

**Commonwealth of Pennsylvania
Department of Education**

**Chapter 14
Special Education Services and Programs
State Regulations**

COMPARED TO

**Part 300
Individuals with Disabilities Education Act
Federal Regulations**

**SIDE-BY-SIDE
QUICK REFERENCE**

February 12, 2009

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The "left" column of this document are the regulations adopted by the State Board of Education (June 28, 2008). This column contains provisions in addition to the federal regulations adopted by reference, for the delivery of special education to students and eligible young children.

The "right" column of this document are the federal regulations (August 14, 2006 and [December 1, 2008](#)) adopted by reference by the State Board of Education that has the effect of law governing the provision of special education delivered to students with disabilities attending public schools of Commonwealth and the provision of special education delivered to eligible young children through the preschool programs required under Act 212 of 1990. This side by side document does not include a complete version of the federal regulations.

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Pennsylvania Department of Education

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**Side by Side
PA Chapter 14
and
IDEA Part 300**

As of February 12, 2009

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GENERAL PROVISIONS**§ 14.101. Definitions.**

In addition to the definitions in §§ 14.102 and 14.103 (relating to purposes; and terminology related to Federal regulations), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act--The Early Intervention Services System Act (11 P. S. §§ 875-101--875-503).

Agency--A school entity, approved private school, State-operated program or facility or other public (excluding charter schools and cyber charter schools under Article XVII-A of the School Code (24 P. S. §§ 17-1701-A--17-1751-A)) or private organization providing educational services to children with disabilities or providing early intervention services.

Age of beginners--The minimum age established by the school district board of directors for admission to the district's first grade under § 11.15 (relating to admission of beginners).

Developmental areas--Cognitive, communicative, physical, social/emotional and self-help.

Developmental delay--A child who is less than the age of beginners and at least 3 years of age is considered to have a developmental delay when one of the following exists:

(i) The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas.

(ii) The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests.

ESY--Extended school year.

Early intervention agency--A school entity or licensed provider that has entered into a mutually agreed upon written arrangement (MAWA) with the Department to provide early intervention services to eligible young children in accordance with the act.

Early intervention services--As defined in section 103 of the act (11 P. S. § 875-103).

Eligible young child--A child who is less than the age of beginners and at least 3 years of age and who meets the criteria in 34 CFR 300.8 (relating to child with a disability).

IEP--Individualized education program.

IST--Instructional support team.

MDT--Multidisciplinary team.

Mutually agreed-upon written arrangement--As defined in section 103 of the act.

Parent--The term as defined in 34 CFR 300.30 (relating to parent) and also includes individuals appointed as foster parents under 55 Pa. Code § 3700.4 (relating to definitions).

School Code--The Public School Code of 1949 (24 P. S. §§ 1-101--27-2702).

School entity--A local public education provider such as a school district, area vocational-technical school or intermediate unit but excluding charter schools and cyber charter schools under Article XVII-A of the School Code.

Student with a disability--A child of school age who meets the criteria in 34 CFR 300.8 (relating to child with a disability).

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))

§ 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.

(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.

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).

(3) If a 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.

(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 audiovisual 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))

§ 300.17 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 HOUSSE for special education teachers; and
 (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE 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)

§ 300.22 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))

§ 300.27 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))

§ 300.32 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 (lipreading), 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))
- § 300.39 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))

§ 300.41 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))

§ 14.102. Purposes.
 (a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:
 (1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400--1482) and to ensure that:
 (i) Children with disabilities have available to them a free appropriate public education which is designed to enable the student to participate fully and independently in the community, including preparation for employment or higher education.
 (ii) Children with disabilities have access to the general curriculum, and participate in State and local assessments as established and described in Chapter 4 (relating to academic standards and assessment).
 (iii) Children with disabilities are educated, to the maximum extent appropriate, with their nondisabled peers and are provided with supplementary aids and services.
 (iv) School entities provide access to a full continuum of placement options.
 (v) The rights of children with disabilities and parents of these children are protected.
 (vi) The use of early intervening services promotes students' success in a general education environment.
 (2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34

CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 71 FR 46540--46845 (August 14, 2006), [and amended at 73 FR 73006 – 73029 \(December 1, 2008\)](#). The following sections are incorporated by reference:

- (i) 34 CFR 300.4--300.6 (relating to act; assistive technology device; and assistive technology service).
- (ii) 34 CFR 300.8(a) and (c) (relating to child with a disability).
- (iii) 34 CFR 300.9--300.15 (relating to consent; core academic subjects; day, business day, school day; educational service agency; elementary school; equipment; and evaluation).
- (iv) 34 CFR 300.17--300.20 (relating to free appropriate public education; highly qualified special education teachers; homeless children; and include).
- (v) 34 CFR 300.22--300.24 (relating to individualized education program; individualized education program team; and individualized family service plan).
- (vi) 34 CFR 300.27--300.30 (relating to limited English proficient; local educational agency; native language; and parent).
- (vii) 34 CFR 300.32--300.37 (relating to personally identifiable; public agency; related services; scientifically based research; secondary school; and services plan).
- (viii) 34 CFR 300.39 (relating to special education).
- (ix) 34 CFR 300.41--300.45 (relating to State educational agency; supplementary aids and services; transition services; universal design; and ward of the State).
- (x) 34 CFR 300.101 and 300.102 (relating to free appropriate public education (FAPE); and limitation-exception to FAPE for certain ages).
- (xi) 34 CFR 300.104--300.108 (relating to residential placement; assistive technology; extended school year services; nonacademic services; and physical education).
- (xii) 34 CFR 300.113 and 300.114(a)(2) (relating to routine checking of hearing aids and external components of surgically implanted medical devices; and LRE requirements).
- (xiii) 34 CFR 300.115--300.117 (relating to continuum of alternative placements; placements; and nonacademic settings).
- (xiv) 34 CFR 300.122 (relating to evaluation).
- (xv) 34 CFR 300.130--300.144, regarding students enrolled by their parents in private schools.
- (xvi) 34 CFR 300.148 (relating to placement of children by parents when FAPE is at issue).
- (xvii) 34 CFR 300.160 (relating to participation in assessments).
- (xviii) 34 CFR 300.172 (relating to access to instructional materials).
- (xxix) 34 CFR 300.174 (relating to prohibition on mandatory medication).
- (xx) 34 CFR 300.207 (relating to personnel development).
- (xxi) 34 CFR 300.210--300.213 (relating to purchase of instructional materials; information for SEA; public information; and records regarding migratory children with disabilities).
- (xxii) 34 CFR 300.224 (relating to requirements for establishing eligibility).
- (xxiii) 34 CFR 300.226 (relating to early intervening services).
- (xxiv) 34 CFR 300.300 and 300.301 (relating to parental consent; and initial evaluations).
- (xxv) 34 CFR 300.302--300.307(a)(1) and (2) and (b) (relating to screening for instructional purposes is not evaluation; reevaluations; evaluation procedures; additional requirements for evaluations and reevaluations; determination of eligibility; and specific learning disabilities).

