<http://www.ssa.gov>

National Councils/Committees

Council on Exceptional Children (CEC)
<http://www.cec.sped.org>

National Association of Developmental Disabilities Council
<http://www.naddc.org/>
President's Committee on Employment of

People with Disabilities
<http://www.dol.gov/odep/>

President's Committee on Mental Retardation
<http://www.acf.dhhs.gov/programs/pcmr/>

Prevention

Centers for Disease Control and Prevention
<http://www.cdc.gov>

Easter Seal Society
<http://www.easter-seals.org>

International Society for Prevention of Child Abuse and Neglect
<http://www.ispcan.org>

March of Dimes Birth Defects Foundation
<http://www.modimes.org>

National Institute on Drug Abuse
<http://www.nida.nih.gov>

Suicide Prevention
<http://www.afsp.org>

Services

American Occupational Therapy Association
<http://www.aota.org>

American Physical Therapy Association (APTA)
<http://www.apta.org>

American Printing House for the Blind
<http://www.aph.org>

American Speech and Hearing Association (ASHA)
www.asha.org

Guide Dogs of America
www.guidedogsofamerica.org

Indian Children's Program
<http://www.nau.edu/~ihd/icp.html>

Lions Foundation
(click on projects link for eye glasses program)
<http://www.lions.org>

National Library Service for the Blind & Physically Handicapped
<http://www.loc.gov/nls>

National Rehabilitation Information Center
<http://www.naric.com>

American Heritage Girls
<http://americanheritagegirls.org>

Trail Life USA
<http://www.trailifeusa.com/>

- A**
- Ability
<http://www.abilitv.org.uk/index1.html>
- Administration for Children & Families
Administration on Developmental Disabilities
<http://www.acf.dhhs.gov/>
- Adoptive Families of America
<http://www.adoptivefam.org>
- Alexander Graham Bell Association
for the Deaf & Hard of Hearing
<http://www.agbell.org>
- American Anorexia Bulimia Association
<http://www.aabainc.org>
- American Association of the Deaf-Blind
<http://www.tr.wou.edu/dblink/aadb.htm>
- American Deafness and Rehabilitation
Association
www.adara.org
- American Diabetes Association
<http://www.diabetes.org>
- American Epilepsy Society
<http://www.aesnet.org>
- American Foundation for the Blind
<http://www.afb.org>
- American Liver Foundation
www.liverfoundation.org
- American Lung Association
<http://www.lungusa.org>
- American Occupational Therapy Association
<http://www.aota.org>
- American Pain Foundation
<http://www.painfoundation.org>
- American Physical Therapy Association (APTA)
<http://www.apta.org>
- American Printing House for the Blind
<http://www.aph.org>
- American Speech and Hearing
Association (ASHA)
www.asha.org
- Association for Persons with Severe
Handicaps (TASH)
<http://www.tash.org>
- Asthma Education Network
<http://www.healthtalk.com/aen/index.html>
- Autism Research Institute
<http://www.autism.com>
- Autism Society of America
www.autism-society.org
- B**
- Bazelon Center for Mental Health Law
<http://www.bazelon.org>
- Boy Scouts of America
<http://www.bsa.scouting.org/>
- Brain Injury Association of America
<http://www.biausa.org>
- C**
- Centers for Disease Control and Prevention
<http://www.cdc.gov>
- Center for Mental Health Services
<http://www.mentalhealth.org>
- Children and Adults with Attention Deficit
Hyperactivity Disorders (CHADD)
<http://www.chadd.org>
- ChildrenwithDisabilities
<http://www.childrenwithdisabilities.ncjrs.org/>
- Clearinghouse on Disability Information, Office of
Special Education & Rehabilitation Services
<http://www.ed.gov/offices/OSERS>
- Consortium for Citizens with Disabilities
<http://www.c-c-d.org>
- Council on Exceptional Children (CEC)
<http://www.cec.sped.org>
- Cystic Fibrosis Foundation
<http://www.cff.org/>
- D**
- D-B Link (Deaf-Blind)
<http://www.tr.wou.edu/dblink>
- Disabled Parents
<http://www.disabledparents.net>
- Division TEACCH (Treatment & Education of
Autistic & Related Communication Handicapped
Children)
<http://www.unc.edu/depts/teacch>
- Dystonia Medical Research Foundation
<http://www.dvstonia-foundation.org/>
- E**
- Easter Seal Society
<http://www.easter-seals.org>
- Epilepsy Foundation of America
<http://www.epilepsyfoundation.org>
- F**
- Family Child Development Center
<http://www.fcdd.org>
- Families USA
<http://www.familiesusa.org/>
- Federation of Families for Children's
Mental Health
<http://www.ffcmh.org>
- G**
- Girl Scouts of the USA
<http://www.gsusa.org>
- Guide Dogs of America
www.guidedogsofamerica.org
- H**
- I**
- Indian Children's Program
<http://www.nau.edu/~ihd/icp.html>
- International Dyslexia Association
<http://www.interdys.org>
- International Society for Prevention
of Child Abuse and Neglect
<http://www.ispcan.org>
- J**
- Juvenile Arthritis Foundation
http://www.arthritis.org/communities/children_young_adults.asp
- K**
- L**
- LDONLINE (Learning Disabilities)
<http://www.ldonline.org>
- Learning Disabilities Association of America
<http://www.lidaamerica.org>
- Leukemia-Lymphoma Society of America
http://www.leukemia-lymphoma.org/hm_lls
- Lions Foundation
(click on projects link for eye glasses program)
<http://www.lions.org>
- Literacy Volunteers of America, Inc.
<http://www.literacyvolunteers.org>
- Looking Glass
<http://www.lookingglass.org>
- M**
- March of Dimes Birth Defects Foundation
<http://www.modimes.org>
- Mental Health
<http://www.mentalhealth.com>
- Muscular Dystrophy Association
<http://www.mdausa.org>
- N**
- National Alliance for the Mentally Ill
(NAMI)
<http://www.nami.org>
- National Anxiety Foundation
<http://lexington-on-line.com/naf.html>
- National Aphasia Association Disabilities
Council
<http://www.aphasia.org>
- National Association for Education
of Young Children
<http://www.naeyc.org/>
- National Association of Developmental
Disabilities Council
<http://www.naddc.org/>
- National Association of Private
Schools for Exceptional Children
<http://www.napsec.com>
- National Association of School
Psychologists (NASP)
<http://nasponline.org/index2.html>
- National Attention Deficit Disorder Association
<http://www.add.org>

