

determination required in § 300.306(a)(2).

*Comment:* Several commenters requested that the written report include the determination of the group concerning the effects of cultural factors, limited English proficiency, and environmental or economic disadvantage to be consistent with all the elements in § 300.309(a)(3).

*Discussion:* We agree that it is important to emphasize the importance of considering such factors in determining eligibility under SLD and will add these factors in § 300.311(a).

*Changes:* We have added a new paragraph (6) to § 300.311(a) to require the written report to include a statement on the effects of cultural factors, limited English proficiency, environmental, or economic disadvantage.

*Comment:* Several commenters requested clarification of what happens if a group member disagrees with the report and agreement is never reached. Other commenters asked whether services are delayed pending a group consensus; whether the submission of a separate statement is synonymous with a veto for eligibility; whether it matters which group member submits a separate report; and whether each group member has equal standing.

*Discussion:* The eligibility group should work toward consensus, but under § 300.306, the public agency has the ultimate responsibility to determine whether the child is a child with a disability. Parents and school personnel are encouraged to work together in making the eligibility determination. If the parent disagrees with the public agency's determination, under § 300.503, the public agency must provide the parent with prior written notice and the parent's right to seek resolution of any disagreement through an impartial due process hearing, consistent with the requirements in § 300.503 and section 615(b)(3) of the Act.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal dispute resolution process. However, as stated in § 300.506(b)(1)(ii) and section 615(e)(2)(A)(ii) of the Act, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of the Act.

*Changes:* None.

### *Individualized Education Programs*

#### Definition of Individualized Education Program (§ 300.320)

##### General (§ 300.320(a))

We received numerous comments requesting that we require the IEP to include additional content that is not in the Act. Under section 614(d)(1)(A)(ii)(I) of the Act, the Department cannot interpret section 614 of the Act to require public agencies to include additional information in a child's IEP that is not explicitly required under the Act. Therefore, we generally have not included these comments in our analysis and discussion of § 300.320.

*Comment:* One commenter requested that § 300.320 refer to a "student with a disability" instead of a "child with a disability."

*Discussion:* The words "child" and "student" are used interchangeably throughout the Act. The regulations follow the statutory language whenever possible. In § 300.320, we used the term "child with a disability," consistent with section 614(d) of the Act.

*Changes:* None.

*Comment:* Many commenters recommended that the regulations include a definition of "functional" as it is used, for example, in "functional performance" in § 300.320(a)(1) and "functional goals" in § 300.320(a)(2). Some commenters suggested defining "functional" as the acquisition of essential and critical skills needed for children with disabilities to learn specific daily living, personal, social, and employment skills, or the skills needed to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for postsecondary and other life long learning opportunities. One commenter recommended that the regulations include examples of functional skills and how functional skills should be measured.

*Discussion:* It is not necessary to include a definition of "functional" in these regulations because we believe it is a term that is generally understood to refer to skills or activities that are not considered academic or related to a child's academic achievement. Instead, "functional" is often used in the context of routine activities of everyday living. We do not believe it is necessary to include examples of functional skills in the regulations because the range of functional skills is as varied as the individual needs of children with disabilities. We also decline to include examples of how functional skills are measured because this is a decision that is best left to public agencies, based on

the needs of their children. However, it should be noted that the evaluation procedures used to measure a child's functional skills must meet the same standards as all other evaluation procedures, consistent with § 300.304(c)(1).

*Changes:* None.

*Comment:* One commenter recommended revising § 300.320(a) to state that "an IEP includes" rather than "an IEP must include" in order to reflect the specific language in section 614(d) of the Act. The commenter stated that use of the word "must" limits the contents of an IEP to the items listed in § 300.320(a).

*Discussion:* The word "must" is used in § 300.320(a) to clarify that an IEP is required to include the items listed in § 300.320(a). We believe it is important to retain this language in § 300.320(a). Under section 614(d)(1)(A)(ii)(I) of the Act, section 614 of the Act cannot be interpreted to require content in the IEP beyond that which is specified in the Act.

*Changes:* None.

*Comment:* One commenter requested clarifying the meaning of "appropriate" as used, for example, in § 300.320(a)(1)(ii) to refer to a child's participation in "appropriate" activities.

*Discussion:* The word "appropriate" in these regulations does not have a different meaning from its common usage. Generally, the word "appropriate" is used to mean "suitable" or "fitting" for a particular person, condition, occasion, or place.

*Changes:* None.

*Comment:* Some commenters recommended requiring the IEP to include a statement of the relevant social and cultural background of a child and how those factors affect the appropriate participation, performance, and placement of the child in special education.

*Discussion:* Section 614(d)(1)(A)(ii)(I) of the Act precludes the Department from interpreting section 614 of the Act to require public agencies to include information in a child's IEP other than what is explicitly required in the Act. Therefore, we cannot require the IEP to include the statement requested by the commenters. However, a child's social or cultural background is one of many factors that a public agency must consider in interpreting evaluation data to determine if a child is a child with a disability under § 300.8 and the educational needs of the child, consistent with § 300.306(c)(1)(i).

*Changes:* None.

*Comment:* One commenter stated that adapted physical education should be part of a child's IEP. Another

commenter recommended that travel training be required in the IEP.

*Discussion:* The definition of *special education* in new § 300.39 (proposed § 300.38) includes adapted physical education and travel training. We do not believe adapted physical education and travel training should be mandated as part of an IEP because, as with all special education and related services, each child's IEP Team determines the special education and related services that are needed to meet each child's unique needs in order for the child to receive FAPE. In addition, section 614(d)(1)(A)(ii)(I) of the Act prohibits the Department from interpreting section 614 of the Act to require public agencies to include information in a child's IEP that is not explicitly required under the Act.

*Changes:* None.

*Comment:* One commenter recommended that IEPs include the array of new tools used with nondisabled children, so that children with disabilities have access to the materials they need to progress in the general education curriculum.

*Discussion:* There is nothing in the Act that requires new tools or the same tools and materials used by nondisabled children to be used with children with disabilities or be specified in children's IEPs. Therefore, we cannot make the requested change because section 614(d)(1)(A)(ii)(I) of the Act prohibits the Department from interpreting section 614 of the Act to require public agencies to include information in a child's IEP that is not explicitly required under the Act. Each child's IEP Team determines the special education and related services, as well as supplementary aids, services, and supports that are needed to meet the child's needs in order to provide FAPE consistent with § 300.320(a)(4) and section 614(d)(1)(A)(i)(IV) of the Act.

*Changes:* None.

#### Present Levels of Academic Achievement and Functional Performance (§ 300.320(a)(1))

*Comment:* A few commenters stated that § 300.320(a)(1) requires an IEP to include a statement of the child's present levels of academic achievement, and recommended that the regulations define "academic achievement."

*Discussion:* "Academic achievement" generally refers to a child's performance in academic areas (e.g., reading or language arts, math, science, and history). We believe the definition could vary depending on a child's circumstance or situation, and therefore, we do not believe a definition of

"academic achievement" should be included in these regulations.

*Changes:* None.

*Comment:* Some commenters recommended that the regulations clarify that not every child requires a functional performance statement or functional annual goals. Some commenters stated that requiring functional assessments for all children places an unnecessary burden on an LEA, does not add value for every child, and creates a potential for increased litigation. One commenter recommended that § 300.320(a)(1), regarding the child's present levels of performance, and § 300.320(a)(2), regarding measurable annual goals, clarify that functional performance and functional goals should be included in a child's IEP only if determined appropriate by the child's IEP Team.

*Discussion:* We cannot make the changes requested by the commenters. Section 614(d)(1)(A)(i)(I) of the Act requires an IEP to include a statement of the child's present levels of academic achievement and functional performance.

*Changes:* None.

*Comment:* One commenter requested that the regulations require a child's present levels of performance to be aligned with the child's annual goals. Another commenter stated that the content of the IEP should be aligned with the State's core curriculum content standards and the knowledge and skills needed for children with disabilities to become independent, productive, and contributing members of their communities and the larger society.

*Discussion:* The IEP Team's determination of how the child's disability affects the child's involvement and progress in the general education curriculum is a primary consideration in the development of the child's annual IEP goals. Section 300.320(a)(1)(i), consistent with section 614(d)(1)(A)(i)(I)(aa) of the Act, requires the statement of a child's present levels of performance in the IEP to include how the child's disability affects the child's involvement and progress in the general education curriculum. This directly corresponds with the provision in § 300.320(a)(2)(i)(A) and section 614(d)(1)(A)(i)(II)(aa) of the Act, which requires the IEP to include measurable annual goals designed to 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. We do not believe further clarification is needed regarding the alignment of a child's present levels of performance with the child's annual goals.

With regard to the alignment of the IEP with the State's content standards, § 300.320(a)(1)(i) clarifies that the general education curriculum means the same curriculum as all other children. Therefore, an IEP that focuses on ensuring that the child is involved in the general education curriculum will necessarily be aligned with the State's content standards. Congress acknowledged, in section 601(c)(5)(A) of the Act, that ensuring access to the general education curriculum in the regular classroom, to the maximum extent possible, is also effective in preparing children with disabilities to lead productive and independent adult lives. We do not believe further clarification is necessary to address the commenters' concerns.

*Changes:* None.

#### Measurable Annual Goals (§ 300.320(a)(2))

*Comment:* One commenter requested clarification as to whether IEP goals must be specific to a particular discipline (e.g., physical therapy goals, occupational therapy goals). One commenter recommended that goals be explicitly defined and objectively measured. Another commenter recommended requiring IEP goals to have specific outcomes and measures on an identified assessment tool. One commenter recommended clarifying that an IEP Team is permitted, under certain circumstances, to write goals that are intended to be achieved in less than one year.

*Discussion:* Section 300.320(a)(2)(i), consistent with section 614(d)(1)(A)(i)(II) of the Act, requires the IEP to include measurable annual goals. Further, § 300.320(a)(3)(i), consistent with section 614(d)(1)(A)(i)(III) of the Act, requires the IEP to include a statement of how the child's progress toward meeting the annual goals will be measured. The Act does not require goals to be written for each specific discipline or to have outcomes and measures on a specific assessment tool. Furthermore, to the extent that the commenters are requesting that we mandate that IEPs include specific content not in section 614(d)(1)(A)(i) of the Act, under section 614(d)(1)(A)(ii)(I), we cannot interpret section 614 to require that additional content. IEPs may include more than the minimum content, if the IEP Team determines the additional content is appropriate.

*Changes:* None.

*Comment:* Some commenters recommended requiring related services in every child's IEP. The commenters stated that related services are necessary

to enhance the overall health and well-being of the child to prevent secondary conditions; ensure that the child progresses towards independent functioning and community integration; increase the child's ability to function and learn in his or her educational environment; develop social interaction skills to enhance a child's ability to communicate, build relationships, and reinforce other positive behavior skills; and further advance the child's ability to complete his or her own educational requirements and goals.

*Discussion:* To require related services for every child with a disability would be inconsistent with the concept of individualization that has been part of the Act since its inception in 1975. Related services are only required to the extent that such services are necessary to enable the child to benefit from special education. Related services, as with any other service in an IEP, are determined on an individual basis by the child's IEP Team.

*Changes:* None.

*Comment:* Many commenters opposed the removal of benchmarks and short-term objectives as required components of the IEP and recommended that States and LEAs be permitted to require benchmarks and short-term objectives for all children with disabilities. Many commenters recommended that the regulations allow the IEP Team to determine whether to include short-term objectives in a child's IEP to measure progress in functional areas that are not measurable through other means.

*Discussion:* Benchmarks and short-term objectives were specifically removed from section 614(d)(1)(A)(i)(II) of the Act. However, because benchmarks and short-term objectives were originally intended to assist parents in monitoring their child's progress toward meeting the child's annual goals, we believe a State could, if it chose to do so, determine the extent to which short-term objectives and benchmarks would be used. However, consistent with § 300.199(a)(2) and sections 608(a)(2) and 614(d)(1)(A)(ii)(I) of the Act, a State that chooses to require benchmarks or short-term objectives in IEPs in that State would have to identify in writing to the LEAs located in the State and to the Secretary that such rule, regulation, or policy is a State-imposed requirement, which is not required by Part B of the Act or the Federal regulations.

*Changes:* None.

*Comment:* A few commenters supported the requirement in § 300.320(a)(2)(ii) for benchmarks or short-term objectives to be developed

for children who take alternate assessments aligned to alternate achievement standards. However, a few commenters stated that limiting short-term objectives to children who take alternate assessments is not acceptable because the one percent limit on the percentage of children who may take alternate assessments is arbitrary.