(xxvi) 34 CFR 300.308--300.311 (relating to additional group members; determining the existence of a specific learning disability; observation; and specific documentation for the eligibility determination).

(xxvii) 34 CFR 300.320--300.325 (relating to definition of individualized education program; IEP Team; parent participation; when IEPs must be in effect; development, review, and revision of IEP; and private school placement by public agencies).

(xxviii) 34 CFR 300.327 and 300.328 (relating to educational placements; and alternative means of meeting participation).

(xxix) 34 CFR 300.501--300.508 (relating to opportunity to examine records; parent participation in meetings; independent education evaluation; prior notice by the public agency, content of notice; procedural safeguards notice; electronic mail; mediation; filing a due process complaint; and due process complaint).

(xxx) 34 CFR 300.510--300.516 (relating to resolution process; impartial due process hearing; hearing rights; hearing decisions; finality of decisions, appeal; impartial review; timelines and convenience of hearings and reviews; and civil action).

(xxxi) 34 CFR 300.518(a), (b) and (d) and 300.519 (relating to child's status during proceedings; and surrogate parents).

(xxxii) 34 CFR 300.530--300.537 (relating to authority of school personnel; determination of setting; appeal; placement during appeals; protections for children not determined eligible for special education and related services; referral to and action by law enforcement and judicial authorities; change of placement because of disciplinary removals; and state enforcement mechanisms).

(xxxiii) 34 CFR 300.610--300.625 (relating to confidentiality; definitions; notice to parents; access rights; record of access; records on more than one child; list of types and locations of information; fees; amendment of records at parent's request; opportunity for a hearing; result of hearing; hearing procedures; consent; safeguards; destruction of information; and children's rights).

(3) To specify how the Commonwealth will meet its obligations to suspected and identified children with disabilities who require special education and related services.

(4) To provide to the Commonwealth, through the Department, general supervision of services and programs provided under this chapter.

(b) To provide services and programs effectively, the Commonwealth will delegate operational responsibility for school aged students to its school districts to include the provision of child find duties prescribed by 34 CFR 300.111 (relating to child find).

§ 14.103. Terminology related to Federal regulations.

For purposes of interfacing with 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities), the following term applies, unless the context clearly indicates otherwise:

Local educational agency--Where the Federal provision uses the term "local educational agency," for purposes of this chapter, the term means an intermediate unit, school district, State operated program or facility or other public organization providing educational services to children with disabilities or providing early intervention services. Applicability of this term to public charter schools is found in Chapter 711 (relating to charter school services and programs for children with disabilities). In the application of 34 CFR 300.130-300.144, regarding children with disabilities enrolled by their parents in private schools, the intermediate unit shall be considered to be the local education agency.

§ 14.104. Special education plans.

- (a) Each school district shall develop and implement a special education plan aligned with the strategic plan of the school district under § 4.13 (relating to strategic plans). The special education plan shall be developed every 3 years consistent with the phase of the strategic plan of the school district. The Secretary will prescribe the format, content and time for submission of the special education plan.
- (b) Each school district's special education plan must specify the special education programs that operate in the district and those that are operated in the district by intermediate units, area vocational technical schools and other agencies, and it must describe the following:
- (1) Early intervening services under 34 CFR 300.226 (relating to early intervening services) and this chapter, if the services are provided by the school district.
 - (2) The school district procedures for complying with the State criteria for identifying children with specific learning disabilities.
 - (3) Examples of supplementary aids and services provided by the school district.
 - (4) Access to a full continuum of educational placements.
 - (5) Policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children with disabilities, for those school districts identified with significant disproportionality in accordance with 34 CFR 300.646(a) (relating to disproportionality).
 - (6) School district procedures on behavior support services, including a description of the training provided to staff in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention.
 - (7) Parent training activities provided by the school district.
- (c) Each school district's special education plan must include procedures for the education of all students with disabilities who are residents of the district, including those receiving special education in approved private schools and students with disabilities who are nonresidents placed in private homes or institutions in the school district under sections 1305, 1306 and 1306.2 of the School Code (24 P. S. §§ 13-1305, 13-1306 and 13-1306.2).
- (d) Each intermediate unit shall prepare annually and submit to the Secretary a special education plan specifying the special education services and programs to be operated by the intermediate unit, including equitable services provided consistent with 34 CFR 300.130--300.144 and subsection (b)(2)--(4), (6) and (7). The Secretary will prescribe the format, content and time for submission of the intermediate units' plans.
- (e) Each early intervention agency shall develop and submit to the Department an early intervention special education plan every year.
- (f) The Department will approve plans in accordance with the following criteria:
- (1) Services and programs are designed to meet the needs of students identified as children with disabilities within the school district or intermediate unit or eligible young children within the early intervention agency.
 - (2) The full range of services and programs under this chapter are available to children with disabilities and eligible young children.
 - (3) Placement of students with disabilities in settings other than regular education settings may not be based on lack of resources, facilities, staff or for administrative convenience.
 - (4) The plan meets the specifications defined in this chapter and the format, content and time for submission of the agency plans prescribed by the Secretary.

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(g) Portions of the plans that do not meet the criteria for approval will be disapproved. Prior to disapproval, Department personnel will discuss disapproved portions of the plan and suggest modifications with appropriate intermediate unit or school district personnel. Portions of the plan that are not specifically disapproved will be deemed approved.

(h) When a portion of an intermediate unit, school district or early intervention plan is disapproved, the Department will issue a notice specifying the portion of the plan disapproved, and the rationale for the disapproval and the opportunity for a hearing under 2 Pa. C.S. §§ 501--508 and 701--704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice Procedure). If requested, the Department will convene a hearing within 30 days after the receipt of the request. The Department will render a decision within 30 days following the hearing.

(i) Each school entity shall maintain information concerning students with disabilities, the services provided, performance and discipline data, as specified by the Secretary, and report information in a form and at times as required by the Secretary.

Subpart B—State Eligibility
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.
(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.

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

Other FAPE Requirements

§ 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.

(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.

(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.

(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.

(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.

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

§ 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.

(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.

(Authority: 20 U.S.C. 1401(3); 1412(a)(3))

§ 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).

(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.

(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.

(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.

(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.

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

§ 300.122 Evaluation.

