



IDEA Part B Final Regulations: A Side-by-Side Comparison Analysis

This detailed analysis focuses on select sections of the 2006 IDEA Part B final regulations that impact speech-language pathologists or audiologists practicing in a school setting. This document is in the form of a “side-by-side comparison analysis,” comprised of: the 2006 IDEA Part B final regulations; the 1999 IDEA Part B regulations; and ASHA’s summary and impact analysis of the changes. In some cases, there are no corresponding or comparable sections between the 2006 and the 1999 regulations, or the corresponding content has been re-titled or re-numbered. Major changes in the sections are highlighted throughout the document. The complete 2006 IDEA Part B final regulations can be found at <http://www.asha.org/about/legislation-advocacy/federal/idea> .

Each state that receives funds under IDEA Part B must ensure that any state rules, regulations, and policies relating to Part B conform to the federal regulations, which became effective October 13, 2006. Also, a state must identify in writing to its local education agencies (LEAs) and the Secretary of the U.S. Department of Education (ED) any state-imposed requirement that is not required by Part B of the Act and federal regulations. We encourage ASHA members to:

- ü be aware of their state regulations, administrative code or equivalent which reflects these federal IDEA Part B final regulations,
- ü participate in their state regulatory review process,
- ü advocate at the state and local levels on implementation issues of concern, and
- ü visit ASHA’s Web site at <http://www.asha.org/about/legislation-advocacy/state/> for state contact information.

Additional technical assistance materials, including issue briefs on topics such as personnel qualifications, early intervening services, responsiveness-to-intervention, and cochlear implants will be developed and made available to further assist members in the implementation of these regulations.

Please address specific questions and comments about the regulations to Catherine Clarke at cclarke@asha.org or by phone at 800-498-2071, ext.4159. For practice-related IDEA issues or concerns, contact Kathleen Whitmire by e-mail at kwhitmire@asha.org or by phone at 800-498-2071, ext. 4137.

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Sec. 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))	Sec. 300.5 Assistive technology device. As used in this part, 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. (Authority: 20 U.S.C. 1401(1))	Sec. 300.5 Assistive technology device This section retains the current definition with an added statement to address the exemption consistent with other pertinent sections (300.34 and 300.113) indicating that an assistive technology device does not include any medical device that is surgically implanted, or the replacement of such device. The Education department explained that in this case, it pertains to both the internal implanted portion and the external portion of the device. The actual services as outlined in the next section 300.6 remain unchanged. <i>Implications:</i> Unlike a hearing aid, which in some cases, is designated as an assistive device on IEP's, this option is not available for an implanted device. Specifically in this case, a cochlear implant. The definition does not limit the addition of other assistive devices, e.g. an FM system to the CI.
Sec. 300.6 Assistive technology service.	Sec. 300.6 Assistive technology service.	Essentially Unchanged
Sec. 300.8 Child with a disability.	Sec. 300.7 Child with a disability. (a) General. (1) As used in this part, the term child with a disability means a child evaluated in accordance with Secs. 300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an	Sec. 300.8 Child with a disability

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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 Sec. 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 Sec. 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section. (b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in Sec. 300.111(b), include a child-- (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) Who, by reason thereof, needs special education and related services. (c) Definitions of disability terms. The terms used	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 Secs. 300.530- 300.536, 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 Sec. 300.26(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section. (b) Children aged 3 through 9 experiencing developmental delays. The term child with a disability for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with Sec. 300.313, include a child-- (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) Who, by reason thereof, needs special education and related services.	(b) has been changed to clarify that the use of the term “developmental delay” is subject to the conditions described in 300.111(b) of the Act. A child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in 300.111(b), include a child who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who by reason thereof, needs special education and related services. Also, states can define the age range of children eligible under this category of developmental delay. LEAs are not required to adopt and use the term; however, if an LEA uses the category of

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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 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	(c) Definitions of disability terms. The terms used in this definition are defined as follows: (1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section. (ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed 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) Emotional disturbance is defined as follows: (i) The term means a condition exhibiting one or	developmental delay, the LEA must conform to both the State's definition of the term and that age range that has been adopted by the State. If a state does not adopt the category of developmental delay, an LEA may not use that category as the basis for establishing a child's eligibility for special education and related services.

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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. (5) Hearing impairment means an impairment in 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	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) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance. (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, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.	

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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 (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), 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.	(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), 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, and sickle cell anemia; and (ii) Adversely affects a child's educational performance. (10) Specific learning disability is defined as follows: (i) General. The term 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 an 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. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental	Sec. 300.8(c)(9) Other Health Impaired In its discussion section, ED stated that it declined to include dysphagia and other organic neurological disorders in the definition of other health impairment because these conditions are commonly understood to be health impairments. ED notes that the list of conditions in the definition is not exhaustive, but rather provides examples. <i>Implications:</i> Members advocating for dysphagia services at the State or local level may wish to refer to ED's discussion for support.

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(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; abstract thinking; judgment; reasoning; 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))	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. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (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)(A) and (B); 1401(26))	

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Sec. 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))	No Comparable Provision	Sec. 300.27 Limited English Proficient The regulations refer to the definition defined in the ESEA. In the discussion section, the exact language is outlined. The discussion also indicated that each state is responsible for determining the qualifications of bilingual personnel and interpreters for children with limited English proficiency.
Sec. 300.29 Native language.	Sec. 300.19 Native language.	Essentially Unchanged
Sec. 300.34 Related services. (a) <u>General</u>. <u>Related services</u> 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) <u>Exception</u>; services that apply to children with surgically implanted devices, including	Sec. 300.24 Related services. (a) General. As used in this part, the term 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, 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. The term also includes school health services, social work services in schools, and parent counseling and training. (b) Individual terms defined. The terms used in this definition are defined as follows:	Sec. 300.34(b) Related Services Exception The regulations added section "(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants," and clarifies that related services do not include the

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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 Sec. 300.113(b). (c) Individual related services terms defined. The terms used in this definition are defined as follows: (1) <u>Audiology</u> includes-- (i) Identification of children with hearing loss; (ii) Determination of the range, nature, and degree of hearing loss, including referral for the habilitation of hearing; (iii) Provision of habilitative activities,	(1) Audiology includes-- (i) Identification of children with hearing loss; (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; (iv) Creation and administration of programs for prevention of hearing loss; (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and (vi) Determination of children's needs for group	optimization of the device's functioning, e.g. mapping, maintenance or replacement. A new section (b)(2) was then also added to make clear that nothing in section (b) precludes this child with a surgically implanted device from receiving a related service as determined by the IEP team or limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health of the child or to prevent the routine checking of an external component of a surgically implanted device to assure that it is working properly. In the discussion ED made it clear that the exclusion of mapping as a related service is not intended to deny a child with a disability assistive technology, e.g. an FM system, proper classroom acoustical modifications or routine checking of such device. Neither does this exception preclude a child with a cochlear implant from receiving related services (e.g. speech, audiology, language and/or interpreting services) that are necessary to benefit from special education as determined by the IEP team. <i>Implications:</i> This clarification makes clear the expectations of the district re: mapping. It also clearly states that the child with an implantable device has the same rights to speech therapy, language intervention, auditory training, speechreading training etc as a child who was deaf or hard of hearing and used a hearing aid or assistive technology.

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such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; (iv) Creation and administration of programs for prevention of hearing loss; (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification. (2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. (3) <u>Early identification and assessment of disabilities in children</u> means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (4) <u>Interpreting services</u> 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) <u>Occupational therapy</u>-- (i) Means	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) 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. (5) 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. (6) Orientation and mobility services-- (i) Means services provided to blind or visually impaired students 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 students the following, as appropriate: (A) Spatial and environmental concepts and use of	Sec. 300.34 Related Services (c) (4) Interpreting Services This is a new section on interpreting services for the child who is deaf or hard of hearing. The definition on interpreting services while broad, does list specific methods of interpreting as well as listing transcription services. This definition does refer to services for children with hearing loss, however, ED clarified in its discussion requirements to provide services to students who are limited English proficient by citing several references, including Department policy memoranda.