National Cancer Institute
<http://www.nci.nih.gov>

National Center for Family Literacy
<http://www.familit.org>

National Center for Grandparent Support
 PACER Center
<http://www.pacer.org>

National Center for Learning Disabilities
<http://www.ncld.org>

National Center for Neurogenic and
 Communication Disorders
<http://cnet.shs.arizona.edu>

National Clearinghouse for ESL
 (English as a Second Language) Literacy
 Education Center for Applied Linguistics
<http://www.cal.org>

National Clearinghouse on Post Secondary
 Education for Individuals with Disabilities
<http://www.acenet.edu/Programs/HEATH/home.cfm>

National Council on Disability
<http://www.ncd.gov>

National Down Syndrome Society
<http://www.ndss.org>

National Eye Institute
<http://www.nei.nih.gov>

National Fragile X Foundation
<http://www.fragilex.org>

National Head Start Association
<http://www.nhsa.org>

National Health Information Center
<http://www.health.gov/nhic>

National Heart, Lung and Blood Institute
<http://www.nhlbi.nih.gov/index.htm>

National Information Center for
 Children & Youth
 w/Disabilities (NICHCY)
<http://www.nichcy.org>

National Information Center on
 Deafness-Northridge University
<http://ncod.csun.edu>

National Institute of Arthritis and
 Musculoskeletal and Skin Diseases,
 National Institutes of Health
<http://www.nih.gov/niams>

National Institute of Child Health and
 Human Development
<http://www.nichd.nih.gov>

National Institute of Diabetes &
 Digestive & Kidney Diseases
<http://www.niddk.nih.gov/>

National Institute of Mental Health
<http://www.nimh.nih.gov>

National Institute of Neurological
 Disorders and Stroke
<http://www.ninds.nih.gov>

National Institute on Alcohol
 Abuse and Alcoholism
<http://www.niaaa.nih.gov>

National Institute on Allergy and
 Infectious Diseases
<http://www.niaid.nih.gov/default.htm>