Children with disabilities must be evaluated in accordance with §§ 300.300 through 300.311 of subpart D of this part.

(Authority: 20 U.S.C. 1412(a)(7))

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.

(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.

(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 by-pass 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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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).

(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.

(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.

(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.

(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.

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

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.
- (Authority: 20 U.S.C. 1412(a)(10)(C))
- § 300.160 Participation in assessments.**
- (a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.
- (b) Accommodation guidelines. (1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.
- (2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must--
- (i) Identify only those accommodations for each assessment that do not invalidate the score; and
- (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.
- (c) Alternate assessments. (1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.
- (2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that--
- (i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;
- (ii) If the State has adopted modified academic achievement standards permitted in 34 CFR

200.1(e), measure the achievement of children with disabilities meeting the State's criteria under Sec. 200.1(e)(2) against those standards; and

(iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.

(d) Explanation to IEP Teams. A State (or in the case of a district-wide assessment, an LEA) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(e) Inform parents. A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

(f) Reports. An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

- (1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.
- (2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.
- (3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.
- (4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.
- (5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if--
 - (i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and
 - (ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) Universal design. An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16))

§ 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.

(Authority: 20 U.S.C. 1412(a)(23), 1474(e))

§ 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).

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

§ 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.

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

§ 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.

(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.

(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.

(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.

(Authority: 20 U.S.C. 1413(a)(9))

§ 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.

(Authority: 20 U.S.C. 1413(a)(9))

§ 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.

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

§ 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

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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.

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

§ 14.105. Personnel.

(a) Paraprofessionals.

(1) An instructional paraprofessional is a school employee who works under the direction of a certificated staff member to support and assist in providing instructional programs and services to children with disabilities or eligible young children. The support and assistance includes one-on-one or group review of material taught by certificated staff, classroom management and implementation of positive behavior support plans. Services may be provided in a special education class, regular education class or other instructional setting as provided in the student's IEP. Instructional paraprofessionals shall meet one of the following qualifications effective July 1, 2010:

- (i) Have completed at least 2 years of postsecondary study.
- (ii) Possess an associate degree or higher.
- (iii) Meet a rigorous standard of quality as demonstrated through a State or local assessment.

(2) Nothing in subsection (a) should be construed to supersede the terms of a collective bargaining agreement in effect on July 1, 2008.

(3) Instructional paraprofessionals, each school year, shall provide evidence of 20 hours of staff development activities related to their assignment.

(4) A personal care assistant provides one-to-one support and assistance to a student, including support and assistance in the use of medical equipment (for example, augmentative communication devices; activities of daily living; and monitoring health and behavior). A personal care assistant may provide support to more than one student, but not at the same time. Personal care assistants shall provide evidence of 20 hours of staff development activities related to their assignment each school year. The 20 hours of training may include training required by the school-based access program.

(b) Educational interpreters. An educational interpreter is an individual who provides

students who are deaf or hard of hearing with interpreting or transliterating services in an educational setting.

(1) To serve as an educational interpreter, an individual shall meet the qualifications in subparagraph (i) or (ii) and subparagraph (iii):

(i) Achieve and provide evidence of a score of 3.5 on the Educational Interpreter Performance Assessment (EIPA) for the appropriate grade level to which the person has been assigned.

(ii) Be a qualified sign language interpreter or qualified transliterator under the Sign Language Interpreter and Transliterator Registration Act (63 P. S. §§ 1725.1--1725.12) and its implementing regulations.

(iii) Provide evidence of a minimum of 20 hours of staff development activities relating to interpreting or transliterating services annually.

(2) The Board, in consultation with the Department, will review the EIPA score requirement every 2 years.

(c) *Caseload.*

(1) The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

(i) *Full-time.* Special education supports and services provided by special education personnel for 80% or more of the school day.

(ii) *Itinerant.* Special education supports and services provided by special education personnel for 20% or less of the school day.

(iii) *Supplemental.* Special education supports and services provided by special education personnel for more than 20% but less than 80% of the school day.

(2) The following chart represents the maximum number of students allowed on a teacher's caseload:

| | Itinerant (20% or Less) | Supplemental (Less Than 80% but More Than 20%) | Full-Time (80% or More) |
|-------------------------------------|------------------------------------|---|------------------------------------|
| Learning Support | 50 | 20 | 12 |
| Life Skills Support | 20 | 20 | 12(Grades K-6) 15(Grades 7-12) |
| Emotional Support | 50 | 20 | 12 |
| Deaf And Hearing Impaired Support | 50 | 15 | 8 |
| Blind And Visually Impaired Support | 50 | 15 | 12 |
| Speech And Language Support | 65 | | 8 |
| Physical Support | 50 | 15 | 12 |
| Autistic Support | 12 | 8 | 8 |
| Multiple Disabilities Support | 12 | 8 | 8 |

(3) Each student with a disability shall be assigned to a special education teacher's

caseload.

(4) A school district may request approval for a caseload chart that varies from that in paragraph (2) as part of its special education plan consistent with § 14.104 (relating to special education plans). The caseload and supporting documents submitted must:

- (i) Ensure the ability of assigned staff to provide the services required in each student's IEP.
- (ii) Apply to special education classes operated in the school district.
- (iii) Provide a justification for why the chart deviates from the caseload chart in paragraph (2).
- (iv) Describe the opportunities for parents, teachers and other interested parties to review and comment on the chart prior to its submission. The district shall provide and include a copy of the notice to the public indicating the district intends to request a waiver of caseload regulations and a description of how parents, teachers and other interested parties were provided opportunities to give comment on the waiver request.

(5) Classes or programs with students from more than one district, regardless of whether operated by a school district, intermediate unit or agency, shall follow the caseload chart of the district where the class or program is located. Intermediate unit services provided to multiple districts must follow the caseload chart under paragraph (2).

(6) Caseloads are not applicable to approved private schools or to chartered schools for the deaf and blind.

(7) The Department may withdraw approval of variance in the caseload chart for a school district if its caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:

- (i) Graduation rates of students with a disability.
- (ii) Drop-out rates of students with a disability.
- (iii) Postsecondary transition of students with a disability.
- (iv) Rate of grade level retentions.
- (v) Statewide and district-wide assessment results as prescribed by §§ 4.51 and 4.52 (relating to State assessment system; and local assessment system).

§ 14.106. Access to instructional materials.

(a) The Board adopts the National Instructional Materials Accessibility Standard (NIMAS) as defined in section 674(e)(3)(B) of the Education of Individuals with Disabilities Education Act (20 U.S.C.A. § 1474(e)(3)(B)) and set forth in 71 FR 41084 (July 19, 2006) for the purpose of providing print instructional materials in alternate accessible formats or specialized formats to blind persons or other persons with print disabilities in a timely manner. To ensure the timely provision of high quality, accessible instructional materials to children who are blind or other persons with print disabilities, agencies shall adopt the NIMAS. The NIMAS refers to a standard for source files of print instructional materials created by publishers that may be converted into accessible instructional materials.