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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) <u>Orientation and mobility services--</u> (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) <u>Parent counseling and training</u>	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 to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; (C) To understand and use remaining vision and distance low vision aids; and (D) Other concepts, techniques, and tools. (7) Parent counseling and training means-- (i) 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. (8) Physical therapy means services provided by a qualified physical therapist. (9) 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 needs of children as indicated by psychological tests, interviews, and behavioral evaluations; (v) Planning and managing a program of psychological services, including psychological	

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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) <u>Physical therapy</u> means services provided by a qualified physical therapist. (10) <u>Psychological services</u> 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) <u>Recreation</u> includes-- (i) Assessment of leisure function; (ii) Therapeutic recreation services; (iii) Recreation programs in schools and community agencies; and (iv) Leisure education. (12) <u>Rehabilitation counseling services</u> means services provided by qualified personnel in	counseling for children and parents; and (vi) Assisting in developing positive behavioral intervention strategies. (10) Recreation includes-- (i) Assessment of leisure function; (ii) Therapeutic recreation services; (iii) Recreation programs in schools and community agencies; and (iv) Leisure education. (11) 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 disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended. (12) School health services means services provided by a qualified school nurse or other qualified person. (13) 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	

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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) <u>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.</u> School health services are services that may be provided by either a qualified school nurse or other qualified person. (14) <u>Social work services in schools</u> 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) <u>Speech-language pathology services</u> includes-- (i) Identification of children with speech or	(v) Assisting in developing positive behavioral intervention strategies. (14) 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. (15) 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(22))	

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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) <u>Transportation</u> 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))		

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Sec. 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))	No Comparable Provision	Sec. 300.35 Scientifically Based Research In ED's discussion, it is stated that scientifically based research has the meaning given the term in section 9101(37) of ESEA: (a) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and (b) includes research that – (1) employs systematic, empirical methods that draw on observation or experiment; (2) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers across multiple measurements and observations, and across studies by the same or different investigators; (4) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments; or other designs to the extent that those designs contain within-condition or across-condition controls; (5) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.
Sec. 300.39 Special education.	Sec. 300.26 Special education.	Essentially Unchanged

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Sec. 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 Sec. 300.114 through 300.116. (Authority: 20 U.S.C. 1401(33))	Sec. 300.28 Supplementary aids and services. As used in this part, the term supplementary aids and services means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Secs. 300.550-300.556. (Authority: 20 U.S.C. 1401(29))	Sec. 300.42 Supplementary aids and services This change emphasizes “extracurricular and nonacademic settings” defined in 300.107(b) and included in 300.107 (FAPE) and 300.117 (LRE). <i>Implications:</i> See comments at 300.320(a).

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Sec. 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) <u>Transition services</u> 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))	Sec. 300.29 Transition services. (a) As used in this part, transition services means a coordinated set of activities for a student with a disability that (1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual student's needs, taking into account the student's preferences and interests; and (3) 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 functional vocational evaluation. (b) Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education. (Authority: 20 U.S.C. 1401(30))	Sec. 300.43 Transition services This addition emphasizes "academic achievement and functional performance" mentioned in 300.320(a) (IEPs). <i>Implications:</i> See comments at 300.320(a).

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Sec. 300.101 Free appropriate public education (FAPE) (a) <u>General</u>. 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 Sec. 300.530(d). (b) <u>FAPE for children beginning at age 3</u>. (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 Sec. 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) <u>Children advancing from grade to grade</u>. (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations. (Approved by the Office of Management and Budget	Sec. 300.121 Free appropriate public education (FAPE) (a) <u>General</u>. Each State must have on file with the Secretary information that shows that, subject to Sec. 300.122, the State has in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school. (b) <u>Required information</u>. The information described in paragraph (a) of this section must— (1) Include a copy of each State statute, court order, State Attorney general opinion, and other State documents that show the source of the State's policy relating to FAPE; and (2) Show that the policy— (i)(A) Applies to all public agencies in the State; and (B) is consistent with the requirements of Sec. 300.300–300.313; and (ii) Applies to all children with disabilities, including children who have been suspended or expelled from school. (c) <u>FAPE for children beginning at age 3</u>. (1) Each State shall 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 Sec. 300.342(c). (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. (d) <u>FAPE for children suspended or expelled from school</u>.	Sec. 300.101 Free appropriate public education (FAPE) Sec. 300.101 has been revised to clarify that a free appropriate public education must be 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, and is advancing from grade to grade See also Sec. 300.107 where additional language has been added to clarify that the steps taken by public agencies to provide access to nonacademic and extracurricular services and activities include the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team. <i>Implications:</i> see Sec. 300.320(a).

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under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(1)(A))	(1) A public agency need not provide services during periods of removal under Sec. 300.520(a)(1) 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 services are not provided to a child without disabilities who has been similarly removed. (2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must— (i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is— (A) Under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under Sec. 300.519(b) (Sec. 300.520((a)(1)); or (B) For behavior that is not a manifestation of the child's disability, consistent with Sec. 300.524; and (ii) Provide services consistent with Sec. 300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is— (A) For drug or weapons offenses under Sec. 300.520(a)(2); or (B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with Sec. 300.521. (3)(i) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school	

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	personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under Sec. 300.519 (Sec. 300.520(a)(1)). (ii) The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with Sec. 300.524. (e) <i>Children advancing from grade to grade.</i> (1) Each State shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade. (2) The determination that a child described in paragraph (a)(1) 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 those determinations. (Authority: 20 U.S.C. 1412(a)(1))	

Sec. 300.111 Child find. (a) <u>General</u>. (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) <u>Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:</u> (1) A State that adopts a definition of <u>developmental delay</u> under Sec.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 <u>developmental delay</u> for any children within its jurisdiction. (3) If an LEA uses the term <u>developmental delay</u> for children described in Sec.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 <u>developmental delay</u>, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part. (c) <u>Other children in child find.</u> Child find also must include-- (1) Children who are suspected of being a child with a disability under Sec.300.8 and in need of special education,	Sec. 300.125 Child find. (a) General requirement. (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 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. (2) The requirements of paragraph (a)(1) of this section apply to-- (i) Highly mobile children with disabilities (such as migrant and homeless children); and (ii) Children who are suspected of being a child with a disability under Sec. 300.7 and in need of special education, even though they are advancing from grade to grade.	Sec. 300.111 Child find. Refer to discussion on Sec.300.8(b) on page 2.
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even though they are advancing from grade to grade; and (2) Highly mobile children, including migrant children. (d) <u>Construction.</u> 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 Sec.300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1401(3)); 1412(a)(3))		
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Sec. 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices. (a) <u>Hearing aids.</u> Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (b) <u>External components of surgically implanted medical devices.</u> (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly. (2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device). (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1401(1), 1401(26)(B))	Sec. 300.303 Proper functioning of hearing aids. Each public agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (Authority: 20 U.S.C. 1412(a)(1))	Sec. 300.113 Routine Checking Of Hearing Aids And External Components Or Surgically Implanted Medical Services This section on hearing aids includes what was found in the previous regulations and adds new sections , (b)(1) and (2), to address cochlear implants (CI). It clarifies that it is the district's responsibility to assure that the external components of the cochlear implant are working but are not responsible for the post-surgical maintenance, programming or replacement of the medical device, both the internal implanted portion and the external component. In its discussion, ED further stated that the public agency is responsible for the routine checking of the external components of a surgically implanted device in much the same manner as a public agency is responsible for the proper functioning of hearing aid, for example, to see that the device is turned on and functioning properly. <i>Implications:</i> School districts are responsible to be sure that batteries, cables, cords etc are working and that they have a plan in place to get a new battery or a replacement cord so that the child has working amplification. In the case of a broken hearing aid, some districts are able to provide back-ups or alternative devices. This will not be possible for the CI. The district and the personnel they assign to meet this provision will need very careful planning and cooperation from a multitude of agencies and IEP team members.

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Sec. 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 Sec. 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5))	Sec 300.553 Nonacademic settings In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. (Authority: 20 U.S.C. 1412(a)(5))	Sec. 300.117 Nonacademic settings This change emphasizes the LEA's responsibility to provide nonacademic services (300.107) to ensure that a child with a disability can participate in nonacademic and extracurricular activities, including meals and recess. ASHA members should take this responsibility into consideration when determining appropriate supports and services needed by the child with a disability to participate. <i>Implications:</i> See comments at 300.320(a)

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Sec. 300.129 State responsibility regarding children in private schools The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in Sec. 300.130 through 300.148. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)) <u>Children With Disabilities Enrolled by Their Parents in Private Schools</u> Sec. 300.130 Definition of parentally-placed private school children with disabilities. <u>Parentally-placed private school children with disabilities</u> means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in Sec. 300.13 or secondary school in Sec. 300.36, other than children with disabilities covered under Sec. 300.145 through 300.147. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.131 Child find for parentally-placed private school children with disabilities. (a) <u>General</u>. Each LEA must locate, identify, and evaluate all children with disabilities	Sec. 300.133 Children in private schools Sec. 300.133 Children in private schools. The State must have on file with the Secretary policies and procedures that ensure that the requirements of Sec. 300.400–300.403 and Sec. 300.450– 300.462 are met. (Authority: 20 U.S.C. 1413(a)(4)) Sec. 300.400 Applicability of Sec. 300.400– 300.402. Sections 300.401–300.402 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (Authority: 20 U.S.C. 1412(a)(10)(B)) Sec. 300.401 Responsibility of State educational agency. Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency— (a) Is provided special education and related services— (1) In conformance with an IEP that meets the requirements of Sec. 300.340– 300.350; and (2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs (including the requirements of this part); and (c) Has all of the rights of a child with a disability who is served by a public agency. (Authority: 20 U.S.C. 1412(a)(10)(B)) Sec. 300.402 Implementation by State educational agency. In implementing Sec. 300.401, the SEA shall— (a) Monitor compliance through procedures such as written reports, onsite visits, and parent questionnaires;	Sec. 300.129 –Sec. 300.148 Changes in Section 612 (a)(10)(A) of the statute (IDEA 2004) significantly change the obligation of the States and LEAs to children with disabilities enrolled by parents. The regulations confirm these changes which now require the LEAs where the private school is geographically located to conduct a thorough child find, including evaluations and/or re-evaluations, and provide equitable services to parentally placed private school children with disabilities. The obligation to spend a proportionate amount of funds to provide services is now based on the total number of children with disabilities who are enrolled in private schools located in the LEA whether or not the children and their parents reside in the LEA. <i>Implications:</i> Members should be aware that the LEA for private schools is now determined by the geographic location of the private school, not the residence of the student. Even if the student resides in a different state, that student will be included in the LEA Child Find, including evaluations and re-evaluations, and is entitled to equitable services. This will impact members working in districts with private schools.