*Discussion:* The requirement to develop short-term objectives or benchmarks covers all children with disabilities who are assessed using alternate assessments aligned to alternate achievement standards, consistent with section 614(d)(1)(A)(i)(I)(cc) of the Act. The one percent cap referred to by the commenter is not a limit on the number of children who may take an alternate assessment based on alternate achievement standards. Rather, it is a limit on the number of proficient and advanced scores that may be included in calculating adequate yearly progress (AYP) under the ESEA, consistent with 34 CFR § 200.13(c)(1)(ii). As noted previously, the requirement to include benchmarks or short-term objectives for all children with disabilities was specifically removed from section 614(d)(1)(A)(i)(II) of the Act.

*Changes:* None.

*Comment:* One commenter stated that the IEP should not include benchmarks for alternate achievement standards because this would be teaching to the test and would lower expectations for children.

*Discussion:* Section 300.320(a)(2)(ii) requires benchmarks or short-term objectives only for children with disabilities who take alternate assessments aligned to alternate achievement standards. By "teaching to the test," we assume that the commenter believes that a benchmark or short-term objective must be written for each alternate achievement standard. There is no such requirement in the Act or these regulations.

*Changes:* None.

*Comment:* One commenter requested clarification on how schools should determine which children in kindergarten through grade two must have short-term objectives or benchmarks in their IEPs. Another commenter requested clarification on how the requirements for benchmarks or short-term objectives apply to preschoolers.

*Discussion:* Section 300.320(a)(2)(ii), consistent with section 614(d)(1)(A)(i)(I)(cc) of the Act, requires an IEP to include benchmarks or short-term objectives for children with disabilities who take an alternate assessment aligned to alternate

achievement standards. This would apply to preschool children and children with disabilities in kindergarten through grade two only if these children are assessed in a State or districtwide assessment program and the State has opted to develop an alternate assessment based on alternate achievement standards. Under title I of the ESEA, States are only required to assess children in grades 3 through 8 and once in high school, so it is unlikely that even States that choose to develop alternate achievement standards will include this age population in a Statewide assessment program or develop an alternate achievement standard for these children.

*Changes:* None.

*Comment:* One commenter recommended that the regulations require IEP Team members, including the parents, to be involved in developing short-term objectives.

*Discussion:* Sections 300.320 through 300.324 and section 614(d) of the Act are clear that the IEP Team, which includes the parent, is responsible for developing benchmarks or short-term objectives for children who take alternate assessments aligned to alternate achievement standards.

*Changes:* None.

*Comment:* One commenter recommended clarifying that goals and objectives must be aligned with the State's alternate assessment.

*Discussion:* Section 612(a)(16)(C)(ii) of the Act requires alternate assessments to be aligned with the State's challenging academic content standards and academic achievement standards, and if the State has adopted alternate academic achievement standards permitted under 34 CFR § 200.1(d), to measure the achievement of children with disabilities against those standards. Section 614(d)(1)(A)(i)(II) of the Act requires the IEP to include a statement of measurable annual goals, including academic and functional goals, designed to 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. However, there is nothing in the Act that requires a child's IEP goals to be aligned with the State's alternate assessment based on alternate achievement standards. Additionally, for some children, goals may be needed for activities that are not closely related to a State's academic content and academic achievement standards.

*Changes:* None.

*Comment:* A few commenters stated that the regulations should be more specific about what must be included in an IEP goal if benchmarks or short-term

objectives are not required in every child's IEP.

*Discussion:* The regulations are clear on the requirements for IEP goals. Section 300.320(a)(2)(i), consistent with section 614(d)(1)(A)(i)(II) of the Act, requires that annual IEP goals be measurable and designed to 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 to meet each of the child's other educational needs that result from the child's disability. We believe that these requirements will ensure that progress toward achieving a child's annual goals can be objectively monitored and measured. We do not believe that additional specificity is needed.

*Changes:* None.

*Comment:* One commenter suggested requiring SEAs to ensure that LEAs receive professional development in writing measurable goals and effective methods of measuring progress toward achieving those goals.

*Discussion:* We do not believe that the requested requirement should be included in the regulations. State and local officials are in the best position to determine the training and professional development needs of their personnel.

*Changes:* None.

*Comment:* One commenter recommended retaining current § 300.350, regarding the responsibilities of the public agency to provide special education and related services to a child with a disability in accordance with the child's IEP and to make a good-faith effort to assist the child to achieve the goals and objectives or benchmarks in the IEP.

*Discussion:* The requirement in current § 300.350(a)(1), regarding a public agency's responsibility to provide special education and related services to a child with a disability in accordance with the child's IEP, is unnecessary, because entitlement to FAPE under the Act includes the provision of special education and related services in accordance with an IEP. Paragraphs (a)(2) and (b) in current § 300.350, regarding accountability for a child achieving his or her goals, are unnecessary because other Federal laws, such as title I of the ESEA, already provide sufficient motivation for agency effort to assist children with disabilities in making academic progress. Current § 300.350(c), regarding the rights of parents to invoke due process procedures if a parent feels that efforts are not being made to achieve the IEP goals, is unnecessary because it merely provides explanatory information regarding the due process procedures

for parents and children that are available in §§ 300.500 through 520.

*Changes:* None.

#### Periodic Progress Reports (§ 300.320(a)(3)(ii))

*Comment:* A few commenters supported the language in § 300.320(a)(3)(ii), which requires the IEP to include a description of when periodic reports on the child's progress toward meeting the annual goals will be provided. However, many commenters recommended retaining current § 300.347(a)(7), which requires parents of a child with a disability to be informed about their child's progress at least as often as parents of nondisabled children and for the report to include information on the extent to which the child's progress is sufficient to enable the child to achieve the goals by the end of the year.

One commenter recommended requiring progress reports to be provided with enough time to allow changes in the IEP if the goals will not be met by the end of the year. A few commenters recommended requiring the reports to explain, in reasonable detail and with specific progress measures, the extent to which the child is making progress on each of the annual goals in the child's IEP. Another commenter recommended requiring LEAs to report progress in measurable terms. The commenter stated that many LEAs convert a measurable objective or goal into subjective and vague language, such as "adequate progress," which does not provide objective measurements of achievement. Another commenter recommended requiring progress reports to be specifically linked to the measurable outcomes of a child's annual goals.

Numerous commenters requested that progress reports be provided with school report cards. However, one commenter stated that not all school districts have quarterly report cards, and, therefore, the regulations should require progress reports to be issued at the same time as other report cards in the district.

*Discussion:* Section 300.320(a)(3)(ii) follows the language in section 614(d)(1)(A)(i)(III) of the Act and requires the IEP to include a description of when periodic reports on the child's progress toward meeting the annual goals will be provided. The Act does not require report cards or quarterly report cards. Report cards and quarterly report cards are used as examples in § 300.320(a)(3)(ii) of when periodic reports on the child's progress toward meeting the annual goals might be provided. The specific times that

progress reports are provided to parents and the specific manner and format in which a child's progress toward meeting the annual goals is reported is best left to State and local officials to determine. In addition, under section 614(d)(1)(A)(ii)(I) of the Act we cannot interpret section 614 of the Act to require additional information in a child's IEP that is not specifically required by the Act.

*Changes:* None.

#### Statement of Special Education and Related Services (§ 300.320(a)(4))

*Comment:* One commenter recommended requiring the regular education teacher to offer modifications for every assignment given to a child with a disability.

*Discussion:* It would be inconsistent with the Act to implement the commenter's recommendation. Consistent with § 300.320(a)(4) and section 614(d)(1)(A)(i)(IV) of the Act, the child's IEP Team determines the special education and related services, and supplementary aids, services, and other supports that are needed for the child to advance appropriately toward meeting the child's annual goals.

*Changes:* None.

*Comment:* A significant number of commenters recommended the regulations include a definition of "peer-reviewed research," as used in § 300.320(a)(4). One commenter recommended that the definition of peer-reviewed research be consistent with the work of the National Research Council.

*Discussion:* "Peer-reviewed research" 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. However, there is no single definition of "peer reviewed research" because the review process varies depending on the type of information to be reviewed. We believe it is beyond the scope of these regulations to include a specific definition of "peer-reviewed research" and the various processes used for peer reviews.

*Changes:* None.

*Comment:* Some commenters recommended revising § 300.320(a)(4) to require special education and related services, and supplementary aids and services, to be based on "evidenced-based practices" rather than "peer-reviewed research." A few commenters recommended revising § 300.320(a)(4) to require special education and related services, and supplementary aids and services to be based on peer-reviewed research, evidenced-based practices,

and emerging best practices. Many commenters recommended clarifying the meaning and intent of the phrase “to the extent practicable.” One commenter recommended requiring all IEP Team meetings to include a focused discussion on research-based methods and to provide parents with prior written notice when the IEP Team refuses to provide documentation of research-based methods.

*Discussion:* Section 300.320(a)(4) incorporates the language in section 614(d)(1)(A)(i)(IV) of the Act, which requires that special education and related services and supplementary aids and services be based on peer-reviewed research to the extent practicable. The Act does not refer to “evidenced-based practices” or “emerging best practices,” which are generally terms of art that may or may not be based on peer-reviewed research. Therefore, we decline to change § 300.320(a)(4) in the manner suggested by the commenters. The phrase “to the extent practicable,” as used in this context, generally means that services and supports should be based on peer-reviewed research to the extent that it is possible, given the availability of peer-reviewed research. We do not believe further clarification is necessary.

We decline to require all IEP Team meetings to include a focused discussion on research-based methods or require public agencies to provide prior written notice when an IEP Team refuses to provide documentation of research-based methods, as we believe such requirements are unnecessary and would be overly burdensome.

*Changes:* None.

*Comment:* One commenter recommended clear guidance on the responsibilities of States, school districts, and school personnel to provide special education and related services, and supplementary aids and services that are based on peer-reviewed research. One commenter requested clarification that the requirement for special education and related services, and supplementary aids and services to be based on peer-reviewed research does not mean that the service with the greatest body of research is the service necessarily required for FAPE. Another commenter requested that the regulations clarify that the failure of a public agency to provide special education and related services, and supplementary aids and services based on peer-reviewed research, does not result in a denial of FAPE, and that the burden of proof is on the moving party when the denial of FAPE is at issue.

*Discussion:* Section 612(d)(1)(A)(i)(IV) of the Act requires special education

and related services, and supplementary aids and services, to be based on peer-reviewed research to the extent practicable. States, school districts, and school personnel must, therefore, select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available. This does not mean that the service with the greatest body of research is the service necessarily required for a child to receive FAPE. Likewise, there is nothing in the Act to suggest that the failure of a public agency to provide services based on peer-reviewed research would automatically result in a denial of FAPE. The final decision about the special education and related services, and supplementary aids and services that are to be provided to a child must be made by the child’s IEP Team based on the child’s individual needs.

With regard to the comment regarding the burden of proof when the denial of FAPE is at issue, we have addressed this issue in the *Analysis of Comments and Changes* section for subpart E.

*Changes:* None.

*Comment:* Several commenters recommended including a construction clause in the regulations to clarify that no child should be denied special education and related services, or supplementary aids and services, based on a lack of available peer-reviewed research on a particular service to be provided.

*Discussion:* We do not believe that the recommended construction clause is necessary. Special education and related services, and supplementary aids and services based on peer-reviewed research are only required “to the extent practicable.” If no such research exists, the service may still be provided, if the IEP Team determines that such services are appropriate. A child with a disability is entitled to the services that are in his or her IEP whether or not they are based on peer-reviewed research. The IEP Team, which includes the child’s parent, determines the special education and related services, and supplementary aids and services that are needed by the child to receive FAPE.

*Changes:* None.

*Comment:* A few commenters recommended that the regulations clarify that the reference to “peer-reviewed research” does not require an IEP to include instructional methodologies. However, a few commenters recommended that the regulations require all elements of a program provided to a child, including program methodology, to be specified in the child’s IEP.

*Discussion:* There is nothing in the Act that requires an IEP to include specific instructional methodologies. Therefore, consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot interpret section 614 of the Act to require that all elements of a program provided to a child be included in an IEP. The Department’s longstanding position on including instructional methodologies in a child’s IEP is that it is an IEP Team’s decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.

*Changes:* None.

*Comment:* A few commenters requested that the regulations require programs provided to a child with a disability to be research-based with demonstrated effectiveness in addressing the particular needs of a child.

*Discussion:* While the Act clearly places an emphasis on practices that are based on scientific research, there is nothing in the Act that requires all programs provided to children with disabilities to be research-based with demonstrated effectiveness in addressing the particular needs of a child where not practicable. We do not believe the recommended change should be made because, ultimately, it is the child’s IEP Team that determines the special education and related services that are needed by the child in order for the child to receive FAPE.

*Changes:* None.

*Comment:* A few commenters recommended that § 300.320(a)(4) specifically refer to assistive technology devices as supplementary aids that must be provided to the child.