(b) Agencies shall, in a timely manner, provide print instructional materials in specialized, accessible formats (that is, Braille, audio, digital, large-print, and the like) to children who are blind or other persons with print disabilities, as defined in 2 U.S.C.A. § 135a (regarding books and sound-reproduction records for blind and other physically handicapped residents; annual appropriations; and purchases).

(c) Agencies act in a timely manner in providing instructional materials under subsection (a) if they take steps to ensure that children who are blind or other persons with print

§ 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

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disabilities have access to their accessible format instructional materials at the same time that students without disabilities have access to instructional materials. Agencies may not withhold instructional materials from other students until instructional materials in accessible formats are available.

(d) Receipt of a portion of the instructional materials in alternate accessible or specialized format will be considered receipt in a timely manner if the material received covers the chapters that are currently being taught in the student's class.

(e) If a child who is blind or other person with a print disability enrolls in school after the start of the school year, an agency shall take steps to ensure that the student has access to accessible format instructional materials within 10 school days from the time it is determined that the child requires printed instructional materials in an alternate accessible or specialized format.

(f) The Department or agencies may coordinate with the National Instructional Materials Access Center (NIMAC) to facilitate the production of and delivery of accessible materials to children who are blind or other persons with print disabilities. The NIMAC refers to the central repository, established under section 674(e) of the Education of Individuals with Disabilities Education Act, which is responsible for processing, storing and distributing NIMAS files of textbooks and core instructional materials.

(g) Agencies coordinating with NIMAC shall require textbook publishers to deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the agency. Agencies that choose not to coordinate with NIMAC may require that publishers deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the agency.

§ 14.107. Complaint procedure.

The Department will establish a complaint procedure consistent with 34 CFR 300.151--300.153 (relating to adoption of State complaint procedures; minimum State complaint procedures; and filing a complaint) and disseminate notice of that procedure.

§ 14.108. Access to classrooms.

Parents shall have reasonable access to their child's classrooms, within the parameters of local educational agency policy.

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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.

(Authority: 20 U.S.C. 1412(a)(23), 1474(e))

§ 300.111 Child find.

Chapter 14 PA Regulations (June 28, 2008)**§ 14.121. Child find.**

(a) In addition to the requirements incorporated by reference in 34 CFR 300.111 (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district's jurisdiction.

(b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs. Written information shall be published in the school district handbook and school district web site. The public awareness effort must include information regarding potential signs of developmental delays and other risk factors that could indicate disabilities.

(c) Each school district shall provide annual public notification, published or announced in newspapers, electronic media and other media, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.

(d) Intermediate units are responsible for child find activities necessary to provide equitable services consistent with 34 CFR 300.130--300.144, regarding children with disabilities enrolled by their parents in private schools.

§ 14.122. Screening.

(a) Each school district shall establish a system of screening, which may include early intervening services, to accomplish the following:

- (1) Identify and provide initial screening for students prior to referral for a special education evaluation.
- (2) Provide peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum. To provide this support, school districts may implement instructional support teams according to Department guidelines or use an alternative process.
- (3) Identify students who may need special education services and programs.

(b) The screening process must include:

(1) Hearing and vision screening in accordance with section 1402 of the School Code (24 P. S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(2) Screening at reasonable intervals to determine whether all students are performing based on grade-appropriate standards in core academic subjects.

(c) Each school district may develop a program of early intervening services. In the case of school districts meeting the criteria in 34 CFR 300.646(b)(2) (relating to disproportionality), as established by the Department, the early intervening services are required and must include:

- (1) A verification that the student was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C.A. § 6368(3)), and appropriate instruction in math.
- (2) For students with academic concerns, an assessment of the student's performance in relation to State-approved grade level standards.

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(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 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.

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))

§ 300.300 Parental consent.

(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

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- (3) For students with behavioral concerns, a systematic observation of the student's behavior in the school environment where the student is displaying difficulty.
- (4) A research-based intervention to increase the student's rate of learning or behavior change based on the results of the assessments under paragraph (2) or (3).
- (5) Repeated assessments of achievement or behavior, or both, conducted at reasonable intervals, reflecting formal monitoring of student progress during the interventions.
- (6) A determination as to whether the student's assessed difficulties are the result of a lack of instruction or limited English proficiency.
- (7) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.
- (8) Documentation that information about the student's progress as identified in paragraph (5) was periodically provided to the student's parents.
- (d) Screening or early intervening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of early intervening activities

§ 14.123. Evaluation.

- (a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.306 (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.
- (b) In addition to the requirements incorporated by reference in 34 CFR 300.301 (relating to initial evaluations), the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60-calendar days after the agency receives written parental consent for evaluation, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term will not be counted.
- (c) Parents may request an evaluation at any time, and the request must be in writing. The school entity shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the permission to evaluate form to the parents within 10-calendar days of the oral request.
- (d) Copies of the evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing.

§ 14.124. Reevaluation.

- (a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.303 (relating to reevaluations), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairment, specific learning disability and traumatic brain injury.
- (b) In addition to the requirements incorporated by reference in 34 CFR 300.303, the reevaluation time line will be 60-calendar days, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term will not be counted.
- (c) Students with disabilities who are identified as mentally retarded shall be reevaluated at

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- 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 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 § 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.**
- (ii) 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**
- (iii) 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.**
- (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 § 300.503 before ceasing the provision of special education services;**
- (ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or due process procedures under §§ 300.507—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 §§300.320 and 300.324 for the child for further provision of special education and related services.**
- (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.

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least once every 2 years.

(d) Copies of the reevaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing.