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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 Sec. 300.111 and 300.201. (b) <u>Child find design.</u> 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) <u>Activities.</u> 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) <u>Cost.</u> 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 Sec. 300.133. (e) <u>Completion period.</u> The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with Sec. 300.301. (f) <u>Out-of-State children.</u> Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located. (Approved by the Office of Management and	(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. (Authority: 20 U.S.C. 1412(a)(10)(B)) Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue Sec. 300.403 Placement of children by parents if FAPE is at issue. (a) <i>General.</i> 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 shall include that child in the population whose needs are addressed consistent with Sec. 300.450– 300.462. (b) <i>Disagreements about FAPE.</i> Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Sec. 300.500– 300.517. (c) <i>Reimbursement for private school placement.</i> 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, 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	

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Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)(ii)) Sec. 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 Sec. 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in Sec. 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 Sec. 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 Sec. 300.130 through 300.144: (1) The number of children evaluated;	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) <i>Limitation on reimbursement.</i> The cost of reimbursement described in paragraph (c) of this section may be reduced or denied— (1) If— (i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section; (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 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) <i>Exception.</i> Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if— (1) The parent is illiterate and cannot write in English;	

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(2) The number of children determined to be children with disabilities; and (3) The number of children served. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1412(a)(10)(A)(i)) Sec. 300.133 Expenditures. (a) <u>Formula.</u> To meet the requirement of Sec. 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.	(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child; (3) The school prevented the parent from providing the notice; or (4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section. (Authority: 20 U.S.C. 1412(a)(10)(C)) Children With Disabilities Enrolled by Their Parents in Private Schools Sec. 300.450 Definition of “private school children with disabilities.” As used in this part, <i>private school children with disabilities</i> means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under Sec. 300.400–300.402. (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.451 Child find for private school children with disabilities. (a) Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious school children residing in the jurisdiction of the LEA, in accordance with Sec. 300.125 and 300.220. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools. (b) Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in paragraph (a) of this section. (Authority: 20 U.S.C. 1412(a)(10)(A)(ii))	Sec. 300.133(a)(2)(ii) This change clarifies that children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents if they are enrolled in a private school that meets the definition of elementary school in 300.13 or secondary school in 300.131

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(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 Sec. 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) <u>Calculating proportionate amount.</u> 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 Sec. 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) <u>Annual count of the number of parentally-placed private school children with disabilities.</u> (1) Each LEA must-- (i) After timely and meaningful	Sec. 300.452 Provision of services—basic requirement. (a) <i>General.</i> To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with Sec. 300.453–300.462. (b) <i>SEA Responsibility—services plan.</i> Each SEA shall ensure that, in accordance with paragraph (a) of this section and Sec. 300.454–300.456, a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part. (Authority: 20 U.S.C. 1412(a)(10)(A)(i)) Sec. 300.453 Expenditures. (a) <i>Formula.</i> To meet the requirement of Sec. 300.452(a), each LEA must spend on providing special education and related services to private school children with disabilities— (1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total sub grant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and (2) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its	

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consultation with representatives of parentally-placed private school children with disabilities (consistent with Sec. 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) <u>Supplement, not supplant.</u> State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 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	jurisdiction aged 3 through 5. (b) <i>Child count.</i> (1) Each LEA shall— (i) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and (ii) Ensure that the count is conducted on December 1 or the last Friday of October of each year. (2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year. (c) <i>Expenditures for child find may not be considered.</i> Expenditures for child find activities described in Sec. 300.451 may not be considered in determining whether the LEA has met the requirements of paragraph (a) of this section. (d) <i>Additional services permissible.</i> State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy. (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.454 Services determined. (a) <i>No individual right to special education and related services.</i> (1) No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (2) Decisions about the services that will be provided to private school children with disabilities under Sec.s. 300.452–300.462, must be made in accordance with paragraphs (b), and (c) of this section. (b) <i>Consultation with representative of private school children with disabilities.</i> (1) <i>General.</i> Each LEA shall consult, in a timely and meaningful way, with appropriate	Sec. 300.134 The how, where, and by whom special education and related services are provided to parentally-placed school children with disabilities are topics of the process of consultation among LEA officials, private school representatives, and representatives of parents of parentally-placed private school children with disabilities. The final decision with respect to the services provided to eligible parentally-placed private school children with disabilities is made the LEA.. Under the Act, LEAs only have an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to this population. LEAs are not required to spend more than the proportionate Federal share on those services. A services plan should be developed to describe the specific special education and related services offered to a parentally-placed private school child with a disability designated to receive services.

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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) <u>Proportionate share of funds</u>. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under Sec. 300.133(b), including the determination of how the proportionate share of those funds was calculated. (c) <u>Consultation process</u>. 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) <u>Provision of special education and related services</u>. 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	representatives of private school children with disabilities in light of the funding under Sec. 300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide— (i) Which children will receive services under Sec. 300.452; (ii) What services will be provided; (iii) How and where the services will be provided; and (iv) How the services provided will be evaluated. (2) <i>Genuine opportunity</i>. Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section. (3) <i>Timing</i>. The consultation required by paragraph (b)(1) of this section must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under Sec. 300.452–300.462. (4) <i>Decisions</i>. The LEA shall make the final decisions with respect to the services to be provided to eligible private school children. (c) <i>Services plan for each child served under Sec. 300.450–300.462</i>. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall— (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with Sec. 300.455(b); and (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative	

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(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) <u>Written explanation by LEA regarding services.</u> How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1412(a)(10)(A)(iii)) Sec. 300.135 Written affirmation. (a) When timely and meaningful consultation, as required by Sec. 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. (b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1412(a)(10)(A)(iv))	cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls. (Authority: 1412(a)(10)(A)) Sec. 300.455 Services provided. (a) <i>General.</i> (1) The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools. (2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. (3) No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school. (b) <i>Services provided in accordance with a services plan.</i> (1) Each private school child with a disability who has been designated to receive services under Sec. 300.452 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 Sec. 300.453–300.454, it will make available to private school children with disabilities. (2) The services plan must, to the extent appropriate— (i) Meet the requirements of Sec. 300.347, with respect to the services provided; and (ii) Be developed, reviewed, and revised consistent with Sec. 300.342– 300.346. (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.456 Location of services; transportation. (a) <i>On-site.</i> Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent	Sec. 300.137(b)(2) This clarifies that, after this consultation process, the final decision with respect to the services provided to eligible parentally-placed private school children with disabilities is made by the LEA.

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Sec. 300.136 Compliance. (a) <u>General.</u> 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) <u>Procedure.</u> (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and (2) The LEA must forward the appropriate documentation to the SEA. (3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and (ii) The SEA must forward the appropriate documentation to the Secretary. (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1412(a)(10)(A)(v)) Sec. 300.137 Equitable services determined. (a) <u>No individual right to special education and related services.</u> No parentally-	consistent with law. (b) <i>Transportation.</i> (1) <i>General.</i> (i) If necessary for the child to benefit from or participate in the services provided under this part, a 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) <i>Cost of transportation.</i> 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 Sec. 300.453. (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.457 Complaints. (a) <i>Due process inapplicable.</i> The procedures in Sec. 300.504–300.515 do not apply to complaints that an LEA has failed to meet the requirements of Sec. 300.452–300.462, including the provision of services indicated on the child's services plan. (b) <i>Due process applicable.</i> The procedures in Sec. 300.504–300.515 do apply to complaints that an LEA has failed to meet the requirements of Sec. 300.451, including the requirements of Sec. 300.530–300.543. (c) <i>State complaints.</i> Complaints that an SEA or LEA has failed to meet the requirements of Sec. 300.451–300.462 may be filed under the procedures in Sec. 300.660–300.662. (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.458 Separate classes prohibited. An LEA may not use funds available under section 611 or	Sec. 300.138 (a)(1) Equitable services provided. It is ED's position that the highly qualified special education teacher requirements do not apply to teachers hired by the private schools.