*Discussion:* It is not necessary to refer to assistive technology devices in § 300.320(a)(4). Section 300.324(a)(2)(v), consistent with section 614(d)(3)(B)(v) of the Act, already requires the IEP Team to consider whether the child needs assistive technology devices and services.

*Changes:* None.

#### Participation With Nondisabled Children (§ 300.320(a)(5))

*Comment:* Many commenters recommended that § 300.320(a)(5), regarding the participation of children with disabilities with nondisabled children, follow the language in section 614(d)(1)(A)(i)(V) of the Act and use the term “regular class” instead of “regular educational environment.” One commenter stated that parents, school staff, and the community consider the “regular class” to be the place where a

child's nondisabled peers go to school, while "regular educational environment" is interpreted to be anywhere in the school, such as down the hallway, in a separate wing of the school, or across the lunch room. One commenter stated that the term "regular education environment" could be interpreted to mean only special classes such as art, music, and gym. A few commenters recommended defining "regular education environment" to mean the participation of children with disabilities with their nondisabled peers in the regular classroom and other educational settings, including nonacademic settings.

*Discussion:* We agree that use of the term "regular educational environment" may be misinterpreted. Therefore, we will revise § 300.320(a)(5) to require the IEP to include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class.

*Changes:* We have changed § 300.320(a)(5) to refer to the "regular class" instead of the "regular education environment."

*Comment:* One commenter recommended adding language to § 300.320(a)(5) for preschool children with disabilities and stated that "regular education environment" should be replaced with "settings with typically developing peers."

*Discussion:* Section 300.320(a)(5) follows the language in section 614(d)(1)(A)(i)(V) of the Act and applies to all children with disabilities covered by Part B of the Act, which includes preschool children under section 619 of the Act. We do not believe it is necessary to change the regulations in the manner suggested by the commenter because the "regular class" includes a preschool setting with typically developing peers.

*Changes:* None.

Statewide and Districtwide Assessments (§ 300.320(a)(6))

*Comment:* A few commenters recommended requiring parents to be informed in writing of the consequences of their child taking an alternate assessment, including any effect on the child's eligibility for graduation with a regular high school diploma. The commenters stated that providing this information to parents is particularly important in States that require passing a State exam in order to obtain a regular high school diploma.

*Discussion:* Section 612(a)(16) of the Act requires that the State (or, in the case of a districtwide assessment, the LEA) develop and implement guidelines for the participation of children with

disabilities in alternate assessments, including alternate assessments aligned to alternate achievement standards permitted under 34 CFR 200.1(d). Section 200.6(a)(2)(iii)(A)(2) of the ESEA title I regulations requires States to inform parents that their child's achievement will be measured against alternate achievement standards.

We acknowledge that these requirements do not specifically require a public agency to inform parents of any potential consequences of a child participating in an alternate assessment. The commenters' recommendation will be considered along with other comments we have received in response to the NPRM proposing changes to § 300.160, which was published in the **Federal Register** on December 15, 2005 (70 FR 74624). As noted elsewhere in this preamble, the final regulations for § 300.160, regarding participation in assessments, will be published in a separate final rule.

*Changes:* None.

*Comment:* One commenter recommended defining "appropriate accommodations" and "individual appropriate accommodations" as accommodations that are needed to meet the child's unique needs that maintain and preserve test validity, reliability, and technical testing standards.

*Discussion:* Section 614(d)(1)(A)(i)(VI)(aa) of the Act requires that the IEP include a statement of any individual appropriate accommodations that are necessary to measure the academic and functional performance of the child on State and districtwide assessments. The requirements in proposed § 300.160, published in the **Federal Register** on December 15, 2005, provide additional information about accommodations and the participation of children with disabilities in State and districtwide assessments. As noted elsewhere in this preamble, the final § 300.160 will be published in a separate final rule. We will consider the commenter's recommendation along with other comments received in response to the NPRM proposing changes to § 300.160.

*Changes:* None.

*Comment:* One commenter recommended changing the word "must" in § 300.320(a)(6)(ii) to state that if an IEP Team determines that the child will take an alternate assessment, the IEP "will" include a statement of why the child cannot participate in the regular assessment. The commenter stated that "will" is less coercive and more in line with the consensus decision-making model of IEP Team meetings.

*Discussion:* Generally, we have used the word "must" for regulations that describe what a public agency must do and the word "will" when referring to what the IEP Team has determined a child will do. While we understand the commenter's concern, we believe it is unnecessary to change § 300.320(a)(6)(ii).

*Changes:* None.

*Comment:* One commenter recommended that § 300.320(a)(6) clarify that a child with the most significant cognitive disabilities, who has been determined by the IEP Team to be unable to make progress toward the regular achievement standards even with the best instruction, will be taught and assessed based on alternate achievement standards.

*Discussion:* It would be inappropriate to require a child with the most significant cognitive disabilities to be taught and assessed based on alternate achievement standards. Consistent with section 614(d)(1)(A)(i)(VI)(bb) of the Act, the child's IEP Team is responsible for determining the particular assessment that is appropriate for a child. Under § 200.1(d) of the ESEA title I regulations, a State is permitted, but not required, to adopt alternate achievement standards and develop an alternate assessment based on those standards for children with the most significant cognitive disabilities. There is no requirement under the Act or the ESEA that a State develop an alternate assessment based on alternate achievement standards.

*Changes:* None.

*Comment:* One commenter stated that § 300.320(a)(6) should include information about alternate assessments because there will be children who will not be successful with generic accommodations.

*Discussion:* Section 612(a)(16)(C) of the Act provides information regarding alternate assessments and the requirements for alternate assessments under the Act. As noted elsewhere in this preamble, the final regulations for § 300.160, which will incorporate the requirements in section 612(a)(16) of the Act and provide further clarification regarding the participation of children with disabilities in assessments, will be published in a separate document. We will consider the commenter's recommendation along with other comments received in response to the NPRM proposing changes to § 300.160.

*Changes:* None.

*Comment:* One commenter suggested revising § 300.320(a)(6)(i), which requires the IEP to include a statement of any individual appropriate accommodations that are necessary to

“measure” the academic and functional performance of the child on State and districtwide assessments. The commenter recommended revising the statement to require the IEP to include a statement of any individual appropriate accommodations that are necessary to allow the child to “participate” in assessments.

*Discussion:* To change the regulation in the manner suggested by the commenter would be inconsistent with the Act. Section 300.320(a)(6)(i) reflects the language in section 614(d)(1)(A)(i)(VI)(aa) of the Act and requires accommodations that are necessary to measure a child’s performance. Accommodations that allow a child to “participate” in assessments could include accommodations that invalidate the child’s test score, thereby resulting in an assessment that does not “measure” a child’s performance.

*Changes:* None.

Initiation, Frequency, Location, and Duration of Services (§ 300.320(a)(7))

*Comment:* One commenter recommended clarifying that the term “duration” in § 300.320(a)(7), regarding services and modifications in the IEP, refers to the length of a particular service session and not the entire IEP.

*Discussion:* The meaning of the term “duration” will vary, depending on such things as the needs of the child, the service being provided, the particular format used in an IEP, and how the child’s day and IEP are structured. What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.

*Changes:* None.

*Comment:* One commenter requested that the regulations require the IEP to include information about the person(s) providing the services, rather than just a listing of the services.

*Discussion:* The Act does not require the IEP to include information about the specific person(s) providing the services. Section 614(d)(1)(A)(ii)(I) of the Act precludes the Department from interpreting section 614 of the Act to require public agencies to include information in the IEP beyond what is specifically required by the Act.

*Changes:* None.

Transition Services (§ 300.320(b))

*Comment:* Many commenters disagreed with changing the age at which transition services must be provided to a child with a disability from 14 years to 16 years. One commenter recommended that transition services begin at age 13. Another commenter recommended that transition services begin before high school, because if there is a choice of high schools, transition goals may be a determining factor in the selection process. A few commenters requested that the regulations clarify that States may continue to begin transition services with the first IEP after the child turns age 14. Some commenters recommended that transition begin two to four full school years before the child is expected to graduate because some children may exit school at age 17.

Numerous commenters recommended that the regulations clarify that States have discretion to require transition services to begin before age 16 for all children in the State. However, a few commenters recommended removing the phrase “or younger if determined appropriate by the IEP Team” in § 300.320(b) because the language is not in the Act and promotes additional special education services.

A few commenters recommended that the regulations require transition planning to begin earlier than age 16 if necessary for the child to receive FAPE. Other commenters recommended clarifying that, in order for transition services to begin by age 16, transition assessments and other pre-planning needs that would facilitate movement to post-school life must be completed prior to the child’s 16th birthday. One commenter recommended requiring transition planning to begin no later than the child’s freshman year in high school and that this planning include selecting assessment instruments and completing assessments that will lead to the development of transition goals and objectives in the child’s IEP.

*Discussion:* Section 614(d)(1)(A)(i)(VIII) of the Act requires that transition services begin no later than the first IEP to be in effect when the child turns 16. Because IEP Team decisions must always be individualized, we have included the phrase “or younger if determined appropriate by the IEP Team” in § 300.320(b).

The Act does not require transition planning or transition assessments, as recommended by some commenters. Therefore, consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot

interpret section 614 of the Act to require that IEPs include this information because it is beyond what is specifically required in the Act.

The Department believes that a State could require transition services, if it chose to do so, to begin before age 16 for all children in the State. However, consistent with § 300.199(a)(2) and section 608(a)(2) of the Act, a State that chooses to require transition services before age 16 for all children would have to identify in writing to its LEAs and to the Secretary that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the Act and Federal regulations.

*Changes:* None.

*Comment:* A few commenters recommended that § 300.320(b) clarify that the child is a participating IEP Team member and that the IEP Team is required to consider the child’s preferences in developing transition goals and services.

*Discussion:* The clarification requested is not needed because § 300.321(b)(1) already requires the public agency to invite a child with a disability to attend the child’s IEP Team meeting, if a purpose of the meeting is to consider the child’s postsecondary goals and the transition services needed to assist the child to reach those goals. In addition, § 300.321(b)(2) requires the public agency to take steps to ensure that the child’s preferences and interests are considered, if the child does not attend the IEP Team meeting. We believe that this is sufficient clarification that, for the purposes mentioned by the commenter, the child is a participating IEP Team member.

*Changes:* None.

*Comment:* A few commenters requested that the regulations clarify whether “transition assessments” are formal evaluations or competency assessments. One commenter stated that transition assessments should be different for a college-bound child with a disability than for a child with severe disabilities whose future is a group home.

*Discussion:* We do not believe the requested clarification is necessary because the specific transition assessments used to determine appropriate measurable postsecondary goals will depend on the individual needs of the child, and are, therefore, best left to States and districts to determine on an individual basis.

*Changes:* None.

*Comment:* One commenter requested clarification of the term “postsecondary goals.” Another commenter recommended defining “postsecondary

goals” in the definition section of these regulations.

*Discussion:* We do not believe it is necessary to include a definition of “postsecondary goals” in the regulations. The term is generally understood to refer to those goals that a child hopes to achieve after leaving secondary school (i.e., high school).

*Changes:* None.

*Comment:* One commenter requested clarification regarding whether § 300.320(b)(1) requires measurable postsecondary goals in each of the areas of training, education, employment, and, independent living skills.

*Discussion:* Beginning not later than the first IEP to be in effect when the child turns 16 years of age, section 614(d)(1)(A)(i)(VIII)(aa) of the Act requires a child’s IEP to include measurable postsecondary goals in the areas of training, education, and employment, and, where appropriate, independent living skills. Therefore, the only area in which postsecondary goals are not required in the IEP is in the area of independent living skills. Goals in the area of independent living are required only if appropriate. It is up to the child’s IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE.

*Changes:* None.

*Comment:* Some commenters recommended that the regulations retain the requirement in current § 300.347(b)(1) that requires IEPs to include a statement of the transition service needs of the child under applicable components of the child’s IEP that focus on the child’s courses of study (such as participation in advanced-placement courses or a vocational education program).

*Discussion:* The requirement referred to by the commenter is already in the regulations. Section 300.320(b)(2) includes a reference to “courses of study” as part of transition services, consistent with section 614(d)(1)(A)(i)(VIII)(bb) of the Act. The examples in current § 300.347(b)(2) (i.e., advanced placement course or a vocational education program) are not included in § 300.320(b)(2) because we do not believe they are necessary to understand and implement the requirement.

*Changes:* None.

*Comment:* Several commenters recommended that the regulations explicitly require transition services to include vocational and career training through work-study and documentation of accommodations needed in the workplace.

*Discussion:* The Act does not require IEPs to include vocational and career training or documentation of workplace accommodations. Consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot interpret section 614 of the Act to require IEPs to include information beyond what is specifically required in the Act. It is up to each child’s IEP Team to determine the transition services that are needed to meet the unique transition needs of the child.