National Institute on Deafness &
 Communication Disorders Information
 Clearinghouse
<http://www.nidcd.nih.gov>

National Institute on Drug Abuse
<http://www.nida.nih.gov>

National Library Service for the
 Blind & Physically Handicapped
<http://www.loc.gov/nls>

National Mental Health Association
<http://www.nmha.org>

National Organizations: Disability in General
<http://www.therapistfinder.net/national/general.html>

National Organization for Albinism
<http://www.albinism.org>

National Organization for Rare Disorders (NORD)
<http://www.rarediseases.org>
 National Organizations: Health and
 Disability Law
<http://www.therapistfinder.net/national/leqal.html>

National Organization on Fetal
 Alcohol Syndrome
<http://www.nofas.org>

National Pediatric and Family HIV
 Resource Center
<http://www.pedhiv aids.org/>

National Project on Self Determination
<http://www.self-determination.ora/index.htm>

National Rehabilitation Information Center
<http://www.naric.com>

National Resource Network for Child &
 Family Mental Health Services at the
 Washington Business Group On Health
<http://www.nmha.org>

National Reyes Syndrome Foundation
<http://www.bright.net/~reyessyn>

National Spinal Cord Injury Association
<http://www.erols.com/nsca/index.html>

National Tourettes Syndrome Association
<http://www.tsa-usa.org/>

O

Obsessive Compulsive Foundation
<http://www.ocfoundation.org>

Online Asperger Syndrome Information and
 Support
<http://www.udel.edu/bkirby/asperger>

P

Parent Center Technical Assistance ALLIANCE
<http://www.taalliance.org>

Prader-Willy Syndrome Association USA
<http://www.pwsausa.org>

President's Committee on Employment of People
 with Disabilities
<http://www.dol.gov/odep/>

President's Committee on Mental Retardation
<http://www.acf.dhhs.gov/programs/pcmr/>

R

Raven's Online Guide to Special Education
 (wide variety of subjects)
<http://coe.west.asu.edu/students/rflagle/97-598/sped1.htm>

S

Shriners Hospitals (Directory info)
<http://www.shrinershq.org>

Sidran Traumatic Stress Foundation
<http://www.sidran.org>

Special Education (wide variety of subjects)
<http://specialed.about.com/education/specialed/mlibrary.htm>

Special Needs Network (Military Families)
<http://mfrc.calib.com/snn/index.cfm>

Special Olympics
<http://www.specialolympics.org/>

Spina Bifida Association of America
<http://www.sbaa.org>

Stanley Center for the Innovative
 Treatment of Bi-Polar Disorder
<http://www.wpic.pitt.edu/stanley>

Stuttering Foundation of America
<http://www.stutterSFA.org>

Suicide Prevention
<http://www.afsp.org>

Supplemental Security Income (SSI)
<http://www.ssa.gov>

T

The ARC
<http://www.thearc.org>

Trace Research & Developmental
 Center on Communication, Control, &
 Computer Access for Handicapped Individuals
<http://trace.wisc.edu/>

U

U.S. Department of Education
<http://www.ed.gov>
 United Brachial Plexus - ERBS Palsy
<http://www.ubpn.org/ubpnweb.nsf>

United Cerebral Palsy Association of America
<http://www.ucpa.org/>

V

W

Web MD (Search engine for medical
 definitions/tests/etc.)
<http://www.webmd.com>

Wheelchair Sports, USA
<http://www.wsusa.org>

Williams Syndrome Association
<http://www.williams-syndrome.org>

X, Y, Z

TN Department of Special Populations Directory

Andrew Johnson Tower, 11th Floor 710 James Robertson Parkway Nashville, TN 37243 (888)212-3162 (615)532-8228