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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) <u>Decisions</u>. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under Sec. 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and Sec. 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) <u>Services plan for each child served under Sec. 300.130 through 300.144</u>. 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 Sec. 300.138(b); and (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. (Approved by the Office of Management and Budget under control number 1820-0030)	619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if— (a) The classes are at the same site; and (b) The classes include students enrolled in public schools and students enrolled in private schools. (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.459 Requirement that funds not benefit a private school. (a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. (b) The LEA shall use funds provided under Part B of the Act to meet the special education and related services needs of students enrolled in private schools, but not for— (1) The needs of a private school; or (2) The general needs of the students enrolled in the private school. (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.460 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— (a) To the extent necessary to provide services under Sec. 300.450–300.462 for private school children with disabilities; and (b) If those services are not normally provided by the private school. (Authority: 20 U.S.C. 1412(a)(10)(A))	

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(Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 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 Sec. 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) <u>Services provided in accordance with a services plan.</u> (1) Each parentally-placed private school child with a disability who has been designated to receive services under Sec. 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 Sec. 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 Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with	Sec. 300.461 Use of private school personnel. An LEA may use funds available under section 611 or 619 of the Act to pay for the services of an employee of a private school to provide services under Sec. 300.450–300.462 if— (a) The employee performs the services outside of his or her regular hours of duty; and (b) The employee performs the services under public supervision and control. (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities. (a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities. (b) The public agency may place equipment and supplies in a private school for the period of time needed for the program. (c) The public agency shall ensure that the equipment and supplies placed in a private school— (1) Are used only for Part B purposes; and (2) Can be removed from the private school without remodeling the private school facility. (d) The public agency shall remove equipment and supplies from a private school if— (1) The equipment and supplies are no longer needed for Part B purposes; or (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. (e) No funds under Part B of the Act may be used for	

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respect to the services provided; and (ii) Be developed, reviewed, and revised consistent with Sec. 300.321 through 300.324. (c) Provision of equitable services. (1) The provision of services pursuant to this section and Sec. 300.139 through 300.143 must be provided: (i) By employees of a public agency; or (ii) Through contract by the public agency with an individual, association, agency, organization, or other entity. (2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)(vi)) Sec. 300.139 Location of services and transportation. (a) <u>Services on private school premises.</u> 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) <u>Transportation.</u> (1) <u>General.</u> (i) If necessary for the child to benefit from or participate in the services provided under	repairs, minor remodeling, or construction of private school facilities. (Authority: 20 U.S.C. 1412(a)(10)(A))	

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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) <u>Cost of transportation.</u> 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 Sec. 300.133. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 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 Sec. 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of Sec. 300.132 through 300.139, including the provision of services indicated on the child's services plan. (b) <u>Child find complaints--to be filed with the LEA in which the private school is</u>		

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<u>located.</u> (1) The procedures in Sec. 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in Sec. 300.131, including the requirements in Sec. 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) <u>State complaints.</u> (1) Any complaint that an SEA or LEA has failed to meet the requirements in Sec. 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in Sec. 300.151 through 300.153. (2) A complaint filed by a private school official under Sec. 300.136(a) must be filed with the SEA in accordance with the procedures in Sec. 300.136(b). (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 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		

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education and related services needs of parentally-placed private school children with disabilities, but not for meeting-- (1) The needs of a private school; or (2) The general needs of the students enrolled in the private school. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.142 Use of personnel. (a) <u>Use of public school personnel.</u> 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 Sec. 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) <u>Use of private school personnel.</u> 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 Sec. 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		

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services under public supervision and control. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 300.143 Separate classes prohibited. An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if— (a) The classes are at the same site; and (b) The classes include children enrolled in public schools and children enrolled in private schools. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)) Sec. 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 Sec. 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		

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the equipment and supplies placed in a private school-- and (1) Are used only for Part B purposes; (2) Can be removed from the private school without remodeling the private school facility. (d) The public agency must remove equipment and supplies from a private school if-- (1) The equipment and supplies are no longer needed for Part B purposes; or (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A)(vii)) <u>Children With Disabilities in Private Schools Placed or Referred by Public Agencies</u> Sec. 300.145 Applicability of Sec. 300.146 through 300.147. Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.		

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(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(B)) Sec. 300.146 Responsibility of SEA. Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency-- (a) Is provided special education and related services-- 1) In conformance with an IEP that meets the requirements of Sec. 300.320 through 300.325; and (2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for Sec. 300.18 and Sec. 300.156(c); and (c) Has all of the rights of a child with a disability who is served by a public agency. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(B)) Sec. 300.147 Implementation by SEA. In implementing Sec. 300.146, the SEA must-- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;		

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(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(B)) <u>Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue</u> Sec. 300.148 Placement of children by parents when FAPE is at issue. (a) <u>General</u>. 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 Sec. 300.131 through 300.144. (b) <u>Disagreements about FAPE</u>. Disagreements between the parents and a public agency regarding the availability of a program		

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appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in Sec. 300.504 through 300.520. (c) <u>Reimbursement for private school placement.</u> 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) <u>Limitation on reimbursement.</u> 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		

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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 Sec. 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) <u>Exception.</u> 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 Sec. 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		

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child; and (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if-(i) The parents are not literate or cannot write in English; or (ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(C))		

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Sec. 300.154 Methods of ensuring services. (d) <u>Children with disabilities who are covered by public benefits or insurance.</u> (1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section. (2) With regard to services required to provide FAPE to an eligible child under this part, the public agency-- (i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act; (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay; (iii) May not use a child's benefits under a public benefits or insurance program if that use would-- (A) Decrease available lifetime coverage or any other insured benefit; (B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (C) Increase premiums or lead to the discontinuation of insurance; or	Sec. 300.142 Methods of ensuring services. (e) <i>Children with disabilities who are covered by public insurance.</i> (1) A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (e)(2) of this section. (2) With regard to services required to provide FAPE to an eligible child under this part, the public agency-- (i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act; (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay; and (iii) May not use a child's benefits under a public insurance program if that use would-- (A) Decrease available lifetime coverage or any other insured benefit; (B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (C) Increase premiums or lead to the discontinuation of insurance; or	

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are required for the child outside of the time the child is in school; (C) Increase premiums or lead to the discontinuation of benefits or insurance; or (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and (iv)(A) Must obtain parental consent, consistent with Sec. 300.9, each time that access to public benefits or insurance is sought; and (B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (e) Children with disabilities who are covered by private insurance. (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with Sec. 300.9. (2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must-- (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and (ii) Inform the parents that their refusal to permit the public agency to access their	(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures. (f) <i>Children with disabilities who are covered by private insurance.</i> (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with Sec. 300.500(b)(1). (2) Each time the public agency proposes to access the parent's private insurance proceeds, it must— (i) Obtain parent consent in accordance with paragraph (f)(1) of this section; and (ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (g) <i>Use of Part B funds.</i> (1) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service. (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts). (h) <i>Proceeds from public or private insurance.</i> (1) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.	<i>Implications:</i> ASHA members should be aware if public or private funds are being used in the provision of services. Medicaid has specific provider qualification, supervision guidelines and documentation requirements that need to be met for reimbursement and coverage purposed. Speech-language pathologists and audiologists should also be aware the parental consent is required when a school bills either Medicaid or private health plans for services provided in the schools. Parents do not have to give consent each time a service is provided. However, parents do have to be informed of the number of hours that will be accessed for intervention services. ED plans to issue a letter of clarification on this. Additional information on Medicaid requirements can be found on ASHA's Web site at: http://www.asha.org/members/issues/reimbursement/medicaid/medicaid_main.htm

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private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (f) <u>Use of Part B funds.</u> (1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service. (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts). (g) <u>Proceeds from public benefits or insurance or private insurance.</u> (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. (2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in Sec. 300.163 and 300.203. (h) <u>Construction.</u> Nothing in this part should be construed to alter the requirements	(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in Sec. 300.154 and 300.231. (i) <u>Construction.</u> Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program. (Authority: 20 U.S.C. 1412(a)(12)(A), (B), and (C);1401(8))	

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imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(12) and (e))		
Sec. 300.156 Personnel qualifications. (a) <u>General</u>. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (b) <u>Related services personnel and paraprofessionals</u>. The qualifications under paragraph (a) of this section must include	Sec. 300.136 Sec. Personnel standards. (a) Definitions. As used in this part-- (1) Appropriate professional requirements in the State means entry level requirements that— (i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and (ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children with disabilities who are	Sec. 300.156 Personnel qualifications. The final regulations removed the provision that requires State education personnel standards to meet the highest requirement for a profession or discipline in that state. This removal is consistent with a change in the IDEA 2004 statute. However, the final regulations do require: ∅ The SEA establish and maintain qualifications to ensure that personnel are appropriately and adequately prepared and trained and have the content knowledge and skills to serve children with disabilities; ∅ The qualifications for related services personnel and