*Changes:* None.

*Comment:* A few commenters recommended that the regulations clarify that schools can use funds provided under Part B of the Act to support children in transitional programs on college campuses and in community-based settings.

*Discussion:* We do not believe that the clarification requested by the commenters is necessary to add to the regulations because, as with all special education and related services, it is up to each child’s IEP Team to determine the special education and related services that are needed to meet each child’s unique needs in order for the child to receive FAPE. Therefore, if a child’s IEP Team determines that a child’s needs can best be met through participation in transitional programs on college campuses or in community-based settings, and includes such services on the child’s IEP, funds provided under Part B of the Act may be used for this purpose.

*Changes:* None.

*Comment:* One commenter recommended more accountability for transition services.

*Discussion:* The Act contains significant changes to the monitoring and enforcement requirements under Part B of the Act. Section 300.600, consistent with section 616(a) of the Act, requires the primary focus of monitoring to be on improving educational results and functional outcomes for children with disabilities. The provisions in section 616(a) and (b)(2)(C)(ii) of the Act set forth the responsibility of States to monitor the implementation of the Act, enforce the Act, and annually report on performance of the State and each LEA.

Section 300.600(c), consistent with section 616(a)(3) of the Act, requires States to measure performance in monitoring priority areas using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance. Section 300.601 reflects statutory language in section 616(b) of the Act and requires States to have a performance plan that evaluates their efforts to implement the requirement

and purposes of the Act. Transition services are specifically being addressed in State performance plans. We believe that these changes to the monitoring and enforcement requirements will ensure that States and LEAs are held accountable for the transition services they provide.

*Changes:* None.

*Comment:* One commenter requested that the regulations be revised to include an affirmative statement that transition services can be used to drive the IEP for the child.

*Discussion:* It would be inappropriate to include such a requirement in these regulations because, while section 614(d)(1)(A)(i)(VIII) of the Act includes transition services in a child’s IEP, there is no suggestion that it be the only component or the component that governs a child’s IEP.

*Changes:* None.

#### Transfer of Rights at Age of Majority (§ 300.320(c))

*Comment:* One commenter recommended that the regulations specify how the child is to be informed of the transfer of rights. The commenter also recommended that the regulations require public agencies to explain to the child the rights that will transfer to the child on reaching the age of majority.

*Discussion:* The specific manner in which a child is informed about his or her rights is best left to States, districts, and IEP Teams to decide, based on their knowledge of the child and any unique local or State requirements. Section 300.320(c), consistent with section 614(d)(1)(A)(i)(VIII)(cc) of the Act, already requires the IEP to include a statement that the child has been informed of the child’s rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority. We do not believe further clarification is necessary.

*Changes:* None.

*Comment:* One commenter stated that § 300.320(c) is redundant with § 300.520.

*Discussion:* Sections 300.320 and 300.520 are related, but not redundant. Section 300.320(c) requires the IEP to include a statement that the child has been informed of the child’s rights under Part B of the Act that will transfer to the child on reaching the age of majority. Section 300.520 provides additional information about the transfer of rights as part of the procedural safeguards for parents and children under the Act.

*Changes:* None.



## Construction (§ 300.320(d))

*Comment:* One commenter stated that § 300.320(d)(2) constrains States and LEAs from adding elements to the IEP and misses the opportunity to make sense of the one percent and two percent rules under the ESEA. One commenter recommended that the regulations explicitly state that nothing limits a State from adding its own mandatory components of the IEP, especially given the purpose and intent to align the Act with the ESEA.

*Discussion:* There is nothing in the Act that limits States and LEAs from adding elements to the IEP, so long as the elements are not inconsistent with the Act or these regulations, and States do not interpret the Act to require these additional elements. Section 300.320(d), consistent with section 614(d)(1)(A)(ii)(I) of the Act, does not prohibit States or LEAs from requiring IEPs to include information beyond that which is explicitly required in section 614 of the Act. However, if a State requires IEPs to include information beyond that which is explicitly required in section 614 of the Act, 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 Act or these regulations, consistent with § 300.199(a)(2) and section 608(a)(2) of the Act.

*Changes:* None.

## IEP Team (§ 300.321)

*Comment:* One commenter recommended that the regulations clarify whether regular education teachers are required at every IEP Team meeting.

*Discussion:* Consistent with § 300.321(a)(2) and section 614(d)(1)(B)(ii) of the Act, a regular education teacher is a required member of an IEP Team if the child is, or may be, participating in the regular education environment. In such cases, the regular education teacher would be expected to attend each IEP Team meeting, unless the regular education teacher has been excused from attending a meeting, pursuant to § 300.321(e) and section 614(d)(1)(C) of the Act. We do not believe further clarification is necessary.

*Changes:* None.

*Comment:* Many comments were received recommending that the IEP Team include additional members beyond those required by § 300.321(a). Several commenters stated that occupational therapists should be part of the IEP Team because of their unique training in assisting children to learn in changing environments. A few

commenters recommended that a recreation therapist or specialist be included on the IEP Team. Other commenters stated that a practitioner skilled in assistive technology should be included. Several commenters recommended that the IEP Team include individuals with knowledge or special expertise regarding the related services needs of a child.

Some commenters stated that individuals from the child welfare system should be included as members of the IEP Team and should be invited to attend IEP Team meetings when the purpose of the meeting is to consider transition services for a child who is a ward of the State or in the custody of the child welfare agency. The commenters recommended that the IEP Team should specifically include any of the following individuals: The child's attorney or guardian *ad litem*, court appointed special advocate, caseworker, foster parent, caretaker, or judge.

*Discussion:* It would be inappropriate to require that individuals with specific professional knowledge or qualifications attend all IEP Team meetings. These decisions should be made on a case-by-case basis in light of the needs of a particular child. Section 300.321(a)(6), consistent with section 614(d)(1)(B)(vi) of the Act, already allows other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, to be included as members of a child's IEP Team at the discretion of the parent or the agency. Therefore, we decline to make the changes recommended by the commenters. However, it should be noted that if a public agency wishes to invite officials from another agency, such as officials of the child welfare agency that are not representing the child, the public agency must obtain parental consent for the individual to participate in the IEP Team meeting because confidential information about the child from the child's education records would be shared at the meeting.

*Changes:* None.

*Comment:* A few commenters recommended that the IEP Team include a representative of the private school or facility when an IEP is developed for a child in a private school.

*Discussion:* We believe the commenters' concerns are already addressed in the regulations. Section 300.325(a) requires that, before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child and must ensure that a

representative of the private school or facility attends the meeting.

*Changes:* None.

*Comment:* A few commenters stated that the IEP Team should include other persons whose presence on the IEP Team would be beneficial to the child, regardless of their academic qualifications. Other commenters recommended that the IEP Team include credentialed and licensed personnel, even though it is important to recognize that people who are not credentialed have important roles to play.

*Discussion:* We believe the commenters' concerns are already addressed. Section 614(d)(1)(B)(vi) of the Act states that other individuals who have knowledge or special expertise regarding the child may be included as members of a child's IEP Team at the discretion of the parent or the agency. Consistent with § 300.321(c), the party (parents or public agency) who invites the individual to be a member of the IEP Team determines the knowledge or special expertise of such individual.

*Changes:* None.

*Comment:* Several commenters recommended that the IEP Team include an IEP manager who would communicate with IEP members not in attendance, ensure that the IEP requirements are met, and assume responsibility for implementing the IEP.

*Discussion:* The Act does not require an IEP Team manager as a part of the IEP Team. While having one individual manage the provision of services under the IEP might be a good practice in particular circumstances, we decline to require IEP Team managers for all IEPs because, in many cases, it would be unnecessary. In addition, to ensure that all IEP Team members are aware of their responsibilities regarding the implementation of a child's IEP, § 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.

*Changes:* None.

*Comment:* A few commenters recommended that the special education teacher on a child's IEP Team should be required to have expertise in the area of the child's disability. The commenters stated that this is especially important for children with dyslexia and children with other learning disabilities.

A few commenters recommended that the child's future teacher be required to attend an end-of-the-year IEP Team meeting.

*Discussion:* Section 612(d)(1)(B)(iii) of the Act requires that not less than one special education teacher of the child (or where appropriate, not less than one special education provider of the child) be included on the IEP Team. Decisions as to which particular teacher(s) or special education provider(s) are members of the IEP Team and whether IEP Team meetings are held at the end of the school year or some other time, are best left to State and local officials to determine, based on the needs of the child.

*Changes:* None.

*Comment:* A few commenters recommended defining "regular education environment" in § 300.321(a)(2) to mean the regular classroom and the non-academic environment. A few commenters requested that the regulations require children to be in the regular classroom and in nonacademic activities with their nondisabled peers.

*Discussion:* It is not necessary to define "regular education environment" or to repeat that children with disabilities should be included in the regular classroom and in nonacademic activities with their nondisabled peers. The LRE requirements in §§ 300.114 through 300.120, consistent with section 612(a)(5) of the Act, are clear that each public agency must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled. Section 300.117, consistent with section 612(a)(5) of the Act, is clear that this includes nonacademic and extracurricular services and activities.

*Changes:* None.

*Comment:* A few commenters stated that a special education provider should be allowed to substitute for a special education teacher only when the child does not have a special education teacher because the role of a special education teacher is different from the role of a special education provider.

*Discussion:* The recommended change is not appropriate. Section 300.321(a)(2) incorporates the language in section 614(d)(1)(B)(iii) of the Act and requires the IEP Team to include not less than one special education teacher, or where appropriate, not less than one special education provider. The special education provider may substitute when there is no special education teacher. However, the Act leaves open the possibility that there may be other appropriate circumstances when a special education provider could substitute for a special education teacher. These are decisions best left to State and local officials.

*Changes:* None.

*Comment:* A few commenters recommended that the regulations define "special education teacher" and "special education provider," as used in § 300.321(a)(3).

*Discussion:* Section 300.321(a)(3), consistent with section 614(d)(1)(B)(iii) of the Act, requires that the IEP Team include not less than one special education teacher, or where appropriate, not less than one special education provider of the child. This is not a new requirement. The same requirement is in current § 300.344(a)(3). As noted in Attachment I of the March 12, 1999 final regulations, the special education teacher or provider who is a member of the child's IEP Team should be the person who is, or will be, responsible for implementing the IEP. For example, if the child's disability is a speech impairment, the special education teacher or special education provider could be the speech language pathologist. We do not believe that further clarification is needed.

*Changes:* None.

*Comment:* Many commenters recommended that the regulations require the IEP Team to include a representative of the public agency who has the authority to commit resources. One commenter stated that the failure of this individual to attend an IEP Team meeting lengthens the decision-making process, delays services, and removes parents from equal participation in an IEP Team meeting.

*Discussion:* Section 300.321(a)(4) incorporates the language in section 614(d)(1)(B)(iv) of the Act and requires the IEP Team to include a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of LEA resources.

A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided. However, we do not need to regulate in the manner suggested, as the public agency will be bound by the IEP that is developed at an IEP Team meeting.

*Changes:* None.

*Comment:* One commenter recommended that the IEP Team include an individual who is qualified

to conduct individual diagnostic assessments.

*Discussion:* Section 300.321(a)(5) follows the language in section 614(d)(1)(B)(v) of the Act and requires the IEP Team to include an individual who can interpret the instructional implications of evaluation results. An individual who is qualified to conduct a particular assessment does not necessarily have the skills or knowledge to assist the IEP Team in determining the special education, related services, and other supports that are necessary in order for the child to receive FAPE. Therefore, we do not believe that it is necessary to require that the IEP Team also include an individual who can conduct diagnostic assessments.

*Changes:* None.

*Comment:* A few commenters expressed concern that IEP Team meetings are being used by parent advocates to train parents of other children, and by attorneys to train their associates about the school's IEP process. In order to prevent this, these commenters stated that the regulations should identify the specific knowledge and expertise that an individual must have to be included on an IEP Team. One commenter expressed concern about confidentiality rights; the lack of credentials for advocates; and the lack of authority for a parent or school district to prevent advocates from participating in an IEP Team meeting.

*Discussion:* Section 614(d)(1)(B)(vi) of the Act allows other individuals who have knowledge or special expertise regarding the child to be included on a child's IEP Team. Section 300.321(c) provides that the determination of the knowledge or special expertise of these individuals must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team. We continue to believe that this determination is best left to parents and the public agency. We also believe that it would be inappropriate to regulate on the specific knowledge and expertise that an individual must have to be included on an IEP Team because it would be burdensome for both parents and public agencies.

Additionally, nothing in the Act prevents parents from consenting to have an observer who is not a member of the IEP Team present at the meeting, as the parent can consent to the sharing of confidential information about the child. With that exception, it should be emphasized that a person who does not have knowledge and special expertise regarding the child and who is not requested to be present at the IEP Team meeting by the parent or public agency would not be permitted to be a member

of the IEP Team or be permitted to attend the IEP Team meeting as an observer.