Special Populations	Vacant, Assistant Commissioner	(615)741-0661	
Special Populations	Jerry Bush Deputy Assistant Commissioner	(615)741-7811	Jerry.Bush@tn.gov
Assessment	Lori Nixon, Director of Assessment Design (with the Div. of Curriculum & Instruction)	(615)741-5113	Lori.Nixon@tn.gov
Consolidated Planning and Monitoring	Nan Mckerley, Director of IDEA Accountability	(615)741-3340	Nan.Mckerley@tn.gov
Consolidated Planning and Monitoring	Deryl Gentry, Office of Civil Rights Coordinator	(615)741-7775	Deryl.K.Gentry@tn.gov
Data Services	Nathan Travis, Director of Data Services	(615)532-6194	Nathan.Travis@tn.gov
Head Start	Janet Coscarelli, Head Start Collaborator	(615)741-4898	Janet.Coscarelli@tn.gov
Early Childhood TN Early Intervention System (TEIS)	Linda Hartbarger, Executive Director	(615)253-5032	Linda.Hartbarger@tn.gov
ESEA-Federal Programs	Jan Lanier, ESEA Consultant	(615)532-6314	Jan.Lanier@tn.gov
Instructional Programming	Tie Hodack, Director of Instructional Programming	(615)532-3262	Tie.Hodack@tn.gov
Instructional Programming	Linda Copas, Special Programs Coordinator	(615)741-7790	Linda.Copas@tn.gov
Instructional Programming	Blake Shearer, Transition Coordinator	(615)741-3834	Blake.Shearer@tn.gov
Legal Counsel	Bill Wilson, Asst. General Counsel	(615)741-5988	Bill.Wilson@tn.gov
Legal Counsel	Kay Flowers, Complaint Investigator	(615)532-6239	Kay.Flowers@tn.gov

CORE (Centers of Regional Excellence)

East Tennessee Center	Middle Tennessee Center	West Tennessee Center
Ken Green	Don Boyd	Cliff Sturdivant
2761 Island Home Blvd. Knoxville, 37920	1256 Foster Avenue Nashville, 37210	University of Martin 423 Clement Hall 210 Hurt St. Martin, TN 38238
Phone (865)594-6044	Phone (615)741-0560	Phone (731)881-7568
Fax (865)594-5242	Fax (615)532-3257	Fax (731)881-5686
Ken.Green@tn.gov	Don.Boyd@tn.gov	Cliff.Sturdivant@tn.gov

State Special Schools

Tennessee School For The Deaf (Knoxville)	Tennessee School For The Blind (Nashville)	West Tennessee School ForThe Deaf (Jackson)
Alan Mealka, Superintendent	Martin Monson Superintendent	Alan Mealka Superintendent
2763 Island Home Blvd., 37920	115 Stewarts Ferry Pike, 37214	100 Berry Hill Drive, 38301
Phone (865)579-2441	Phone(615)231-7300	Phone (731)423-5705
Fax (865)579-2484	Fax (615)871-9312	Fax (731)423-6470
amealka@tsd.k12tn.us www.tsdeaf.org	Martin.Monson@tnschoolfortheblind.org www.tnschoolfortheblind.org	amealka@tsd.k12.tn.us www.wtsd.tn.org

For a complete list of the Department of Education Contacts visit <http://doe1.tn.gov/ContactList/>

GLOSSARY OF TERMS AND ACRONYMS IN SPECIAL EDUCATION

ADD	<u>Attention Deficit Disorder</u>
ADHD	<u>Attention Deficit Hyperactive Disorder</u>
Amendment	A change, revision, or addition made to a law.
Assessment	A collecting and bringing together of information about a child's learning needs, which may include social, psychological, and educational evaluations used to determine assignment to special programs and services; a process using observation, testing, and test analysis to determine an individual's strengths and weaknesses to plan his or her educational services.
CDC	<u>Comprehensive Developmental Class</u> (a self-contained special education classroom).
CP	<u>Cerebral Palsy</u>
DD	<u>Developmental Disabilities</u> or Developmental Delay
DHS	<u>Department of Human Services</u>
DCS	<u>Department of Children's Services</u>
DMH/MR	<u>Department of Mental Health and Mental Retardation</u>
Due Process	(Procedure) Action that protects a person's rights. In special education, this applies to action taken to protect the educational rights of students with disabilities.
Early Intervention	(EI) Interdisciplinary services provided to children with disabilities, birth through two years of age.
ESY	<u>Extended School Year</u> Includes summer school services for a child with a disability who is at risk of losing skills or knowledge during school breaks and who will require a lengthy period of time to regain lost skills.
Evaluation	A way of collecting information about the student's learning needs, strengths, and interests. The evaluation is part of the process of determining whether a student qualifies for special education programs

and services. Assessment can be used interchangeably.