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qualifications for related services personnel and paraprofessionals that-- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and (2) Ensure that related services personnel who deliver services in their discipline or profession-- (i) Meet the requirements of paragraph (b)(1) of this section; and (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities. (c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section	served by State, local, and private agencies (see Sec. 300.2); (2) Highest requirements in the State applicable to a specific profession or discipline means the highest entry-level academic degree needed for any State-approved or –recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline; (3) Profession or discipline means a specific occupational category that— (i) Provides special education and related services to children with disabilities under Part B of the Act; (ii) Has been established or designated by the State; (iii) Has a required scope of responsibility and degree of supervision; and (iv) Is not limited to traditional occupational categories; and (4) State- approved or -recognized certification, licensing, registration, or other comparable requirements means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State. (b) Policies and procedures. (1)(i) The State must have on file with the Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained. (ii) The policies and procedures required in paragraph (b)(1)(i) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized	paraprofessionals are consistent with any State approved or State-recognized certification, licensing, registration, or other comparable requirements; € State requirements have not been waived on an emergency, temporary, or provisional basis; and € States must adopt a policy that includes a requirement that LEAs take measurable steps to recruit, hire, train, and retain highly qualified personnel. The regulations also allow the use of paraprofessionals and assistants who are appropriately trained and supervised. ED points out in its discussion that the Act should not be construed to permit or encourage the use of paraprofessionals as a replacement for teachers or related services providers. ED emphasizes that these personnel are not directly responsible for the provision of special education and related services to children with disabilities; rather, they provide services only under the supervision of special education and related services personnel. The regulations specify that states may reserve a portion of their allocations to assist LEAs in meeting personnel shortages (see Sec. 300.704(b)(4)(vii)). ED states in its discussion that, although many strategies for recruitment and retention of qualified personnel are effective, it did not include specific strategies in the regulations because these strategies vary depending on the unique needs of each State and LEA.

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1119(a)(2) of the ESEA. (d) <u>Policy.</u> In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities. (e) <u>Rule of construction.</u> Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(14))	certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services. (2) Each State may-- (i) Determine the specific occupational categories required to provide special education and related services within the State; and (ii) Revise or expand those categories as needed. (3) Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the Act. (4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard as necessary to ensure the provision of FAPE to all children with disabilities in the State without violating the requirements of this section. (c) Steps for retraining or hiring personnel. To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State must provide the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State. (d) Status of personnel standards in the State. (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline. (2) The	Sec. 300.23 Qualified personnel from the 1999 regulations were removed and incorporated into this section on Personnel Qualifications. In its discussion of this section, ED indicated that its intent is to provide greater flexibility for SEAs to establish appropriate personnel standards. It believes that states have sufficient incentives to ensure that related services providers deliver services of appropriate quality so that children with disabilities can achieve to high standards. The qualifications of related services providers required under Medicaid, or in hospitals and other public settings, and the fact that Medicaid will not pay for providers who do not meet Medicaid provider qualifications should serve as an incentive for states that want to bill for medical services on children's IEPs to impose consistent requirements for qualifications of related services providers. <i>Implications:</i> LEAs may need to be encouraged to continue to hire the same quality of related services provider as they did under stricter personnel requirements. In addition, states and LEAs should be closely monitored to make sure that they comply with the requirement to take measurable steps to recruit, hire, and retain highly qualified personnel. Finally, ASHA members should work with their state speech-language-hearing association to monitor any proposed legislative and/or regulatory actions to lower personnel standards, and to rally colleagues and the parents of school children to advocate effectively for standards of quality. ASHA members should be aware that Medicaid provider qualifications may be more stringent than those required by the state under IDEA. Federal Medicaid providers' qualifications must be met in order for a school to bill for speech-language pathology and audiology services. Additional information on Medicaid

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	information required in paragraph (d)(1) of this section must be on file in the SEA and available to the public. (e) Applicability of State statutes and agency rules. In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children with disabilities must be considered. (f) Use of paraprofessionals and assistants. A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of the Act. (g) Policy to address shortage of personnel. (1) In implementing this section, a State may adopt a policy that includes a requirement that LEAs in the State make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law and the steps described in paragraph (c) of this section, within three years. (2) If a State has reached its established date under paragraph (c) of this section, the State may still exercise the option under paragraph (g)(1) of this section for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State. (3)(i) Each State must have a mechanism for serving children with disabilities if instructional needs exceed available	provider qualifications for speech-language pathology and audiology services can be found at http://www.asha.org/members/issues/reimbursement/medicaid/medicaid_main.htm. The preamble to the IDEA Part B regulations and ED's discussion therein specifically state "the fact that Medicaid will not pay for providers who do not meet Medicaid provider qualifications should serve as an incentive for states that want to bill for medical services on children's IEPs to impose consistent requirements for qualifications of related services providers."

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	personnel who meet appropriate professional requirements in the State for a specific profession or discipline. (ii) A State that continues to experience shortages of qualified personnel must address those shortages in its comprehensive system of personnel development under Sec. 300.135.(Authority: 20 U.S.C. 1412(a)(15))	

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Sec. 300.167 State advisory panel. The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(21)(A)) Sec. 300.168 Membership. (a) <u>General</u>. The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including-- (1) Parents of children with disabilities (ages birth through 26); (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that prepare special education and related services personnel; (5) State and local education officials, including officials who carry out		

activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 <u>et seq.</u>); (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (8) Representatives of private schools and public charter schools; (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; (10) A representative from the State child welfare agency responsible for foster care; and (11) Representatives from the State juvenile and adult corrections agencies. (b) <u>Special rule.</u> A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26). (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(21)(B) and (C)) Sec. 300.169 Duties. The advisory panel must-- (a) Advise the SEA of unmet needs within the State in the education of children with disabilities; (b) Comment publicly on any		
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rules or regulations proposed by the State regarding the education of children with disabilities; (c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act; (d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and (e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(21)(D))		
	Sec. 300.650 Establishment of advisory panels. (a) Each State shall establish and maintain, in accordance with Sec. 300.650–300.653, a State advisory panel on the education of children with disabilities.	300.167-169 State Advisory Panel Sec. 300.653 Advisory Panel Procedures (20 USC 1412(a)(21) from the 1999 regulations were not included in the 2006 version. ED claims that these guidelines were removed, “to provide greater

	(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments. (c) If a State has an existing advisory panel that can perform the functions in Sec. 300.652, the State may modify the existing panel so that it fulfills all of the requirements of Sec. 300.650–300.653, instead of establishing a new advisory panel. (Authority: 20 U.S.C. 1412(a)(21)(A)) Sec. 300.651 Membership. (a) <i>General.</i> The membership of the State advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make these appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with the education of children with disabilities, including— (1) Parents of children with disabilities; (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that prepare special education and related services personnel; (5) State and local education officials; (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (8) Representatives of private schools and public charter schools; (9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and (10) Representatives from the State juvenile and adult corrections agencies.	State flexibility in the operation of the advisory board.” These guidelines included requirements for the announcement of Panel meetings and public access to these meetings among other items. ED suggests in the discussion of the 2006 regulations that, “it is important that individuals consult the laws governing their State and locality on the issue of open meetings and public access.” This clearly shifts the burden off of the state and on to the individual citizen to keep abreast of Panel activities. Membership on the panel remains identical to that specified in the 2004 statute. Multiple comments recommended an expanded Panel membership which was rejected by ED. Paragraph (b) of Section 300.652 Advisory Panel Functions from the 1999 regulations was not included in the 2006 regulations. This paragraph required the State advisory panels to provide advice for educating students with disabilities in adult correctional facilities were not included in the 2006 IDEA regulations. ED explained that all “nonstatutory mandates”, including this one, were removed.
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	(b) <i>Special rule.</i> A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities. (Authority: 20 U.S.C. 1412(a)(21)(B) and (C)) Sec. 300.652 Advisory panel functions. (a) <i>General.</i> The State advisory panel shall— (1) Advise the SEA of unmet needs within the State in the education of children with disabilities; (2) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities; (3) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act; (4) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and (5) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities. (b) <i>Advising on eligible students with disabilities in adult prisons.</i> The advisory panel also shall advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons, even if, consistent with Sec. 300.600(d), a State assigns general supervision responsibility for those students to a public agency other than an SEA. (Authority: 20 U.S.C. 1412(a)(21)(D)) Sec. 300.653 Advisory panel procedures. (a) The advisory panel shall meet as often as necessary to conduct its business. (b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.