*Changes:* None.

*Comment:* A few commenters recommended changing § 300.321(a)(7) to clarify that a parent has the right to bring their child to any or all IEP Team meetings at any age.

*Discussion:* We do not believe that the additional clarification requested by the commenters is necessary. Section 614(d)(1)(B)(vii) of the Act clearly states that the IEP Team includes the child with a disability, whenever appropriate. Generally, a child with a disability should attend the IEP Team meeting if the parent decides that it is appropriate for the child to do so. If possible, the agency and parent should discuss the appropriateness of the child's participation before a decision is made, in order to help the parent determine whether or not the child's attendance would be helpful in developing the IEP or directly beneficial to the child, or both.

Until the child reaches the age of majority under State law, unless the rights of the parent to act for the child are extinguished or otherwise limited, only the parent has the authority to make educational decisions for the child under Part B of the Act, including whether the child should attend an IEP Team meeting.

*Changes:* None.

#### Transition Services Participants (§ 300.321(b))

*Comment:* A few commenters recommended requiring the public agency to invite the child with a disability to attend the child's IEP Team meeting no later than age 16 or at least two years prior to the child's expected graduation, whichever comes first.

*Discussion:* The commenters' concerns are addressed in § 300.321(b), which requires the public agency to invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching the child's postsecondary goals. Furthermore, a child's IEP must include transition services beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP Team, consistent with § 300.320(b).

*Changes:* None.

*Comment:* One commenter requested that the regulations clarify that parents and children are not required to use the transition services offered by agencies

that the school invites to the IEP Team meeting.

*Discussion:* There is nothing in the Act or these regulations that requires a parent or child to participate in transition services that are offered by agencies that the public agency has invited to participate in an IEP Team meeting. However, if the IEP Team determines that such services are necessary to meet the needs of the child, and the services are included on the child's IEP, and the parent (or a child who has reached the age of majority) disagrees with the services, the parent (or the child who has reached the age of majority) can request mediation, file a due process complaint, or file a State complaint to resolve the issue. We do not believe further clarification in the regulations is necessary.

*Changes:* None.

*Comment:* A few commenters recommended requiring the public agency to include all the notice requirements in § 300.322(b) with the invitation to a child to attend his or her IEP Team meeting. The commenters stated that children need to be fully informed about the details and purpose of the meeting in order for them to adequately prepare and, therefore, should have the same information that is provided to other members of the IEP Team.

*Discussion:* We decline to make the suggested change. We believe it would be overly burdensome to require a public agency to include all the notice requirements in § 300.322(b) with an invitation to a child to attend his or her IEP Team meeting, particularly because the information is provided to the child's parents who can easily share this information with the child. However, when a child with a disability reaches the age of majority under State law, the public agency must provide any notice required by the Act to both the child and the parents, consistent with § 300.520 and section 615(m)(1)(A) of the Act.

*Changes:* None.

*Comment:* One commenter requested clarification regarding the public agency's responsibility to invite a child who has not reached the age of majority to the child's IEP Team meeting when a parent does not want the child to attend.

*Discussion:* Section 300.321(b)(1) requires the public agency to invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, regardless of whether the child has

reached the age of majority. However, until the child reaches the age of majority under State law, unless the rights of the parent to act for the child are extinguished or otherwise limited, only the parent has the authority to make educational decisions for the child under Part B of the Act, including whether the child should attend an IEP Team meeting.

*Changes:* None.

*Comment:* A few commenters expressed concern that § 300.321(b) does not require children to have sufficient input as a member of the IEP Team and recommended requiring the IEP Team to more strongly consider the child's preferences and needs.

*Discussion:* Section 300.321(a)(7) includes the child as a member of the IEP Team, when appropriate, and § 300.321(b)(1) requires the public agency to invite the child to the child's IEP Team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. Further, if the child does not attend the IEP Team meeting, § 300.321(b)(2) requires the public agency to take other steps to ensure that the child's preferences and interests are considered. We believe this is sufficient to ensure that the child's preferences and needs are considered and do not believe that any changes to § 300.321(b) are necessary.

*Changes:* None.

*Comment:* One commenter stated that the requirements in § 300.321(b), regarding transition services participants, are not in the Act, are too rigid, and should be modified to provide more flexibility for individual children.

*Discussion:* We believe that, although not specified in the Act, the requirements in § 300.321(b) are necessary to assist children with disabilities to successfully transition from high school to employment, training, and postsecondary education opportunities. We believe it is critical for children with disabilities to be involved in determining their transition goals, as well as the services that will be used to reach those goals. Section 300.321(b), therefore, requires the public agency to invite the child to attend IEP Team meetings in which transition goals and services will be discussed. If the child does not attend the IEP Team meeting, § 300.321(b)(2) requires the public agency to take other steps to ensure that the child's preferences and interests are considered.

We also believe that, when it is likely that a child will be involved with other

agencies that provide or pay for transition services or postsecondary services, it is appropriate (provided that the parent, or a child who has reached the age of majority, consents) for representatives from such agencies to be invited to the child's IEP Team meeting. The involvement and collaboration with other public agencies (e.g., vocational rehabilitation agencies, the Social Security Administration) can be helpful in planning for transition and in providing resources that will help children when they leave high school. We believe that children with disabilities will benefit when transition services under the Act are coordinated with vocational rehabilitation services, as well as other supports and programs that serve all children moving from school to adult life. Therefore, we decline to change the requirements in § 300.321(b).

*Changes:* None.

*Comment:* One commenter stated that § 300.321(b)(1), which requires the public agency to invite the child to an IEP Team meeting when transition is to be considered, duplicates § 300.321(a)(7), which requires a child with a disability to be invited to his or her IEP Team meeting, whenever possible.

*Discussion:* These two provisions are not redundant. Section 300.321(a)(7) requires the public agency to include the child with a disability, when appropriate (not "whenever possible," as stated by the commenter), in the child's IEP Team meeting, and, thus, provides discretion for the parent and the public agency to determine when it is appropriate to include the child in the IEP Team meeting. Section 300.321(b), on the other hand, requires a public agency to invite a child to attend an IEP Team meeting when the purpose of the meeting will be to consider the postsecondary goals for the child and the transition services needed to assist the child to reach those goals. The Department believes it is important for a child with a disability to participate in determining the child's postsecondary goals and for the IEP Team to consider the child's preferences and interests in determining those goals.

*Changes:* None.

*Comment:* Many commenters recommended removing the requirement in § 300.321(b)(3) for parental consent (or consent of a child who has reached the age of majority) before inviting personnel from participating agencies to attend an IEP Team meeting because it is burdensome, may reduce the number of agencies participating in the IEP Team meeting, and may limit the options for transition

services for the child. The commenters stated that this consent is unnecessary under FERPA, and inconsistent with § 300.321(a)(6), which allows the parent or the agency to include other individuals in the IEP Team who have knowledge or special expertise regarding the child.

*Discussion:* Section 300.321(b)(3) was included in the regulations specifically to address issues related to the confidentiality of information. Under section 617(c) of the Act the Department must ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, irrespective of the requirements under FERPA. We continue to believe that a public agency should be required to obtain parental consent (or the consent of a child who has reached the age of majority) before inviting representatives from other participating agencies to attend an IEP Team meeting, consistent with § 300.321(b)(3).

We do not believe that the requirements in § 300.321(b)(3) are inconsistent with § 300.321(a)(6). Section 300.321(a)(6) permits other individuals who have knowledge or special expertise regarding the child to attend the child's IEP Team meeting at the discretion of the parent or the public agency. It is clear that in § 300.321(b)(3), the individuals invited to the IEP Team meeting are representatives from other agencies who do not necessarily have special knowledge or expertise regarding the child. In these situations, we believe that consent should be required because representatives of these agencies are invited to participate in a child's IEP Team meeting only because they may be providing or paying for transition services. We do not believe that representatives of these agencies should have access to all the child's records unless the parent (or the child who has reached the age of majority) gives consent for such a disclosure. Therefore, we believe it is important to include the requirement for consent in § 300.321(b)(3).

*Changes:* None.

*Comment:* Some commenters recommended removing the phrase, "to the extent appropriate" in § 300.321(b)(3) and requiring public agencies to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to the IEP Team meeting.

*Discussion:* We disagree with the recommended change because the decision as to whether to invite a

particular agency to participate in a child's IEP Team meeting is a decision that should be left to the public agency and the parent (or the child with a disability who has reached the age of majority).

*Changes:* None.

*Comment:* Numerous commenters recommended retaining current § 300.344(b)(3)(ii), which requires the public agency to take steps to ensure the participation of invited agencies in the planning of any transition services when the agencies do not send a representative to the IEP Team meeting. These commenters stated that the participation of other agencies is vital to ensuring that the child receives the necessary services. One commenter requested that the regulations clarify that, aside from inviting other agencies to attend a child's IEP Team meeting, public agencies have no obligation to obtain the participation of agencies likely to provide transition services.

*Discussion:* The Act has never given public agencies the authority to compel other agencies to participate in the planning of transition services for a child with a disability, including when the requirements in § 300.344(b)(3)(ii) were in effect. Without the authority to compel other agencies to participate in the planning of transition services, public agencies have not been able to meet the requirement in current § 300.344(b)(3)(ii) to "ensure" the participation of other agencies in transition planning. Therefore, while we believe that public agencies should take steps to obtain the participation of other agencies in the planning of transition services for a child, we believe it is unhelpful to retain current § 300.344(b)(3)(ii).

*Changes:* None.

*Comment:* A few commenters recommended that the regulations require the public agency to put parents in touch with agencies providing transition services.

*Discussion:* We do not believe it is necessary to regulate to require public agencies to put parents in touch with agencies providing transition services. As a matter of practice, public agencies regularly provide information to children and parents about transition services during the course of planning and developing transition goals and determining the services that are necessary to meet the child's transition goals.

*Changes:* None.

*Comment:* One commenter asked whether a parent could exclude an individual from the IEP Team.

*Discussion:* A parent can refuse to provide consent only for the public

agency to invite other agencies that are likely to be responsible for providing or paying for transition services. A parent may not exclude any of the required members of the IEP Team.

*Changes:* None.

#### IEP Team Attendance (§ 300.321(e))

*Comment:* We received many comments from individuals expressing concern about allowing IEP Team members to be excused from attending an IEP Team meeting. A few commenters recommended that the regulations require all IEP Team members to attend all IEP Team meetings without exception. One commenter stated that excusing members from attending IEP Team meetings interrupts the flow of the meeting and takes away time from discussing the child's needs. Another commenter expressed concern that the integrity of the IEP Team meeting process depends on a discussion to determine the services that are necessary to meet the child's unique needs, and that the richness of this discussion may be diminished if IEP Team members are allowed to be excused too frequently and the IEP Team must rely on written input.

Several commenters recommended that the regulations acknowledge that, in most circumstances, interactive discussion in IEP Team meetings is preferable to written input. Many commenters requested that the multidisciplinary scope of the IEP Team meeting be maintained. One commenter stated that written input from an excused IEP Team member is not sufficient and will be burdensome for both the writer and the readers.

*Discussion:* Section 614(d)(1)(C) of the Act allows a parent of a child with a disability and the LEA to agree that the attendance of an IEP Team member at an IEP Team meeting, in whole or in part, is not necessary under certain conditions. Allowing IEP Team members to be excused from attending an IEP Team meeting is intended 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.

*Changes:* None.

*Comment:* Many commenters stated that the excusal provisions in § 300.321 should be optional for States and that States should be allowed to require that all IEP Team members attend each IEP Team meeting. Several commenters recommended allowing States to determine the circumstances or conditions under which attendance at

the IEP Team meeting is not required. A few commenters recommended clarifying whether a State must have policies and procedures to excuse IEP Team members.

*Discussion:* Under section 614(d)(1)(C) of the Act, a State must allow a parent and an LEA to agree to excuse a member of the IEP Team. Section 300.321(e) reflects this requirement and we do not have the authority to make this optional for States. We also do not have the authority to allow a State to restrict, or otherwise determine, when an IEP Team member can be excused from attending a meeting, or to prohibit the excusal of an IEP Team member when the LEA and parent agree to the excusal. Whether a State must have policies and procedures to excuse IEP Team members from attending an IEP Team meeting will depend on whether such policies and procedures are required by a State to implement this statutory requirement. However, every State must allow a parent and an LEA to agree to excuse an IEP Team member from attending an IEP Team meeting.

*Changes:* None.