FAPE	<u>Free Appropriate Public Education</u> An educational program designed to meet the <u>individual</u> needs of a child with a disability <u>at no cost</u> to parent or child.
FERPA	<u>Family Education Rights and Privacy Act</u> The federal law that gives parents the right to see, correct, and control access to their child's school records.
IDEA	<u>Individuals with Disabilities Education Act</u> The second generation name for the Educational of the Handicapped Act, the 1990 amendments to the Act, and now the 1997 Amendments.
IEP	<u>Individualized Education Program</u> A written and individually designed education program for a school-aged child (ages 3-22) with a disability developed by a team of professionals (teachers, therapists, etc.) and the child's parents. It is reviewed and updated at least yearly and describes how the child is presently doing, what the child's learning needs are, and what services the child is to receive. (For children ages 0-2 years, the IFSP is used.)
IEP Team	Former name M-Team - for the committee meeting with parents and professionals to discuss the results of an evaluation of the child and to determine what special services are appropriate and to write those needs on the IEP. "M-team" or Multi-disciplinary Team was a term specific to TN.
Identification	The process of locating and identifying all children (ages 0-22) needing special services. Also known as "Child Find".
IFSP	<u>Individualized Family Service Plan</u> A written program for an infant toddler (ages birth through 2 years old) developed by a team of people including the parents/family. The IFSP must contain the child's level of development, strengths and needs, major goals or outcomes expected, services needed, date of the next evaluation, and the starting date of the present IFSP.
LD	<u>Learning Disability</u>
LEA	<u>Local Education Agency</u> (the child's local school district).
LRE	<u>Least Restrictive Environment</u> An educational setting or program that provides a student with disabilities the chance to work and learn to the best of his or her ability and make progress in the general curriculum. It also provides the student with the supports necessary to be educated

alongside children without disabilities, while meeting all of the child's learning needs and physical requirements.

MR	<u>Mental Retardation</u>
M-Team	Former name (now the IEP team) for the committee meeting with parents and professionals to discuss the results of an evaluation of the child and meets to determine what (if any) special services are appropriate and to write the IEP. "M-team" or Multi-disciplinary Team is a term specific to TN.
Occupational Therapy	A therapy or treatment provided by an occupational therapist that helps an individual develop mental or physical skills that will aid in daily living; it focuses on the use of hands and fingers; on coordination of movement; on oral motor skills; and on self help skills, such as dressing, eating with a fork and spoon, etc.
OCR	<u>Office for Civil Rights</u> A division of the US Department of Education that addresses accessibility and discrimination issues.
P & A	<u>Protection and Advocacy</u> A system of free legal services to address problems with services to individuals with disabilities. Tennessee Protection and Advocacy, Inc. has the P & A grant in Tennessee.
Part C	Part C - provides services to children with disabilities, from birth to their third birthday, and their families through an IFSP.
Part B	Part B of IDEA entitles 3-22 year old eligible students to educational services through the public school system through an IEP.
Part H	Now Part C - provides services to children with disabilities, from birth to their third birthday, and their families through an IFSP.
Physical Therapy	Treatment of (physical) disabilities given by a trained physical therapist (under doctor's orders) that includes the use of massage, exercise, etc., to help the person improve the use of bones, muscles, joints and nerves.
Placement	The classroom, program, and/or therapy that is selected by the IEP Team for a student with special needs.
Referral	The first step in obtaining an evaluation for a child who may be in need of special services. May be made by school personnel, parent or others.
Related Services	Developmental, corrective, and other supportive services as are required

to assist a child with a disability to benefit from special education. Includes services such as transportation, speech, physical therapy, occupational therapy, audiology, etc.

SEA	<u>State Education Agency</u> (The Tennessee Department of Education)
SED	<u>Emotional Disturbance</u> - name changed from Serious Emotional Disturbance but criteria for eligibility remained the same.
Special Education	Programs, services, and/or specially designed instruction (offered at no cost to families) for children with special needs who are found eligible for such services: these include special supports, classes, and programs that meet the unique needs of the child.
Speech/Language Therapy	A planned program to improve and correct speech and/or language or communication problems, including assistive technology.
Tennessee Protection and Advocacy	Tennessee's protection and advocacy system (P & A), the agency that provides free legal assistance to families in conflict with their child's school district.
VR	<u>Vocational Rehabilitation</u> , sometimes referred to as RS (Rehabilitation Services).