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- (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 determinates 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))

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))

§ 14.125. Criteria for the determination of specific learning disabilities.
 This section contains the State-level criteria for determining the existence of a specific learning disability. Each school district and intermediate unit shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school district's and intermediate unit's special education plan in accordance with § 14.104(b) (relating to special education plans). To determine that a child has a specific learning disability, the school district or intermediate unit shall:

(1) Address whether the child does not achieve adequately for the child's age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and scientifically based 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) Use one of the following procedures:

(i) A process based on the child's response to scientific, research-based intervention, which

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

(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

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includes documentation that:

- (A) The student received high quality instruction in the general education setting.
- (B) Research-based interventions were provided to the student.
- (C) Student progress was regularly monitored.
- (ii) A process that examines whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability and achievement, or relative to age or grade.
- (3) Have determined that its findings under this section are not primarily the result of:
 - (i) A visual, hearing or orthopedic disability.
 - (ii) Mental retardation.
 - (iii) Emotional disturbance.
 - (iv) Cultural factors.
 - (v) Environmental or economic disadvantage.
 - (vi) Limited English proficiency.
- (4) Ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics by considering documentation that:
 - (i) Prior to, or as a part of, the referral process, the child was provided scientifically-based instruction in regular education settings, delivered by qualified personnel, as indicated by observations of routine classroom instruction.
 - (ii) Repeated assessments of achievement were conducted at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

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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,

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| | <p>research-based intervention—</p> <ul style="list-style-type: none"> (i) The instructional strategies used and the student-centered data collected; and (ii) The documentation that the child’s parents were notified about— <ul style="list-style-type: none"> (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. <p>(Authority: 20 U.S.C. 1221e-3; 1401(30);1414(b)(6))</p> |
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| <p>§ 14.131. IEP.</p> <p>(a) In addition to the requirements incorporated by reference (see 34 CFR 300.320--300.324), the IEP of each student with a disability must include:</p> <p>(1) A description of the type or types of support as defined in this paragraph that the student will receive, the determination of which may not be based on the categories of the child's disability alone. Students may receive more than one type of support as appropriate and as outlined in the IEP and in accordance with this chapter. Special education supports and services may be delivered in the regular classroom setting and other settings as determined by the IEP team. In determining the educational placement, the IEP team must first consider the regular classroom with the provision of supplementary aids and services before considering the provision of services in other settings.</p> <p>(i) <i>Autistic support.</i> Services for students with the disability of autism who require services to address needs primarily in the areas of communication, social skills or behaviors consistent with those of autism spectrum disorders. The IEP for these students must address needs as identified by the team which may include, as appropriate, the verbal and nonverbal communication needs of the child; social interaction skills and proficiencies; the child's response to sensory experiences and changes in the environment, daily routine and schedules; and, the need for positive behavior supports or behavioral interventions.</p> <p>(ii) <i>Blind-visually impaired support.</i> Services for students with the disability of visual impairment including blindness, who require services to address needs primarily in the areas of accessing print and other visually-presented materials, orientation and mobility, accessing public and private accommodations, or use of assistive technologies designed for individuals with visual impairments or blindness. For students who are blind or visually impaired, the IEP must include a description of the instruction in Braille and the use of Braille unless the IEP team determines, after the evaluation of the child's reading and writing needs, and appropriate reading and writing media, the extent to which Braille will be taught and used for the student's learning materials.</p> <p>(iii) <i>Deaf and hard of hearing support.</i> Services for students with the disability of deafness or hearing impairment, who require services to address needs primarily in the area of reading, communication, accessing public and private accommodations or use of assistive technologies designed for individuals with deafness or hearing impairment. For these students, the IEP must include a communication plan to address the 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</p> | <p>Individualized Education Programs</p> <p>§ 300.320 Definition of individualized education program.</p> <p>(a) <i>General.</i> 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—</p> <p>(1) A statement of the child’s present levels of academic achievement and functional performance, including—</p> <ul style="list-style-type: none"> (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; <p>(2)(i) A statement of measurable annual goals, including academic and functional goals designed to—</p> <ul style="list-style-type: none"> (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; <p>(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;</p> <p>(3) A description of—</p> <ul style="list-style-type: none"> (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; <p>(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—</p> <ul style="list-style-type: none"> (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 |
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- communication mode; and assistive technology devices and services.
- (iv) *Emotional support.* Services for students with a disability who require services primarily in the areas of social or emotional skills development or functional behavior.
- (v) *Learning support.* Services for students with a disability who require services primarily in the areas of reading, writing, mathematics, or speaking or listening skills related to academic performance.
- (vi) *Life skills support.* Services for students with a disability who require services primarily in the areas of academic, functional or vocational skills necessary for independent living.
- (vii) *Multiple disabilities support.* Services for students with more than one disability the result of which is severe impairment requiring services primarily in the areas of academic, functional or vocational skills necessary for independent living.
- (viii) *Physical support.* Services for students with a physical disability who require services primarily in the areas of functional motor skill development, including adaptive physical education or use of assistive technologies designed to provide or facilitate the development of functional motor capacity or skills.
- (ix) *Speech and language support.* Services for students with speech and language impairments who require services primarily in the areas of communication or use of assistive technologies designed to provide or facilitate the development of communication capacity or skills.
- (2) Supplementary aids and services in accordance with 34 CFR 300.42 (relating to supplementary aids and services).
- (3) A description of the type or types of support as defined in § 14.105 (relating to personnel).
- (4) The location where the student attends school and whether this is the school the student would attend if the student did not have an IEP.
- (5) For students who are 14 years of age or older, a transition plan that includes appropriate measurable postsecondary goals related to training, education, employment and, when appropriate, independent living skills.
- (6) The IEP of each student shall be implemented as soon as possible, but no later than 10 school days after its completion.
- (7) Every student receiving special education and related services provided for in an IEP developed prior to July 1, 2008, shall continue to receive the special education and related services under that IEP, subject to the terms, limitations and conditions set forth in law.
- (b) In addition to the requirements incorporated by reference in 34 CFR 300.324 (relating to development, review, and revision of IEP), each school entity shall designate persons responsible to coordinate transition activities

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

§ 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))

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

§ 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))

§ 14.132. ESY.
 (a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), school entities shall use the following standards for determining whether a student with disabilities requires ESY as part of the student's program:
 (1) At each IEP meeting for a student with disabilities, the school entity shall determine whether the student is eligible for ESY services and, if so, make subsequent determinations about the services to be provided.
 (2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors; however, no single factor will be considered determinative:
 (i) Whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming (Regression).
 (ii) Whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming (Recoupment).
 (iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.
 (iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

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

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

(b) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

- (1) Progress on goals in consecutive IEPs.
- (2) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.
- (3) Reports by parents of negative changes in adaptive behaviors or in other skill areas.
- (4) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
- (5) Observations and opinions by educators, parents and others.
- (6) Results of tests, including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(c) The need for ESY services will not be based on any of the following:

- (1) The desire or need for day care or respite care services.
- (2) The desire or need for a summer recreation program.
- (3) The desire or need for other programs or services that, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

(d) Students with severe disabilities such as autism/pervasive developmental disorder, serious emotional disturbance; severe mental retardation; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for ESY services to be provided as follows:

- (1) Parents of students with severe disabilities shall be notified by the school entity of the annual review meeting to encourage their participation.
- (2) The IEP review meeting must occur no later than February 28 of each school year for students with severe disabilities.
- (3) The Notice of Recommended Educational Placement shall be issued to the parent no later than March 31 of the school year for students with severe disabilities.
- (4) If a student with a severe disability transfers into a school entity after the dates in paragraphs (2) and (3), and the ESY eligibility decision has not been made, the eligibility and program content must be determined at the IEP meeting.