*Comment:* Several commenters recommended that the regulations clarify whether the excusal agreement must meet the standard for informed consent. Some commenters stated that Congress intended excusal agreements to mean informed written consent. Other commenters stated that parents, not the public agency, can provide consent and therefore, only parents should be allowed to provide consent for excusing IEP Team members from IEP Team meetings. A few commenters recommended simplifying § 300.321(e) by eliminating the different procedures for different types of excusals.

*Discussion:* Whether a parent must provide consent to excuse a member of the IEP Team from attending an IEP Team meeting depends on whether the member's area of the curriculum or related services is being modified or discussed at the IEP Team meeting. We cannot eliminate the different procedures for different types of excusals because section 614(d)(1)(C) of the Act clearly differentiates between circumstances in which parental consent is required and when an agreement is required to excuse an IEP member from attending an IEP Team meeting.

If the member's area is not being modified or discussed, § 300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the member's attendance is not necessary.

An agreement is not the same as consent, but instead refers to an understanding between the parent and the LEA. Section 614(d)(1)(C) of the Act specifically requires that the agreement between a parent and an LEA to excuse a member's attendance at an IEP Team meeting must be in writing. If, however, the member's area is being modified or discussed, § 300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent.

*Changes:* None.

*Comment:* One commenter asked whether parents must be provided any information when asked to excuse IEP Team members. A few commenters recommended that the request for an excusal include the reason for the request to excuse a member of the IEP Team, that it be written in the chosen language of the parent, and accompanied by written evaluations and recommendations of the excused IEP Team member.

A few commenters recommended that no IEP Team member should be excused from attending an IEP Team meeting until the parent is informed about the purpose of the meeting for which the public agency proposes to excuse the IEP Team member; the IEP Team member's name and position; the reason(s) the public agency wants to excuse the IEP Team member; the parent's right to have the IEP Team member present; and the parent's right to discuss with the IEP Team member any issues in advance of the meeting so the parent is adequately informed. The commenters stated that this notice should be included in any statement of parent's rights that is distributed.

Numerous commenters recommended that the regulations include specific language to clarify that, before agreeing to excuse an IEP Team member, serious consideration must be given to determining if written input will be sufficient to thoroughly examine what services are needed and whether changes to the current IEP are necessary. A few commenters recommended that parents be informed of the roles and responsibilities of the excused member prior to giving consent for the excusal. Some commenters stated that parents must understand that they have the right to disagree and not excuse a member of the IEP Team who the parents believe may be essential to developing or revising an IEP. One commenter recommended that the written agreement be required to include information that the parent was informed of the parent's right to have all IEP Team members present.

One commenter recommended permitting States to establish additional procedural safeguards that guarantee that parents who consent to excuse an IEP member from a meeting do so freely and are aware of the implications of their decisions. Some commenters expressed concern that a parent could be pressured to agree to excuse an IEP Team member for what, in reality, are economic or staffing reasons. One commenter stated that parents should have the right to consent to excusal only after conferring with the individual to be excused. Some commenters recommended that parents be informed that they have a legal right to require an IEP Team member to participate in the meeting.

A few commenters expressed concern that the permission to excuse IEP Team members from attending IEP Team meetings will be abused, particularly with language-minority parents who are often misinformed or misled by school districts. Some commenters stated that parents do not understand the roles of the various members and could easily be pressured into excusing vital members of the IEP Team.

A few commenters recommended that the regulations include requirements to guard against excessive excusals. Some commenters stated that an LEA that routinely prevents general or special education teachers, or related services providers, from attending IEP Team meetings using the excusal provisions should be subject to monitoring and review.

*Discussion:* When an IEP Team member's area is not being modified or discussed, § 300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the member's attendance is not necessary. We believe it is important to give public agencies and parents wide latitude about the content of the agreement and, therefore, decline to regulate on the specific information that an LEA must provide in a written agreement to excuse an IEP Team member from attending the IEP Team meeting when the member's area of the curriculum or related services is not being modified or discussed.

When an IEP Team member's area is being modified or discussed, § 300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent. Consistent with § 300.9, *consent* means that the parent has been fully informed in his or her native language, or other mode of communication, and understands that

the granting of consent is voluntary and may be revoked at any time. The LEA must, therefore, provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP Team member from attending an IEP Team meeting in which the member's area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP Team meeting must be held with that IEP Team member in attendance.

We believe that these requirements are sufficient to ensure that the parent is fully informed before providing consent to excuse an IEP Team member from attending an IEP Team meeting in which the member's area of the curriculum will be modified or discussed, and do not believe that it is necessary to include in the regulations the more specific information that commenters recommended be provided to parents.

We also do not believe it is necessary to add a regulation permitting States to establish additional procedural safeguards for parents who consent to excuse an IEP Team member, as recommended by one commenter, because we believe the safeguard of requiring consent will be sufficient to prevent parents from feeling pressured to excuse an IEP Team member. Furthermore, parents who want to confer with an excused team member may ask to do so before agreeing or consenting to excusing the member from attending the IEP Team meeting, but it would be inappropriate to add a regulation that limited parent rights by requiring a conference before the parent could agree or consent to the excusal of an IEP Team member.

With regard to the recommendation that the notice state that the parent has a legal right to require an IEP Team member to participate in an IEP Team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. A parent does not have a legal right to require other members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the LEA to be on the IEP Team, they are not required to attend.

An LEA may not routinely or unilaterally excuse IEP Team members from attending IEP Team meetings as parent agreement or consent is required in each instance. We encourage LEAs to carefully consider, based on the

individual needs of the child and the issues that need to be addressed at the IEP Team meeting whether it makes sense to offer to hold the IEP Team meeting without a particular IEP Team member in attendance or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion. However, we do not believe that additional regulations on this subject are warranted.

An LEA that routinely excuses IEP Team members from attending IEP Team meetings would not be in compliance with the requirements of the Act, and, therefore, would be subject to the State's monitoring and enforcement provisions.

*Changes:* None.

*Comment:* A few commenters requested clarification on whether excusals from IEP Team meetings apply to only regular education teachers, special education teachers, and related services providers, or to all individuals whose curriculum areas may be discussed at an IEP Team meeting. One commenter recommended clarifying that all IEP Team members, as defined in § 300.321, must be represented at the IEP Team meeting unless excused by the parents and the LEA.

One commenter stated that § 300.321(e) can be read to require that each individual invited to the IEP Team meeting by the parent or the public agency (who has knowledge or special expertise) must attend the meeting unless the parent and the agency agree in writing that they need not attend. The commenter recommended that the regulations clarify that the attendance of the other individuals invited to attend the IEP Team meeting by the parent and public agency is discretionary and that no waiver is needed to hold the IEP Team meeting without them. The commenter recommended revising § 300.321(e)(1) to refer to "mandatory" members of the IEP Team. Another commenter expressed concern that it is not possible to pre-determine the areas of the curriculum that may be addressed at an IEP Team meeting, and recommended that excusals be permitted only for the IEP Team members identified by the public agency in § 300.321(a).

One commenter recommended that the regulations allow teachers with classroom responsibilities to attend an IEP Team meeting for 15 to 20 minutes and leave the meeting when necessary. Some commenters requested clarification regarding situations in which there is more than one regular education teacher at an IEP Team meeting and whether one or both

teachers must have a written excusal to leave before the end of an IEP Team meeting.

One commenter stated that it is unclear whether consent must be obtained if a speech pathologist or occupational therapist cannot attend a meeting because speech pathologists and occupational therapists are not required members of an IEP Team.

*Discussion:* We believe that the excusals from IEP Team meetings apply to the members of the IEP Team in paragraphs (a)(2) through (5) in § 300.321, that is, to the regular education teacher of the child (if the child is, or may be participating in the regular education environment); not less than one special education teacher of the child (or where appropriate, not less than one special education provider of the child); a representative of the public agency who meets the requirements in § 300.321(a)(4); and an individual who can interpret the instructional implications of evaluation results. We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the public agency because such individuals are not required members of an IEP Team. We will add new language to § 300.321(e) to clarify the IEP Team members for whom the requirements regarding excusals apply.

With regard to situations in which there is more than one regular education teacher, the IEP Team need not include more than one regular education teacher. The regular education teacher who serves as a member of a child's IEP Team should be a teacher who is, or may be, responsible for implementing a portion of the IEP so that the teacher can participate in discussions about how best to instruct the child. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as the IEP member(s), taking into account the best interest of the child. An LEA could also agree that each teacher attend only the part of the meeting that involves modification to, or discussion of, the teacher's area of the curriculum.

Section 300.321(a)(3) requires the IEP Team to include not less than one special education teacher or where appropriate, not less than one special education provider of the child. As explained earlier, a special education provider is a person who is, or will be, responsible for implementing the IEP. Therefore, if a speech pathologist, occupational therapist, or other special

education provider, other than the child's special education teacher is on the IEP Team, written consent from the parent would be required for the speech pathologist, occupational therapist, or other special education provider to be excused from attending an IEP Team meeting, in whole or in part, when the IEP Team meeting involves a modification to, or discussion of, the IEP Team member's related service or area of the curriculum.

*Changes:* We have added language in § 300.321(e)(1) to refer to paragraphs (a)(2) through (a)(5), and a reference to paragraph (e)(1) in § 300.321(e)(2) to clarify the IEP Team members for whom a parent and public agency must consent or agree in writing to excuse from an IEP Team meeting.

*Comment:* A few commenters stated that excusal of the regular education teacher is already built into the requirements and questioned the circumstances under which a State might exceed these requirements.

*Discussion:* Section 300.321(a)(2) does not require a regular education teacher to be part of the IEP Team for a child who is not participating in the regular education environment or is not anticipated to participate in the regular education environment. The excusals from IEP Team meetings in § 300.321(e) apply to a regular education teacher who is part of the IEP Team by virtue of the fact that the child with a disability is participating, or may be participating, in the regular education environment.

*Changes:* None.

*Comment:* Some commenters recommended setting a limit as to how often teachers can be excused from IEP Team meetings. A few commenters recommended prohibiting the excusal of IEP Team members for initial IEP Team meetings. One commenter recommended allowing an IEP Team meeting to occur only if there is one person who cannot attend the meeting.

Many commenters opposed the excusal of teachers, therapists, speech providers, and other experts who work with a child on an ongoing basis. A few commenters stated that regular education teachers should not be excused from IEP Team meetings because they have the content expertise that is critical to the IEP process. One commenter stated that the excusal of an LEA representative should not be allowed.

A few commenters requested guidance to make it more difficult for IEP Team members to be excused from IEP Team meetings. Some commenters stated that excusing IEP Team members should only be done in limited

circumstances and only when absolutely necessary.

Some commenters recommended that the regulations provide an opportunity for the parents to challenge a public agency's attempt to exclude staff members who believe their attendance is necessary at an IEP Team meeting. A few commenters suggested that the regulations prohibit excusal of personnel based on the cost of providing coverage in the classroom for a teacher to attend the IEP Team meeting, disagreements over appropriate services among staff, or scheduling problems. One commenter recommended that the regulations clearly state that teachers cannot be barred from attending an IEP Team meeting.

*Discussion:* We decline to make the changes requested by the commenters because it would be inconsistent with section 614(d)(1)(C) of the Act to set a limit on the number of times an IEP Team member could be excused; prohibit excusals for initial IEP Team meetings; restrict the number of excusals per meeting; prohibit certain IEP Team members from being excused from attending an IEP Team meeting; or otherwise restrict or limit parents and LEAs from agreeing to excuse IEP Team members from attending an IEP Team meeting. Likewise, it would be inconsistent with section 614(d)(1)(C) of the Act for an LEA to unilaterally excuse an IEP Team member from attending an IEP Team meeting.

The public agency determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. Whether other teachers or service providers who are not the public agency's required participants at the IEP Team meeting can attend an IEP Team meeting is best addressed by State and local officials.

*Changes:* None.

*Comment:* A few commenters asked whether the regular teacher, the special education teacher, principal, or the LEA makes the decision with the parent to excuse an IEP member. Some commenters recommended that the regulations require the excused IEP Team member to agree to be excused from an IEP Team meeting. Other commenters stated that a teacher should be included as one of the parties that decide whether a teacher should be excused from attending the IEP Team meeting.

Numerous commenters recommended that, before an IEP Team member is excused from attending an IEP Team meeting, sufficient notice must be given so that other IEP Team members can consider the request. Some commenters requested that the regulations clarify

whether the entire IEP Team must meet and then agree on whether a member's attendance at the IEP Team meeting is needed.

*Discussion:* It would not be appropriate to make the changes recommended by the commenters. There is no requirement that the excused IEP Team member agree to be excused from the IEP Team meeting, that a teacher be included as one of the parties that decides whether a teacher should be excused from attending the IEP Team meeting, or that other IEP Team members agree to excuse a member's attendance. It is up to each public agency to determine the individual in the LEA with the authority to make the agreement (or provide consent) with the parent to excuse an IEP Team member from attending an IEP Team meeting. The designated individual must have the authority to bind the LEA to the agreement with the parent or provide consent on behalf of the LEA.