	(c) Official minutes must be kept on all panel meetings and must be made available to the public on request. (d) All advisory panel meetings and agenda items must be announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be open to the public. (e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under Sec. 300.620. (f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under Sec. 300.620 for this purpose. (Authority: 20 U.S.C. 1412(a)(21))	
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Sec. 300.172 Access to instructional materials. (a) <u>General</u>. 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 <u>Federal Register</u> 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) <u>Rights and responsibilities of SEA</u>. (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	No comparable provision	Sec. 300.172 Access to instructional materials Section 674(e) of IDEA 2004 established the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to the final Part B regulations, which all states <u>must</u> use in the preparation of electronic files for conversion into Braille, audio, or digital text for use by blind or other persons with print disabilities. Section 674(e) also established the National Instructional Materials Accessibility Center (NIMAC) to provide access to print instructional materials, including textbooks, in accessible form free of charge to blind persons or other persons with print disabilities in elementary and secondary schools. States <u>may</u> choose to coordinate with NIMAC but are not required to do so. Those eligible to receive instructional materials in specialized formats include children with visual disabilities, physical limitations, or reading disabilities resulting from organic dysfunction, according to the Act to Provide Books for the Adult Blind approved March 3, 1931. Further clarification of eligibility determination is pending decisions from an advisory board convened by ED. 300.172(b)(3) emphasizes that states are responsible to ensure that all children with disabilities who need instructional materials in accessible formats receive those materials in a timely manner, even if those children are not included under the NIMAS definition or the materials cannot be produced from NIMAS files. Furthermore, 300.172(b)(4) states that state education agencies must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children

with print disabilities in Sec. 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) <u>Preparation and delivery of files.</u> 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) <u>Assistive technology.</u> In carrying		with disabilities at the same time as other children receive instructional materials. <i>Implications:</i> This section has obvious implications for students with physical disabilities who need assistive technology devices or other means of alternative formats to access instructional materials. Depending upon the outcome of the advisory group, this could also impact students with reading disabilities. ASHA members need to be knowledgeable about these state and local obligations regarding the timely availability of accessible instructional materials, participate in decision-making regarding the need for specialized formats on an individual basis, and be prepared to advocate for students' needs if necessary.
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out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs. (e) <u>Definitions.</u> (1) In this section and Sec. 300.210-- (i) <u>Blind persons or other persons with print disabilities</u> 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) <u>National Instructional Materials Access Center or NIMAC</u> means the center established pursuant to section 674(e) of the Act; (iii) <u>National Instructional Materials Accessibility Standard or NIMAS</u> has the meaning given the term in section 674(e)(3)(B) of the Act; (iv) <u>Specialized formats</u> has the meaning given the term in section 674(e)(3)(D) of the Act. (2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(23), 1474(e))		
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Sec. 300.173 Overidentification and disproportionality. The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in Sec. 300.8. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(24))	No Comparable Provision	
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Sec. 300.199 State administration. (a) <u>Rulemaking</u>. Each State that receives funds under Part B of the Act must— (1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part; (2) <u>Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations; and</u> (3) <u>Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act.</u> (b) <u>Support and facilitation</u>. State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C 1407)	Sec. 300.110 Condition of assistance. (a) A State is eligible for assistance under Part B of the Act for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the conditions in Sec. Sec. 300.121–300.156. (b) To meet the requirement of paragraph (a) of this section, the State must have on file with the Secretary— (1) The information specified in Sec. Sec. 300.121–300.156 that the State uses to implement the requirements of this part; and (2) Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information. (Authority: 20 U.S.C. 1412(a))	

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Sec. 300.226 Early intervening services. (a) <u>General</u>. 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 Sec. 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 Sec. 300.205(d), regarding local maintenance of effort, and Sec. 300.226(a) affect one another.) (b) <u>Activities</u>. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include-- (1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and (2) Providing educational and behavioral evaluations, services, and supports,	No Comparable Provision	Sec. 300.226 Early intervening services. The final regulations include a new provision that an LEA may use not more than 15 percent of the Part B funds it receives to develop and implement coordinated, early intervening services for children who have not been identified as eligible under the Act, but who need additional academic and behavioral support to succeed in a general education environment. These services are for students in kindergarten through grade 12 with particular emphasis on students in kindergarten through grade three. These activities include professional development for teachers and other school staff as well as educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction. Although related services providers, including SLPs, are not specifically listed, ED notes that there is nothing in the Act or regulations preventing States and LEAs from including related services personnel in these services. Finally, ED commented that nothing is to be construed to delay an appropriate evaluation of a child suspected of having a disability. ED did not consider it appropriate or necessary to specify a timeframe. If a child receiving early intervening services is suspected of having a disability, the LEA must conduct a full and individual evaluation. <i>Implications:</i> ASHA members are encouraged to become involved as their schools develop and implement early intervening (i.e. responsiveness-to-intervention) programs. SLPs and audiologists are uniquely qualified to assist students in need of additional academic supports, as language skills are the basis for learning and literacy. For helpful resources, refer to ASHA's new RTI technical assistance packet at http://www.asha.org/members/slp/schools/prof-consult/rtol.htm.

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SUBPART C including scientifically based literacy instruction. (c) <u>Construction</u>. 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) <u>Reporting</u>. 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) <u>Coordination with ESEA</u>. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1413(f))		

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Sec. 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))	No comparable provision	
Sec. 300.303 Reevaluations. (a) <u>General</u>. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with Sec. 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) <u>Limitation</u>. 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))	Sec. 300.536 Reevaluation. Each public agency shall ensure-- (a) That the IEP of each child with a disability is reviewed in accordance with Sec. 300.340-300.350; and (b) That a reevaluation of each child, in accordance with Sec. 300.532-300.535, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years. (Authority: 20 U.S.C. 1414(a)(2))	

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Sec. 300.304 Evaluation procedures. (a) <u>Notice</u>. The public agency must provide notice to the parents of a child with a disability, in accordance with Sec 300.503, that describes any evaluation procedures the agency proposes to conduct. (b) <u>Conduct of evaluation</u>. 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 Sec. 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	Sec. 300.532 Evaluation procedures. Each public agency shall ensure, at a minimum, that the following requirements are met: (a)(1) Tests and other evaluation materials used to assess a child under Part B of the Act-- (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and (ii) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and (2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills. (b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining-- (1) Whether the child is a child with a disability under	Sec. 300.304 Evaluation procedures Assessment and other evaluation materials are to be 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 do so. For English Language Learners and other culturally and linguistically diverse children the "form" in which evaluation procedures are administered will vary. The addition of this new language emphasizes the allowance of variance from standard testing procedures when necessary in order to appropriately assess academic, developmental, and functional skills. The discussion section further stated that the provision stating, "unless it is clearly not feasible to do so," "should not be improperly used to limit evaluations in a child's native language." ED also mentioned in the discussion section that "it is standard test administration practice to include in the evaluation report the extent to which an assessment varied from standard conditions, including the language or other mode of communication that was used in assessing a child."

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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) <u>Other evaluation procedures.</u> 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	Sec. 300.7; and (2) The content of the child's IEP. (c)(1) Any standardized tests that are given to a child-- (i) Have been validated for the specific purpose for which they are used; and (ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. (2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report. (d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the (f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. (g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.	

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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 Sec. 300.301(d)(2) and (e), to ensure prompt completion of full evaluations. (6) In evaluating each child with a disability under Sec..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))	(h) In evaluating each child with a disability under Secs. 300.531- 300.536, 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. test purports to measure). (i) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (j) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child. (Authority: 20 U.S.C. 1412(a)(6)(B), 1414(b)(2) and (3))	

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Sec. 300.306 Determination of eligibility. (a) <u>General</u>. 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 Sec. 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) <u>Special rule for eligibility determination</u>. 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 Sec. 300.8(a). (Authority: 20 U.S.C. 1414(b)(4) and (5))	Sec. 300.534 Determination of eligibility (a) Upon completing the administration of tests and other evaluation materials-- (1) A group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in Sec. 300.7; and (2) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent. (b) A child may not be determined to be eligible under this part if-- (1) The determinant factor for that eligibility determination is-- (i) Lack of instruction in reading or math; or (ii) Limited English proficiency; and (2) The child does not otherwise meet the eligibility criteria under Sec. 300.7(a). (c)(1) A public agency must evaluate a child with a disability in accordance with Secs. 300.532 and 300.533 before determining that the child is no longer a child with a disability. (2) The evaluation described in paragraph (c)(1) of this section is not required before the termination of a student's eligibility under Part B of the Act due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law. (Authority: 20 U.S.C. 1414(b)(4) and (5). (c)(5))	