(e) School entities shall consider the eligibility for ESY services of all students with disabilities at the IEP meeting. ESY determinations for students other than those described in subsection (d) are not subject to the time lines in subsection (d). However, these determinations shall still be made in a timely manner. If the parents disagree with the school entity's recommendation on ESY, the parents will be afforded an expedited due process hearing.

§ 14.133. Positive behavior support.

(a) Positive, rather than negative, measures must form the basis of behavior support programs to ensure that all students and eligible young children shall be free from

demeaning treatment, the use of aversive techniques and the unreasonable use of restraints. Behavior support programs must include research based practices and techniques to develop and maintain skills that will enhance an individual student's or eligible young child's opportunity for learning and self-fulfillment. Behavior support programs and plans must be based on a functional assessment of behavior and utilize positive behavior techniques. When an intervention is needed to address problem behavior, the types of intervention chosen for a particular student or eligible young child shall be the least intrusive necessary. The use of restraints is considered a measure of last resort, only to be used after other less restrictive measures, including de-escalation techniques, in accord with subsection (c)(2).

(b) Notwithstanding the requirements incorporated by reference in 34 CFR 300.34, 300.324 and 300.530 (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Aversive techniques--Deliberate activities designed to establish a negative association with a specific behavior.

Behavior support--The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive behavior support plans--A plan for students with disabilities and eligible young children who require specific intervention to address behavior that interferes with learning. A positive behavior support plan shall be developed by the IEP team, be based on a functional behavior assessment, and become part of the individual eligible young child's or student's IEP. These plans must include methods that utilize positive reinforcement and other positive techniques to shape a student's or eligible young child's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints--

(i) The application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's or eligible young child's body.

(ii) The term does not include briefly holding, without force, a student or eligible young child to calm or comfort him, guiding a student or eligible young child to an appropriate activity, or holding a student's or eligible young child's hand to safely escort her from one area to another.

(iii) The term does not include hand-over-hand assistance with feeding or task completion and techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatment, as agreed to by the student's or eligible young child's parents and specified in the IEP. Devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets used for balance and safety, safety harnesses in buses, and functional positioning devices are examples of mechanical restraints which are excluded from this definition, and governed by subsection (d).

(c) Restraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students or to employees, and only when less restrictive measures and techniques have proven to be or are less effective.

(1) The use of restraints to control the aggressive behavior of an individual student or

eligible young child shall cause the school entity to notify the parent of the use of restraint and shall cause a meeting of the IEP team within 10 school days of the inappropriate behavior causing the use of restraints, unless the parent, after written notice, agrees in writing to waive the meeting. At this meeting, the IEP team shall consider whether the student or eligible young child needs a functional behavioral assessment, reevaluation, a new or revised positive behavior support plan, or a change of placement to address the inappropriate behavior.

(2) The use of restraints may only be included in a student's or eligible young child's IEP when the following conditions apply:

- (i) The restraint is utilized with specific component elements of positive behavior support.
- (ii) The restraint is used in conjunction with the teaching of socially acceptable alternative skills to replace problem behavior.
- (iii) Staff are authorized to use the procedure and have received the staff training required.
- (iv) There is a plan in place for eliminating the use of restraint through the application of positive behavior support.

(3) The use of prone restraints is prohibited in educational programs. Prone restraints are those in which a student or eligible young child is held face down on the floor.

(4) The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.

(5) School entities shall maintain and report data on the use of restraints as prescribed by the Secretary. The report shall be reviewed during cyclical compliance monitoring conducted by the Department.

(d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.

(e) The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:

- (1) Corporal punishment.
- (2) Punishment for a manifestation of a student's disability.
- (3) Locked rooms, locked boxes or other structures or spaces from which the student cannot readily exit.
- (4) Noxious substances.
- (5) Deprivation of basic human rights, such as withholding meals, water or fresh air.
- (6) Suspensions constituting a pattern under § 14.143(a) (relating to disciplinary placement).
- (7) Treatment of a demeaning nature.
- (8) Electric shock.

(f) School entities have the primary responsibility for ensuring that positive behavior support programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods and techniques, and for having a written policy and procedures on the use of positive behavior support techniques and obtaining parental consent prior to the use of restraints or intrusive procedures as provided in subsection (c).

(g) In accordance with their plans, agencies may convene a review, including the use of

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human rights committees, to oversee the use of restrictive or intrusive procedures or restraints.
(h) Subsequent to a referral to law enforcement, for students with disabilities who have positive behavior support plans, an updated functional behavior assessment and positive behavior support plan shall be required.

§ 14.143. Disciplinary placements.

(a) Notwithstanding the requirements incorporated by reference in 34 CFR 300.530(b) and 300.536 (relating to authority of school personnel; and change of placement because of disciplinary removals), a disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered a pattern so as to be deemed a change in educational placement.
(b) A removal from school is a change of placement for a student who is identified with mental retardation, except if the student's actions are consistent with ** 34 CFR 300.530(g)(1)-(3) (relating to authority of school personnel).

[**Amended September 19, 2008]

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 §A300.530(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

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(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))

§ 14.144. Facilities

The comparability and availability of facilities for students with a disability shall be consistent with the approved intermediate unit or school district plan, which shall provide, by description of policies and procedures, the following:

- (1) Students with disabilities will be provided appropriate classroom space.
- (2) Moving of a class shall occur only when the result will be:
 - (i) To bring the location for delivery of special education services and programs closer to the students’ homes.
 - (ii) To improve the delivery of special education services and programs without reducing the degree to which the students with disabilities are educated with students without disabilities.
 - (iii) To respond to an emergency which threatens the students’ health or safety.
 - (iv) To accommodate ongoing building renovations, provided that the movement of students with disabilities due to renovations will be proportional to the number of students without disabilities being moved.
 - (v) That the location of classes shall be maintained within a school building for at least 3 school years.
- (3) Each special education class is:
 - (i) Maintained as close as appropriate to the ebb and flow of usual school activities.
 - (ii) Located where noise will not interfere with instruction.
 - (iii) Located only in space that is designed for purposes of instruction.
 - (iv) Readily accessible.
 - (v) Composed of at least 28 square feet per student.

§ 14.145. Least restrictive environment requirements.

Students with disabilities shall be educated in the least restrictive environment. Each school

Least Restrictive Environment (LRE)

§ 300.114 LRE requirements.