*Changes:* None.

*Comment:* A few commenters recommended that the regulations specifically state that parents retain the right to change their mind to excuse an IEP Team member and have full IEP Team member participation, if it becomes apparent during the IEP Team meeting that the absence of an excused IEP Team member inhibits the development of the IEP. One commenter expressed concern that parents will be informed of excusals at the beginning of a meeting or be given a note, report, or letter from the absent IEP Team member.

*Discussion:* The IEP Team is expected to act in the best interest of the child. As with any IEP Team meeting, if additional information is needed to finalize an appropriate IEP, there is nothing in the Act that prevents an IEP Team from reconvening after the needed information is obtained, as long as the IEP is developed in a timely manner, consistent with the requirements of the Act and these regulations. The parent can request an additional IEP Team meeting at any time and does not have to agree to excuse an IEP Team member. Likewise, if a parent learns at the IEP Team meeting that a required participant will not be at the meeting, the parent can agree to continue with the meeting and request an additional meeting if more information is needed, or request that the meeting be rescheduled.

*Changes:* None.

*Comment:* Several commenters recommended that the regulations specify the amount of time prior to an IEP Team meeting by which notice must

be received by the parent about the LEA's desire to excuse an IEP Team member from attending an IEP Team meeting. A few commenters recommended that an LEA's request for excusal of an IEP Team member be provided to the parent 10 business days prior to the date of the IEP Team meeting and other commenters recommended five business days before an IEP Team meeting.

One commenter recommended that the regulations specify when the parent's written consent to excuse IEP Team members from the meeting must be received by the agency. Many commenters recommended that the regulations include language requiring that any agreement to excuse an IEP Team member from attending the IEP Team meeting be done in advance of the meeting. Some commenters stated that requiring an agreement in advance of an IEP Team meeting would allow the parent to review the IEP Team member's written input prior to the IEP Team meeting and ensure that parental consent is informed. A few commenters recommended that the Act prohibit a written agreement from being signed before the meeting occurs.

*Discussion:* The Act does not specify how far in advance of an IEP Team meeting a parent must be notified of an agency's request to excuse a member from attending an IEP Team meeting or when the parent and LEA must sign a written agreement or provide consent to excuse an IEP Team member. Ideally, public agencies would provide parents with as much notice as possible to request that an IEP Team member be excused from attending an IEP Team meeting, and have agreements or consents signed at a reasonable time prior to the IEP Team meeting. However, this might not always be possible, for example, when a member has an emergency or an unavoidable scheduling conflict. To require public agencies to request an excusal or obtain a signed agreement or consent to excuse a member a specific number of days prior to an IEP Team meeting would effectively prevent IEP Team members from being excused from IEP Team meetings in many situations and, thus, be counter to the intent of providing additional flexibility to parents in scheduling IEP Team meetings. Furthermore, if an LEA requests an excusal at the last minute or a parent needs additional time or information to consider the request, the parent always has the right not to agree or consent to the excusal of the IEP Team member. We, therefore, decline to regulate on these matters.

*Changes:* None.

*Comment:* One commenter requested that the regulations clarify the timeframe in which the written input must be provided to the parent and the IEP Team. Another commenter expressed concern that without knowing whether the information submitted is sufficient to answer any of the parent's questions, the parent could not agree, in any informed way, to excuse an IEP Team member from attending the IEP Team meeting.

Several commenters recommended that written input be provided to parents a reasonable amount of time prior to the meeting and not at the beginning of the meeting. One commenter recommended requiring that parents receive written evaluations and recommendations from the excused member at least 10 business days before the IEP Team meeting. Another commenter recommended that written input be provided at least 10 school days in advance of the meeting; another commenter suggested no later than seven days before the meeting; a few commenters recommended at least five days in advance of the meeting; and some commenters recommended at least three business days before the meeting.

A few commenters recommended requiring public agencies to send parents the written input of excused IEP Team members as soon as they receive it so that parents have sufficient time to consider the input. One commenter recommended that the regulations require the written input to be provided to IEP Team members and parents at the same time.

*Discussion:* Section 614(d)(1)(C)(ii)(II) of the Act requires that input into the development of the IEP by the IEP Team member excused from the meeting be provided prior to the IEP Team meeting that involves a modification to, or discussion of the member's area of the curriculum or related services. The Act does not specify how far in advance of the IEP Team meeting that the written input must be provided to the parent and IEP Team members. For the reasons stated earlier, we do not believe it is appropriate to impose a specific timeframe for matters relating to the excusal of IEP Team members. Parents can always reschedule an IEP Team meeting or request that an IEP Team meeting be reconvened if additional time is needed to consider the written information.

*Changes:* None.

*Comment:* A few commenters recommended language clarifying that IEP Team members who submit input prior to an IEP Team meeting may still attend the meeting. Other commenters requested that the regulations specify



that failure to provide prior written input, due to inadequate notice or unreasonable workloads, does not prohibit the excused member from attending the meeting in person.

*Discussion:* The Act does not address circumstances in which an IEP Team member is excused from an IEP Team meeting, but desires to attend the meeting. We believe such circumstances are best addressed by local officials and are not appropriate to include in these regulations.

*Changes:* None.

*Comment:* A few commenters recommended that the format of the written input required in § 300.321(e) be flexible and not unduly burdensome. One commenter stated that no new form should be created for the written input.

A few commenters recommended that the regulations clarify that the written input must be sufficient to allow the IEP Team to thoroughly examine the services needed and decide whether changes to the current IEP are needed. Other commenters recommended that the written input provide information about a child's level of academic achievement and functional performance; recommendations for services, supports, and accommodations to improve academic and functional performance; revisions to the current annual goals; and other appropriate guidance.

Other commenters recommended that the written input include the IEP Team member's opinions regarding the child's eligibility and services needed; the basis for the opinions, including any evaluations or other documents that formed the basis for the IEP Team member's opinion; and whether the evaluations were conducted by the IEP Team member or another person. These commenters also recommended that the regulations require the excused IEP Team member to include a telephone number where the IEP Team member can be reached prior to the meeting if the parent wants to contact the member, and a telephone number where the member can be reached during the meeting in case immediate input during the meeting is required.

A few commenters recommended prohibiting public agencies from giving the child the written input at school to take home to his or her parents. One commenter recommended that the written input be provided with the meeting notice required in § 300.322. Another commenter recommended that the regulations allow the written input to be provided to parents and other IEP Team members by electronic mail or other less formal methods.

*Discussion:* The Act does not specify the format or content to be included in the written input provided by an excused member of the IEP Team. Neither does the Act specify the method(s) by which a public agency provides parents and the IEP Team with the excused IEP Team member's written input. We believe that such decisions are best left to local officials to determine based on the circumstances and needs of the individual child, parent, and other members of the IEP Team, and therefore decline to regulate in this area.

*Changes:* None.

*Comment:* One commenter recommended requiring any IEP Team member who is excused from an IEP Team meeting to be trained in the updated IEP within one calendar week of the IEP Team meeting. A few commenters recommended that the excused IEP Team members be provided a copy of the new or amended IEP after the meeting. One commenter recommended that one person be designated to be responsible for sharing the information from the meeting with the excused IEP Team member and for communicating between the parent and the excused IEP Team member after the meeting.

*Discussion:* Section 300.323(d) already requires each public agency to ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider and other service provider who is responsible for its implementation, regardless of whether the IEP Team member was present or excused from an IEP Team meeting. How and when the information is shared with the IEP Team member who was excused from the IEP Team meeting is best left to State and local officials to determine.

*Changes:* None.

*Comment:* A few commenters recommended that the regulations require the LEA to inform a parent when the absent IEP Team member will address the parent's questions and concerns. Another commenter recommended that the regulations require the LEA to inform the parent of procedures for obtaining the requested information.

*Discussion:* We do not believe it is appropriate to regulate on these matters. The manner in which the parent's questions and concerns are addressed, and how the information is shared with the parent, are best left for State and local officials to determine.

*Changes:* None.

*Comment:* One commenter requested clarification on how the provisions in

§ 300.321(e), which allow IEP Team members to be excused from IEP Team meetings, relate to revising an IEP without convening an IEP Team meeting.

*Discussion:* The two provisions referred to by the commenter are independent provisions. Section 300.321(e), consistent with section 614(d)(1)(C) of the Act, describes the circumstances under which an IEP Team member may be excused from an IEP Team meeting. Section 300.324(a)(4), consistent with section 614(d)(3)(D) of the Act, permits the parent and the public agency to agree not to convene an IEP Team meeting to make changes to a child's IEP after the annual IEP Team meeting has been held.

*Changes:* None.

Initial IEP Team Meeting for Child Under Part C (§ 300.321(f))

*Comment:* Several commenters recommended that the regulations require the public agency to inform parents of their right to request that the public agency invite their child's Part C service coordinator to the initial IEP Team meeting. One commenter recommended that the regulations require parents to be informed of this option in writing.

*Discussion:* Section 300.321(f), consistent with section 614(d)(1)(D) of the Act, requires the public agency, at the request of the parent, to send an invitation to the Part C service coordinator or other representatives of the Part C system to attend the child's initial IEP Team meeting. We believe it would be useful to add a cross-reference to § 300.321(f) in § 300.322 to emphasize this requirement.

*Changes:* We have added a cross-reference to § 300.321(f) in § 300.322.

Parent Participation (§ 300.322)

Public Agency Responsibility—General (§ 300.322(a))

*Comment:* A few commenters recommended that the notice of the IEP Team meeting include a statement that the time and place of the meeting are negotiable and must be mutually agreed on by the parent and public agency. Other commenters recommended that the regulations emphasize the need for flexibility in scheduling meetings so that districts make every effort to secure parent participation in meetings.

Many commenters requested that the regulations specify how far in advance a public agency must notify parents of an IEP Team meeting. One commenter recommended requiring that parents be notified a minimum of five school days before the date of the meeting.

*Discussion:* We do not agree with the changes recommended by the commenters. Section 300.322(a) already requires each public agency to take steps to ensure that one or both parents are present at each meeting, including notifying parents of the meeting early enough to ensure that they have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. We believe that these requirements are sufficient to ensure that parents are provided the opportunity to participate in meetings. We also believe that State and local officials are in the best position to determine how far in advance parents must be notified of a meeting, as this will vary based on a number of factors, including, for example, the distance parents typically have to travel to the meeting location and the availability of childcare.

*Changes:* None.

#### Information Provided to Parents (§ 300.322(b))

*Comment:* Several comments were received requesting that additional information be provided to parents when the public agency notifies parents about an IEP Team meeting. One commenter recommended informing parents that they can request an IEP Team meeting at any time. Other commenters recommended that the notice include any agency requests to excuse an IEP Team member from attending the meeting, and any written input from an IEP Team member who is excused from the meeting. Another commenter recommended that parents receive all evaluation reports before an IEP Team meeting. A few commenters recommended that parents receive a draft IEP so that they have time to examine the child's present levels of performance; prepare measurable goals; and consider appropriate programs, services, and placements.

*Discussion:* The purpose of the notice requirement in § 300.322 is to inform parents about the IEP Team meeting and provide them with relevant information (e.g., the purpose, time, and place of the meeting, and who will be in attendance). This is not the same as the procedural safeguards notice that informs parents of their rights under the Act.

If, at the time the IEP Team meeting notice is sent, a public agency is aware of the need to request that an IEP Team member be excused from the IEP Team meeting, the public agency could include this request with the meeting notice. We do not believe that it is appropriate to require that the request to excuse an IEP Team member from an

IEP Team meeting be included in the meeting notice, because the public agency may not be aware of the need to request an excusal of a member at the time the IEP Team meeting notice is sent. For similar reasons, it is not appropriate to require that the IEP Team meeting notice include any written input from an IEP Team member who may be excused from the IEP Team meeting.

As noted in § 300.306(a)(2), the public agency must provide a copy of an evaluation report and the documentation of determination of eligibility at no cost to the parent. Whether parents receive all evaluation reports before an IEP Team meeting, however, is a decision that is best left to State and local officials to determine.

With respect to a draft IEP, we encourage public agency staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs. We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child's needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins.

*Changes:* None.

#### Other Methods To Ensure Parent Participation (§ 300.322(c))

*Comment:* One commenter recommended that the regulations permit parents to provide input through a written report in order to document that the parents provided input into their child's education.

*Discussion:* Parents are free to provide input into their child's IEP through a written report if they so choose.

Therefore, we do not believe that a change is needed.

*Changes:* None.