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Sec. 300.307 Specific learning disabilities. (a) <u>General</u>. A State must adopt, consistent with Sec. 300.309, criteria for determining whether a child has a specific learning disability as defined in Sec. 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 Sec. 300.8(c)(10); (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in Sec. 300.8(c)(10). (b) <u>Consistency with State criteria</u>. 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)) Sec. 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 Sec. 300.8, must	Sec. 300.540 Additional team members. The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in Sec. 300.7, must be made by the child's parents and a team of qualified professionals which must include-- (a)(1) The child's regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (Authority: Sec. 5(b), Pub. L. 94-142)	Sec. 300.307-300.311 Additional Procedures For Identifying Children With Specific Learning Disabilities The final regulations related to identifying children with specific learning disabilities (SLD) have some significant changes, although similar to the 1999 regulations. The 2006 regulations for IDEA 2004 indicate that states: ✎ Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, ✎ Must permit the use of a process based on the child's response to scientific, research-based intervention; ✎ May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability. Although the regulations do not indicate that states may prohibit use of discrepancy model, ED indicated in their discussions that IDEA 2004 indicates that states are free to prohibit the use of a discrepancy model. The regulations indicate that states "must permit the use of a process based on the child's response to scientific, research-based intervention." This means states can use what is usually referred to as a Responsiveness-to-Intervention (RTI) model to determine if a child is suspected of having a specific learning disability (SLD). ED also indicated that an RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies and cannot rely on any single procedure (e.g., RTI) as the sole criterion for determining eligibility for special education and related services. This requirement applies to all children suspected of having a disability, including those suspected of having SLD. Models or procedures that claim to assist in identifying a child with

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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 (b) At least one person qualified to conduct the SEA to teach a child of his or her age; and (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)) Sec. 300.309 Determining the existence of a specific learning disability. (a) The group described in Sec. 300.306 may determine that a child has a specific learning disability, as defined in Sec. 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.	Sec. 300.541 Criteria for determining the existence of a specific learning disability. (a) A team may determine that a child has a specific learning disability if-- (1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and (2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: (i) Oral expression. (ii) Listening comprehension. (iii) Written expression. (iv) Basic reading skill. (v) Reading comprehension. (vi) Mathematics calculation. (vii) Mathematics reasoning. (b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of-- (1) A visual, hearing, or motor impairment;	SLD, but which are not based on sound scientific research, are not appropriate and should not be adopted by LEAs or states. It also retained the current provision that indicate that the determination of whether a child suspected of having SLD is a child with a disability must be made by the child's parents and a team of qualified professionals, which must include... "at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher."

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(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 Sec. 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	(2) Mental retardation; (3) Emotional disturbance; or (4) Environmental, cultural or economic disadvantage. (Authority: Sec. 5(b), Pub. L. 94-142)	Limited English proficiency has been added to the list of conditions in section 300.309 that could account for a child's learning problems and that must be considered in determining whether the child has a SLD.

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consider, as part of the evaluation described in Sec. 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 Sec. 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 Sec. 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))		"An appropriate period of time" is left to the states to determine.

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Sec. 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 Sec. 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 Sec. 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 Sec. 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))	Sec. 300.542 Observation. (a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting. (b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age. (Authority: Sec. 5(b), Pub. L. 94-142)	

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Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 300.309(a)(2)(ii); (6) The determination of the group	Sec. 300.543 Written report. (a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by Sec. 300.534(a)(2), must include a statement of-- (1) Whether the child has a specific learning disability; (2) The basis for making the determination; (3) The relevant behavior noted during the observation of the child; (4) The relationship of that behavior to the child's academic functioning; (5) The educationally relevant medical findings, if any; (6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and (7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage. (b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions. (Authority: Sec. 5(b), Pub. L. 94-142)	

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concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention-- (i) The instructional strategies used and the student-centered data collected; and (ii) The documentation that the child's parents were notified about-- (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the child's rate of learning; and (C) The parents' right to request an evaluation. (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))		

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Sec. 300.320 Definition of individualized education program. (a) <u>General</u>. 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 Sec. 300.320 through 300.324, and that must include-- (1) A statement of the child's present levels of academic achievement and functional performance, including-- (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; (2)(i) A statement of measurable annual goals, including academic and functional goals designed to-- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child's other educational needs that result from the child's disability; (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of	Sec. 300.347 Content of IEP. (a) General. The IEP for each child with a disability must include-- (1) A statement of the child's present levels of educational performance, including-- (i) How the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; (2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to-- (i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities; and (ii) Meeting each of the child's other educational needs that result from the child's disability; (3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child-- (i) To advance appropriately toward attaining the annual goals; (ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children	300.320 Definition of individualized education program (a) General (1) Wording has been changed from the 1999 regulations from "educational performance" to "academic achievement and functional performance." ED declined to define "functional," stating that the term is generally understood to refer to skills or activities that are not considered academic or related to a child's academic achievement and is often used in the context of routine activities of everyday living. ED also declined to define "academic achievement," stating that it generally refers to a child's performance in academic areas (e.g., reading or language arts, math, science, and history). (2) "general curriculum" has been changed to "general education curriculum" (3) measurable annuals goals have been clarified as "including academic and functional goals" (4) benchmarks or short-term objectives are now required only for children with disabilities who take alternate assessments aligned to alternate achievement standards (5) special education and related services and supplementary aids and services must now be "based on peer-reviewed research to the extent practicable;" ED declined to define "peer-reviewed research," stating that the term generally refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published, and noting that the review process will vary depending on the type of information to be reviewed (6) the new regulations refer to "appropriate accommodations" rather than "modifications" as referred to in the '99 regulations (7) "how the child's parents will be regularly informed" has been changed to "when periodic reports ... will be provided" (8) the new regulations delete the requirement that the IEP include a statement of how parents will be regularly informed of the extent

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benchmarks or short-term objectives: (3) A description of-- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child-- (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in	with disabilities and nondisabled children in the activities described in this section; (4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section; (5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and (ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of-- (A) Why that assessment is not appropriate for the child; and (B) How the child will be assessed; (6) The projected date for the beginning of the services and modifications described in paragraph (a)(3) of this section, and the anticipated frequency, location, and duration of those services and modifications; and (7) A statement of-- (i) How the child's progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and (ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of-- (A) Their child's progress toward the annual goals; and (B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year. (b) Transition services. The IEP must include-- (1) For each student with a disability beginning at age	to which their child's progress is sufficient to enable the child to achieve the goals by the end of the year (9) the law changed the age at which transition services must be provided to a child with a disability from 14 years to 16 years. The regulations are consistent with this change. In its discussion, ED reiterates that the services may begin for a child who is "younger if determined appropriate by the IEP Team." (10) the regulations add the statement that if a state requires IEPs to include information beyond that which is explicitly required in section 614 IDEA04, the state must identify in writing to its LEAs and the Secretary that it is a state-imposed requirement and not one based on the law or regulations. Sec. 300.138 Participation in assessments in the 1999 regulations were incorporated into 300.320 (a)(2)(ii), (a) (6) (ii). <i>Implications:</i> There have been several changes related to the general components of the IEP. Listed here are the changes that may be considered relevant for speech-language-hearing services. Members are encouraged to read through this list carefully, and incorporate these changes when developing, reviewing, and revising IEPs and when serving on an IEP Team. In particular, members should note the change from "educational performance" to "academic achievement and functional performance." This change reinforces the provision of services for reasons other than academic failure and is consistent with ED's long-standing clarification regarding this issue. It is also consistent with clarification that a child with a disability is eligible for services even if the child is not failing and is advancing grade to grade. Finally, this section also reiterates the LEA's responsibility of enabling the child with a disability to participate in extracurricular and nonacademic activities. Members need to consider these points when determining eligibility for services for any child, but particularly those with articulation, fluency, and voice problems that

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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. (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))	14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced- placement courses or a vocational education program); and (2) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages. (c) Transfer of rights. In a State that transfers rights at the age majority, beginning at least one year before a student reaches the age of majority under State law, the student's IEP must include a statement that the student has been informed of his or her rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority, consistent with Sec. 300.517. (d) Students with disabilities convicted as adults and incarcerated in adult prisons. Special rules concerning the content of IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in Sec. 300.311(b) and (c). (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)(A)(ii))	may impede the child's involvement in extracurricular and nonacademic settings but not be reflected in academic achievement. Additional wording that supports this can be found in 300.42 (Supplemental aids and services) 300.43 (Definition of transition services), 300.101 (FAPE), 300.107 (Nonacademic services), 300.111 (Child find), and 300.117 (Nonacademic settings). Although short term objectives are not required for all children as part of the IEP, ASHA recommends that SLPs continue to identify short term goals as part of their intervention plan in order to monitor progress towards long term goals. As we strive towards improved evidence-based practice in our profession, it is clear that we should maintain documentation of treatment effectiveness.
Sec. 300.321 IEP Team. (a) <u>General</u>. 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	Sec. 300.344 IEP team. (a) <u>General</u>. The public agency shall ensure that the IEP team for each child with a disability includes-- (1) The parents of the child; (2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular	

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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) <u>Transition services participants.</u> (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	education environment); (3) At least one special education teacher of the child, or if appropriate, at least 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 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 (6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) If appropriate, the child. (b) Transition services participants. (1) Under paragraph (a)(7) of this section, the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of-- (i) The student's transition services needs under Sec. 300.347(b)(1); (ii) The needed transition services for the student under Sec. 300.347(b)(2); or (iii) Both. (2) If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered. (3) (i) In implementing the requirements of Sec. 300.347(b)(2), the public agency also shall invite a	

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the child in reaching those goals under Sec. 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) <u>Determination of knowledge and special expertise.</u> 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) <u>Designating a public agency representative.</u> 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) <u>IEP Team attendance.</u> (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.	representative of any other agency that is likely to be responsible for providing or paying for transition services. (ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services. (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 shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP. (d) Designating a public agency representative. A public agency may designate another 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. (Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7), (B))	There is a new provision (Sec. 300.321(e)) that a member of the IEP Team is not required to attend the IEP meeting if that member's area is not being modified or discussed, and the parent and LEA agree to this in writing. Also, a member of the IEP Team may be excused from attending the IEP meeting that includes a modification or discussion of the member's area if the parent and LEA agree in writing and the member submits written input prior to the meeting. In its comments, ED was firm in leaving the decision of member attendance and excusal up to the LEA and parent rather than further regulating terms of the decision. <i>Implications:</i> In its discussion, ED notes that the intent of this provision is to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict. ASHA members may wish to monitor excusals to ensure that this is indeed the reason for the excusal. In addition, members need to be prepared to submit written input prior to an IEP Team meeting, if excused.