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entity shall ensure that:

- (1) To the maximum extent appropriate, and as provided in the IEP, the student with a disability is educated with nondisabled peers.
- (2) Special classes, separate schooling or other removal of a student with a disability from the regular education class occurs only when the nature or severity of the disability is such that education in the regular education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.
- (3) A student may not be determined to require separate education because the child cannot achieve at the same level as classmates who do not have disabilities if the child can, with the full range of supplementary aids and services, make meaningful progress in the goals included in the student's IEP.
- (4) A student may not be removed from or determined to be ineligible for placement in a regular education classroom solely because of the nature or severity of the student's disability, or solely because educating the student in the regular education classroom would necessitate additional cost or for administrative convenience.
- (5) School entities shall be required to provide access to a full continuum of placement options.

(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.

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

§ 14.146. Age range restrictions.

- (a) The maximum age range in specialized settings shall be 3 years in elementary school (grades K--6) and 4 years in secondary school (grades 7--12).
- (b) A student with a disability may not be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits unless an exception is determined to be appropriate by the IEP team of that student and is justified in the IEP.

EARLY INTERVENTION**§ 14.151. Purpose.**

- (a) This section and §§ 14.152--14.158 (relating to early intervention) apply to services and programs for eligible young children.
- (b) Notwithstanding the requirements incorporated by reference, with regard to early intervention services:
 - (1) The Department will provide for the delivery of early intervention services.
 - (2) The Department may provide for the delivery of some or all of these services through mutually agreed-upon written arrangements. Each mutually agreed-upon written arrangement may include memoranda of understanding under an approved plan submitted to the Department by a school entity or other agencies.

§ 14.152. Child find, public awareness and screening.

- (a) Each early intervention agency shall adopt and use a system to locate and identify eligible young children and young children thought to be eligible who reside within the boundary served by the early intervention agency.
- (b) Each early intervention agency shall conduct awareness activities to inform the public of early intervention services and programs and the manner by which to request these services and programs.
- (c) Each early intervention agency shall provide annual public notification, published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the area served by the agency of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to eligible young children in accordance with this chapter.

§ 14.153. Evaluation.

Notwithstanding the requirements in 34 CFR 300.122 (relating to evaluation):

- (1) Evaluations shall be conducted by early intervention agencies for children who are thought to be eligible for early intervention and who are referred for evaluation.
- (2) Evaluations shall be sufficient in scope and depth to investigate information relevant to the young child's suspected disability, including physical development, cognitive and sensory development, learning problems, learning strengths and educational need, communication development, social and emotional development, self-help skills and health considerations, as well as an assessment of the family's perceived strengths and needs which will enhance the child's development.
- (3) The assessment must include information to assist the group of qualified professionals and parents to determine whether the child has a disability and needs special education and related services.
- (4) The following time line applies to the completion of evaluations and reevaluations under this section:
 - (i) Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 calendar days after the early intervention agency receives written parental consent.
 - (ii) Notwithstanding the requirements incorporated by reference in 34 CFR 300.303 (relating to reevaluations), a reevaluation report shall be provided within 60 calendar days from the date that the parental consent for reevaluation was received.
 - (iii) Reevaluations shall occur at least every 2 years.
- (5) Each eligible young child shall be evaluated by an MDT, to make a determination of continued eligibility for early intervention services and to develop an evaluation report in accordance with the requirements concerning evaluation under § 14.123 (relating to evaluation), excluding the provision to include a certified school psychologist where appropriate under § 14.123(a).

§ 14.154. IEP.

- (a) An IEP is a written plan for the provision of appropriate early intervention services to an eligible young child, including services to enable the family to enhance the young child's development. The IEP shall be based on and be responsive to the results of the evaluation.
- (b) Notwithstanding the requirements incorporated by reference, the IEP team shall include:
 - (1) At least one special education teacher or special education provider.

(2) An agency representative familiar with appropriate activities for preschool children and knowledgeable about the availability of the resources of the early intervention agency. With regard to the adoption of 34 CFR 300.344(a)(4) (relating to IEP team), the agency representative shall be qualified to provide or supervise the provision of specially designed instruction to meet the needs of children with disabilities. This could include a preschool supervisor or service coordinator or designee of the early intervention agency.

(c) With parental consent, the IEP must include a section on family services, which provides for appropriate services to assist the family in supporting the eligible young child's development.

(d) Notwithstanding the requirements incorporated by reference, the following time lines govern the preparation and implementation of IEPs:

(1) The IEP of each eligible young child shall be implemented as soon as possible, but no later than 14 calendar days after the completion of the IEP.

(2) The IEP of each eligible young child shall be reviewed by the IEP team at least annually.

(e) For children who are within 1 year of transition to a program for school age students, the IEP must contain goals and objectives which address the transition process.

(f) Progress indicators include, but are not limited to, IEP annotation, dated progress and documented parental feedback.

(g) If an eligible young child moves from one early intervention agency to another in this Commonwealth, the new early intervention agency shall implement the existing IEP to the extent possible or shall provide services and programs specified in an interim IEP agreed to by the parents until a new IEP is developed and implemented or until the completion of due process proceedings under this chapter.

(h) Every eligible young child receiving special education and related services provided for in the IEP developed prior to July 1, 2008, shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law

§ 14.155. Range of services.

(a) The Department will ensure that options are available to meet the needs of children eligible for early intervention. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs with other agencies in the community, including preschools, provided that the other agencies are subject to the supervision or licensure of the Department of Public Welfare or licensed by the State Board of Private Academic Schools.

(b) The IEP team shall recommend early intervention services to be provided in the least restrictive environment with appropriate and necessary supplementary aids and services. The placement options may include one or more of the following:

(1) *Early childhood environment.* Services provided in a typical preschool program with noneligible young children.

(2) *Early childhood special education environment.* Services provided in a special education preschool program funded by the early intervention agency.

(3) *Home environment.* Services provided in the home.

(4) *Services outside of the home environment.* Services provided outside of the home environment.

(5) *Specialized environment.* Services provided in a specialized setting, including the following:

(i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting.

(iii) An approved out-of-State program.

(c) The duration of early intervention services, in terms of program days and years, must accommodate the individual needs of eligible young children.

(1) The duration of early intervention services shall be developed by each early intervention agency in accordance with the Mutually Agreed upon Written Arrangement (MAWA) and shall be included in the MAWA's plan under § 14.104 (relating to educational plans).

(2) Some eligible young children may lose skills over breaks and have difficulty in regaining these skills as evidenced through child performance data. In those cases, the IEP team shall consider whether services should be provided during the break period to maintain skills.

(d) The caseloads of professional personnel shall be determined on the basis of the amount of time required to fulfill eligible young children's IEPs. The following caseload requirements shall be used for preschool early intervention programs:

(1) *Early intervention itinerant teachers.* Teachers who provide services in a typical preschool, community program or the child's home, shall have a caseload range of 20--40 children, based on the duration and frequency of service as indicated on each IEP.

(2) *Early intervention classroom teachers.* Early intervention classroom teachers, who provide specialized instruction in an early intervention classroom, may have up to 6 young children in their classroom and may have additional children up to a maximum of 11, provided that one additional teacher or paraprofessional is assigned to the classroom.

Speech therapists. Speech therapists who provide services in classrooms, typical preschools, community programs or the child's home shall have 25--50 children based on the duration and frequency of service as indicated on each IEP.

Chapter 14 PA Regulations (June 28, 2008)**Part 300 Federal Regulations (August 14, 2006) Adopted by Reference****§ 14.156. System of quality assurance.**

The Department will assure in accordance with section 302(b) of the act (11 P. S. § 875-302(b)) through its monitoring and technical assistance activities, a system of quality assurance, including evaluation of the developmental appropriateness, quality and effectiveness of programs; assurance of compliance with program standards; documented progress indicators; and provision of assistance to assure compliance. These requirements will apply to those programs operated by the early intervention agency directly or through providers contracted by the early intervention agency.

§ 14.157. Exit criteria.

(a) Under section 301(14) of the act (11 P. S. § 875-301(14)), children shall be exited subject to §§ 14.161 and 141.162 (relating to procedural safeguards) from early intervention based on one or more of the following criteria:

- (1) The child has reached the age of beginners and is therefore no longer eligible for early intervention services authorized under the act.
- (2) The child has functioned within the range of normal development for 4 months, with an IEP, and as verified by the IEP team.
- (3) The parent or guardian withdrew the child from early intervention for other reasons.

(b) If the child does not meet exit criteria and the child's IEP demonstrates that the child will benefit from services which can be provided only through special education, nothing in the law or this chapter prevents that placement.

§ 14.158. Data collection.

The Department will require early intervention agencies to maintain accurate information concerning eligible young children and the types of services received, and to report that information in aggregate at predetermined dates throughout the fiscal year. The Secretary will prescribe the format, content, data items and time for submission of the required information.

PROCEDURAL SAFEGUARDS**§ 14.162. Impartial due process hearing and expedited due process hearing.**

(a) In addition to the requirements incorporated by reference in 34 CFR 300.504 (relating to procedural safeguard notice), with regard to a student who is mentally retarded or thought to be mentally retarded, a notice when mailed shall be issued to the parent by certified mail (addressee only, return receipt requested).

(b) If parents disagree with the school district's, or the early intervention agency's in the case of a young child, identification, evaluation, or placement of, or the provision of a free appropriate public education to the student or young child, the parent may request an impartial due process hearing.

(c) A school district or early intervention agency may request a hearing to proceed with an initial evaluation or a reevaluation when a parent fails to respond to the district or early intervention agency's proposed evaluation or reevaluation. When a parent rejects the district or early intervention agency's proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, other than the initial placement, the school district or early intervention agency may request an impartial due process hearing. If the parent fails to respond or refuses to consent to the initial provision of special education services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.

(d) The hearing for a school aged child with a disability or thought to be a child with a

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,

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disability shall be held in the school district at a place and time reasonably convenient to the parents and child involved. A hearing for an eligible young child or thought to be an eligible young child shall be conducted at a place and time reasonably convenient to the parents and child involved. These options shall be set forth in the notice provided for requesting a hearing.

(e) The hearing shall be an oral, personal hearing and shall be closed to the public unless the parents request an open hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student or young child and may not be available to the public.

(f) The decision of the hearing officer shall include findings of fact, discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.

(g) The hearing officer shall have the authority to order that additional evidence be presented.

(h) A written or at the option of the parents, electronic verbatim record of the hearing shall, upon request, be made and provided to parents at no cost.

(i) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.

(j) A parent or parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(k) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5-business days before the hearing.

(l) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.

(m) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(n) A party to a hearing has the right to obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(o) The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

(p) The following applies to coordination services for hearings and to hearing officers:

(1) The Secretary may contract for coordination services for hearings related to a child with a disability or thought to be a child with a disability. The coordination services may include arrangements for stenographic services, arrangements for hearing officer services (including the compensation of hearing officers), scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings. The compensation of hearing officers does not cause them to become employees of the Department.

(2) A hearing officer may not be an employee or agent of the school entity in which the parents or the child with a disability or thought to be a child with a disability resides, or of an agency that is responsible for the education or care of the child with a disability or thought to be a child with a disability or by a person having a personal or professional

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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.

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interest that would conflict with the person's objectivity in the hearing. A hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(q) The following time line applies to due process hearings:

(1) A hearing shall be held after the conclusion of the resolution session under 34 CFR 300.510 (relating to resolution process) or after one of the parties withdraws from mediation or the parties agree to waive or agree to end the resolution session.

(2) The hearing officer's decision shall be issued within 45 days after the resolution or mediation session ends without resolution or agreement date.

(3) A hearing officer may grant specific extensions of time beyond the periods in paragraphs (1) and (2) at the request of either party.

(4) If an expedited hearing is conducted under 34 CFR 300.532 (relating to appeals), the hearing officer decision shall be mailed within 30 school days of the public agency's receipt of the request for the hearing without exceptions or extensions.

(r) Each school district and early intervention agency shall keep a list of the persons who serve as hearing officers. The list must include the qualifications of each hearing officer. School districts and early intervention agencies shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

(s) Except as provided in 34 CFR 300.533 (relating to placement during appeals), during the pendency of any mediation proceeding conducted in accordance with 34 CFR 300.506 (relating to mediation), unless the school entity and the parents of the child agree otherwise, the child that is the subject of the mediation shall remain in the current education placement until the mediation process is concluded.

(t) The Department will report to the Board by September 1 each year on the number of impartial due process hearings held during the previous school year. The report will also provide a Statewide summary of the results of the hearings in a manner that will not violate the confidentiality of children and families. The report will also address actions taken during the previous school year and future plans to strengthen the activities of due process hearing proceedings

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(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).

(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.

(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.

(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))

§ 300.510 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.

(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D))

§ 300.512 Hearing rights.

(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, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;
- (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))

§ 300.518 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.
- (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))

§ 14.163. Resolution session.

The resolution session required under 34 CFR 300.510 (relating to resolution process) will be available to parents of both school age and eligible young children with disabilities. Parent advocates may attend the sessions.

§ 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))

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))