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(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) <u>Initial IEP Team meeting for child under Part C.</u> 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))		Sec. 300.321(f) requires that the public agency, at the request of the parent, send an invitation to the Part C service coordinator, or other representative of the Part C system, to attend the child's first IEP meeting. <i>Implications:</i> ASHA members and certificate holders also may want to inform parents of their right to request that the public agency invite their child's Part C service coordinator to the initial IEP meeting.

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Sec. 300.322 Parent participation. (a) <u>Public agency responsibility—general.</u> 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) <u>Information provided to parents.</u> (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 Sec. 300.321(f) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and Sec. 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--	Sec. 300.345 Parent participation. (a) Public agency responsibility--general. Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including-- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. (b) 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 Sec. 300.344(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child). (2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also-- (i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in Sec. 300.347(b)(1); and (ii) Indicate that the agency will invite the student. (3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must-- (i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in Sec. 300.347(b)(2); (ii) Indicate that the agency will invite the student; and (iii) Identify any other agency that will be invited to send a representative. (c) Other methods to ensure parent participation. If	Essentially unchanged <i>Implications:</i> ASHA members and certificate holders also may want to inform parents of their right to request that the public agency invite their child's Part C service coordinator to the initial IEP meeting.

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(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with Sec. 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) <u>Other methods to ensure parent participation.</u> 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 Sec. 300.328 (related to alternative means of meeting participation). (d) <u>Conducting an IEP Team meeting without a parent in attendance.</u> 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 the results of those calls; (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. (e) <u>Use of interpreters or other action,</u>	neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls. (d) Conducting an IEP 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 have a record of its attempts to arrange a mutually agreed on time and place, such as-- (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. (e) Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP 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 shall 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))	

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<u>as appropriate</u>. 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) <u>Parent copy of child's IEP</u>. 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))		

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Sec. 300.324 Development, review, and revision of IEP. (a) <u>Development of IEP.</u> (1) <u>General.</u> 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) <u>Consideration of special factors.</u> 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	Sec. 300.346 Development, review, and revision of IEP. (a) Development of IEP. (1) General. In developing each child's IEP, the IEP team, shall consider-- (i) The strengths of the child and the concerns of the parents for enhancing the education of their child; (ii) The results of the initial or most recent evaluation of the child; and (iii) As appropriate, the results of the child's performance on any general State or district-wide assessment programs. (2) Consideration of special factors. The IEP team also shall-- (i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior; (ii) In the case of a child with limited English proficiency, consider the language needs of the child as 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,	Sec. 300.324 Development, review, and revision of IEP <i>Considerations when developing the IEP (Sec. 300.324)(a)(1):</i> To the list of considerations has been added "the academic, developmental, and functional needs of the child" and deleted "as appropriate, the results of the child's performance on any general state or district-wide assessment programs" to reflect wording changes in the Act. <i>Implications:</i> Members should consider academic, developmental, and functional needs of the child when developing annual goals on the child's IEP.

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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) <u>Requirement with respect to regular education teacher.</u> 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 Sec. 300.320(a)(4). (4) <u>Agreement.</u> (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	opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and (v) Consider whether the child requires assistive technology devices and services. (b) Review and Revision of IEP. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section. (c) Statement in IEP. If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP. (d) Requirement with respect to regular education teacher. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of-- 1) Appropriate positive behavioral interventions and strategies for the child; and (2) Supplementary aids and services, program modifications or supports for school personnel that will be provided for the child, consistent with Sec. 300.347(a)(3). (e) Construction. Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP. (Authority: 20 U.S.C. 1414(d)(3) and (4)(B) and (e))	There are two new provisions under Development of IEP: 1. To the extent possible, LEAs must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child. 2. IEPs may be amended without an IEP Team meeting if the parent and LEA agree to this. This is intended to benefit parents by providing flexibility. LEAs are required to inform the IEP Team of the changes that were made without an IEP Team meeting. Also, the LEA and parent may agree to use alternative means of meeting participation, such as video conferences and conference calls (see Sec. 300.328 Alternative means of meeting participation).

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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) <u>Consolidation of IEP Team meetings.</u> 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) <u>Amendments.</u> 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.		

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Sec. 300.502 Independent educational evaluation. (b) <u>Parent right to evaluation at public expense.</u> (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 Sec. 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay	Sec. 300.502 Independent educational evaluation. (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. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either-- (i) Initiate a hearing under Sec. 300.507 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 under Sec. 300.507 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (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 explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.	

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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.		

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Sec. 300.504 Procedural safeguards notice. (a) <u>General</u>. 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 Sec. 300.151 through 300.153 and upon receipt of the first due process complaint under Sec. 300.507 in a school year; (3) In accordance with the discipline procedures in Sec. 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 (Authority: 20 U.S.C. 1415(d))	Sec. 300.504 Procedural safeguards notice. (a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum-- (1) Upon initial referral for evaluation; (2) Upon each notification of an IEP meeting; (3) Upon reevaluation of the child; and (4) Upon receipt of a request for due process under Sec. 300.507. (Authority: 20 U.S.C. 1415(d))	
Sec. 300.505 Electronic mail. A parent of a child with a disability may elect to receive notices required by Sec. 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))	No comparable provision	

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Sec. 300.646 Disproportionality. (a) <u>General</u>. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to-- (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; (2) The placement in particular educational settings of these children; and (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions. (b) <u>Review and revision of policies, practices, and procedures</u>. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must-- (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.	Sec. 300.755 Disproportionality. (a) <u>General</u>. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State or in the schools operated by the Secretary of the Interior with respect to-- (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; and (2) The placement in particular educational settings of these children. (b) <u>Review and revision of policies, practices, and procedures</u>. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior shall provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the Act. (Authority: 20 U.S.C. 1418(c))	300.646 Disproportionality The final regulations added a provision requiring states to review ethnicity data in addition to race data to determine the presence of disproportionality. The 2006 regulations also require states to include a review of disproportionality with respect to disciplinary actions. In the event that significant disproportionality is determined, the state will not only be required to review and revise policies, procedures, and practices, but they will also require the LEA to reserve the maximum amount of funds under 613(f) to provide early intervening services to children in the LEA, "particularly, but not exclusively" to those in groups that were significantly overidentified. Additionally, the LEA will be required to publicly report on the revision of policies, practices, and procedures. This is stricter than the previous 1999 regulations on disproportionality and is supported with funding to address the problem. These regulations more clearly define steps that States must take to address the problem of disproportionality in special education, in particular with the mandate of funds for early intervening services. Research has shown that early intervening strategies assist in reducing the number of inappropriate referrals to special education, especially among culturally and linguistically diverse students. In their discussion, ED indicated that each State must determine what should be considered "significant disproportionality". ED referenced their provided guidance to states on methods for assessing disproportionality, which can be found at: http://www.ideadata.org/docs/Disproportionality%20Technical%20Assistance%20Guide.pdf.

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(2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section. (Authority: 20 U.S.C. 1418(d))		
Removed	Sec. 300.380 General CSPD requirements. (a) Each State shall develop and implement a comprehensive system of personnel development that-- (1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act; (2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; (3) Meets the requirements of Secs. 300.381 and 300.382; and (4) Is updated at least every five years. (b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section. (Authority: 20 U.S.C. 1412(a)(14))	

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Sec. 300.800 - 300.818 Preschool Grants for Children with Disabilities	Preschool Grants program provisions in separate 1998 Final Regulations (Part 301), and not included in the 1999 IDEA Part B Final regulations.	No Substantive Changes Part 301 has been removed and the regulations implementing the Preschool Grants for children with Disabilities Program are included under Subpart H of these final regulations.