#### Conducting an IEP Team Meeting Without a Parent in Attendance (§ 300.322(d))

*Comment:* Many commenters recommended that § 300.322(d) retain paragraphs (d)(1) through (d)(3) in current § 300.345, which provide examples of the types of records a public agency may keep to document its attempts to arrange a mutually agreed upon time and place for an IEP Team meeting. These examples include detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits. A few commenters stated that removing these provisions violates section 607(b) of the Act.

*Discussion:* We agree that these provisions are important to encourage parent participation in the IEP process, which is an important safeguard for ensuring FAPE under the Act. We will, therefore, add the requirements in current § 300.345(d)(1) through (d)(3) to § 300.322(d).

*Changes:* We have added the requirements in current § 300.345(d)(1) through (d)(3) to § 300.322(d).

*Comment:* One commenter stated that parents who do not participate in IEP Team meetings when the school has made good-faith efforts to include them should be sanctioned.

*Discussion:* There is nothing in the Act that would permit sanctioning a parent who does not participate in an IEP Team meeting, nor do we believe that it would be appropriate or helpful to do so. Sanctioning a parent is unlikely to engender the type of active participation at IEP Team meetings that would be desirable or helpful in developing, reviewing, or revising a child's IEP.

*Changes:* None.

*Comment:* One commenter recommended that the regulations make explicit that the LEA can move forward and hold an IEP Team meeting without the parent, if notice has been provided consistent with § 300.322(a)(1) and (b)(1), and the parent does not participate. The commenter recommended that this requirement be consistent with the parent participation requirements for placement meetings in § 300.501(c)(3) and (c)(4).

*Discussion:* Section 300.322(d) explicitly allows a meeting to be conducted without a parent if the public

agency is unable to convince the parent to attend. The requirements for parent participation in IEP Team meetings in § 300.322, and placement meetings in § 300.501 are consistent. Section 300.322(d) states that an IEP Team meeting may be conducted without a parent in attendance if the public agency is unable to convince a parent to attend the IEP Team meeting. Similarly, § 300.501(c)(4) provides that a group, without the involvement of the parent, may make a placement decision if the public agency is unable to obtain the parent's participation in the decision. In both cases, the public agency must keep a record of its attempts to obtain the parent's involvement.

*Changes:* None.

*Comment:* One commenter expressed concern that allowing school districts to hold IEP Team meetings without parents could increase the overrepresentation of African American children placed in special education.

*Discussion:* Section 300.322(a) requires a public agency to take steps to ensure that one or both parents are afforded the opportunity to participate in an IEP Team meeting, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. Section 300.322(c) requires the public agency to use other methods to ensure parent participation if neither parent can attend an IEP Team meeting, including individual or conference telephone calls. Only when a public agency is unable to convince a parent to participate in an IEP Team meeting may the meeting be conducted without a parent. We disagree with the implication in the comment that parents of one race are less likely to participate in IEP Team meetings.

*Changes:* None.

*Comment:* Many commenters recommended retaining current § 300.345(e), which requires the public agency to take whatever action is necessary to ensure that the parent understands the proceedings at an IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. Some commenters stated that current § 300.345(e) is protected by section 607(b) of the Act and, therefore, cannot be removed.

Many commenters acknowledged that there are other Federal laws that require public agencies to take appropriate measures to ensure that parents understand the proceedings at an IEP Team meeting, but stated that not all stakeholders are aware of the applicability of those other protections

in IEP Team meetings. Several commenters expressed concern with the removal of current § 300.345(e) stating that other Federal laws are not enforceable at special education due process hearings.

*Discussion:* We agree that current § 300.345(e) is an important safeguard of parent participation for parents with deafness or whose native language is other than English. We will, therefore, add the requirements in current § 300.345(e) to the regulations.

*Changes:* We have added the requirements in current § 300.345(e) as new § 300.322(e), and redesignated the subsequent paragraph as § 300.322(f).

Parent Copy of Child's IEP (New § 300.322(f)) (Proposed § 300.322(e))

*Comment:* One commenter recommended that the regulations clarify that the public agency must provide the parent a copy of any amended IEPs, in addition to the original IEP.

*Discussion:* Section 300.324(a)(6), consistent with section 614(d)(3)(F) of the Act, requires the public agency to, upon request of the parent, provide the parent with a revised copy of the IEP with the amendments incorporated. We do not believe any further clarification is necessary.

*Changes:* None.

When IEPs Must Be in Effect (§ 300.323)

*Comment:* Some commenters recommended retaining current § 300.342(b)(1)(i) to ensure that an IEP is in effect before special education services are provided to a child.

*Discussion:* We do not believe it is necessary to retain current § 300.342(b)(1)(i) because we believe this requirement is implicit in § 300.323(a), which requires each public agency to have an IEP in effect for each child with a disability in the public agency's jurisdiction at the beginning of each school year.

*Changes:* None.

IEP or IFSP for Children Aged Three Through Five (§ 300.323(b))

*Comment:* One commenter recommended revising the regulations to clarify when an IEP must be in place for a child transitioning from an early intervention program under Part C of the Act to a preschool special education program under Part B of the Act whose third birthday occurs after the start of the school year.

*Discussion:* The commenter's concern is already addressed in the regulations. Section 300.101(b), consistent with section 612(a)(1)(A) of the Act, requires an IEP to be in effect no later than the

child's third birthday. However, § 300.323(b)(1), consistent with section 614(d)(2)(B) of the Act, provides that a State, at its discretion, may provide special education and related services to two-year-old children with disabilities who will turn three during the school year. In such cases, the State must ensure that an IEP is developed and in effect at the start of the school year in which the child turns three.

*Changes:* None.

*Comment:* One commenter stated that an IFSP that was incorrectly developed by the early intervention agency should not be the school district's responsibility to correct.

*Discussion:* The development of an IFSP for children from birth through age two is the responsibility of the designated lead agency responsible for early intervention programs under section 635(a)(10) in Part C of the Act. When a child turns age three, section 612(a)(9) of the Act requires each State to ensure that an IEP has been developed and implemented. However, if a child turns age three and an LEA and a parent agree to use an IFSP in lieu of an IEP, as allowed under section 614(d)(2)(B) of the Act, the LEA is responsible for ensuring that the requirements in § 300.323(b) are met. Therefore, if an IFSP was incorrectly developed by the early intervention agency and the public agency and the parent agree to use the IFSP in lieu of an IEP, the LEA is responsible for modifying the IFSP so that it meets the requirements in § 300.323(b).

Section 300.323(b), consistent with section 614(d)(2)(B) of the Act, allows an IFSP to serve as an IEP for a child with a disability aged three through five (or at the discretion of the SEA, a two-year old child with a disability, who will turn age three during the school year), under the following conditions: (a) using the IFSP as the IEP is consistent with State policy and agreed to by the agency and the child's parents; (b) the child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP; (c) written informed consent is obtained from the parent if the parent chooses an IFSP; (d) the IFSP contains the IFSP content, including the natural environments statement; (e) the IFSP includes an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs who are at least three years of age; and (f) the IFSP is developed in accordance with the IEP procedures under Part B of the Act.

*Changes:* None.

*Comment:* One commenter recommended that the regulations

require the IEP Team to explain the changes in services and settings in the initial IEP Team meeting for a child transitioning from an early intervention program under Part C of the Act to a preschool program under Part B of the Act.

*Discussion:* We do not believe it is necessary to change the regulations in the manner recommended by the commenter. Section 300.124, consistent with section 612(a)(9) of the Act, already requires States to have in effect policies and procedures to ensure that children transitioning from an early intervention program under Part C of the Act to a preschool program under Part B of the Act experience a smooth and effective transition to those preschool programs. In addition, each LEA is required to participate in transition planning conferences with the lead agency responsible for providing early intervention services and to have an IEP (or an IFSP, if consistent with § 300.323(b) and section 636(d) of the Act) for the child developed and implemented by the child's third birthday. We believe that in the course of the transition planning conferences and developing the child's IEP, there would be many opportunities for discussions regarding the services provided under Parts B and C of the Act.

*Changes:* None.

*Comment:* One commenter stated that there is no statutory basis to require detailed explanations of the differences between an IEP and an IFSP or for written informed parental consent when an IFSP is used in lieu of an IEP.

*Discussion:* We believe it is important to retain these requirements in § 300.323(b)(2) because of the importance of the IEP as the statutory vehicle for ensuring FAPE to a child with a disability. Although the Act does not specifically require a public agency to provide detailed explanations to the parent of the differences between an IEP and an IFSP, we believe parents need this information to make an informed choice regarding whether to continue to use an IFSP in lieu of an IEP. Parents, for example, should understand that it is through the IEP that the child is entitled to the special education and related services that the child's IEP Team determines are necessary to enable the child to be involved in and make progress in the general education curriculum and to receive FAPE. If a parent decides to use an IFSP in lieu of an IEP, the parent must understand that the child will not necessarily receive the same services and supports that are afforded under an IEP. For a parent to waive the right to an IEP, informed parental consent is necessary.

*Changes:* None.

*Comment:* Some commenters recommended that the regulations explicitly state that the IFSP does not have to include all the elements of an IEP when the IFSP is used in lieu of an IEP.

*Discussion:* Section 300.323(b)(1) provides that, in order for the IFSP to be used as the IEP, the IFSP must contain the IFSP content (including the natural environments statement) in section 636(d) of the Act and be developed in accordance with the IEP procedures under Part B of the Act. For children who are at least three years of age, the IFSP must also include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills. There is no requirement for the IFSP to include all the required elements in an IEP. We think this point is clear in the regulations and that no further clarification is necessary.

*Changes:* None.

*Comment:* Some commenters recommended changing § 300.323(b)(2)(i) to require parental consent before a preschool-aged child receives an IFSP in States that have a policy under section 635(c) of the Act. Some commenters recommended that the regulations clarify whether States have flexibility to continue early intervention services until the end of the school year in which a child turns three.

*Discussion:* Section 300.323(b) outlines the specific requirements that apply when an IFSP is used in lieu of an IEP for children aged three through five, as a means of providing FAPE for the child under Part B of the Act. This is not the same as the policy in section 635(c) of the Act, which gives States the flexibility to provide early intervention services under Part C of the Act to three year old children with disabilities until they enter into, or are eligible under State law to enter into, kindergarten.

Under § 300.323(b), when an IFSP is used in lieu of an IEP, the child continues to receive FAPE. This would not be the case under section 635(c) of the Act. Under section 635(c) of the Act, parents of children with disabilities who are eligible for preschool services under section 619 of the Act and previously received early intervention services under Part C of the Act, may choose to continue early intervention services until the child enters, or is eligible under State law to enter, kindergarten. The option to continue early intervention services is available only in States where the lead agency under Part C of the Act and the SEA have developed and implemented a

State policy to provide this option. This option will be detailed in the Part C regulations, and not the Part B regulations, as it permits a continuation of eligibility and coverage under Part C of the Act, rather than FAPE under Part B of the Act.

Parental consent is required under § 300.323(b), when the IFSP is used in lieu of an IEP, and under section 635(c) of the Act, when a parent opts to continue early intervention services.

*Changes:* None.

Initial IEPs; Provision of Services (§ 300.323(c))

*Comment:* One commenter recommended removing the requirement for an IEP Team meeting to be conducted within 30 days of determining that the child needs special education and related services. Another commenter recommended extending the time to 60 days. A few commenters recommended that the regulations require the meeting to be held no later than 15 days after the eligibility determination.

*Discussion:* The requirement to conduct a meeting to develop a child's IEP within 30 days of the determination that a child needs special education and related services is longstanding, and has been included in the regulations since they were first issued in final form in 1977. Experience has shown that many public agencies choose to conduct the meeting to develop the child's IEP well before the 30-day timeline. Reducing the timeline to 15-days, as some commenters suggest, would be impractical, because there are situations when both public agencies and parents need additional time to ensure that appropriate individuals can be present at the meeting. Experience has demonstrated that the 30-day timeline for conducting a meeting to develop an IEP is a reasonable time to provide both public agencies and parents the opportunity to ensure that required participants can be present at the IEP Team meeting. Therefore, we decline to alter this longstanding regulatory provision.

*Changes:* None.

Accessibility of Child's IEP to Teachers and Others (§ 300.323(d))

*Comment:* Many commenters recommended retaining current § 300.342(b)(3)(i) and (b)(3)(ii), which require teachers and providers to be informed of their specific responsibilities for implementing an IEP, and the specific accommodations, modifications, and supports that must be provided to the child in accordance with the child's IEP. Several

commenters stated that a child's IEP should be readily accessible and all those involved in a child's education should be required to read and understand it.

*Discussion:* Section 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed. We agree with the commenters' recommendation and believe retaining current § 300.342(b)(3)(i) and (b)(3)(ii) is necessary to ensure proper implementation of the child's IEP and the provision of FAPE to the child. However, the mechanism that the public agency uses to inform each teacher or provider of his or her responsibilities is best left to the discretion of the public agency.

*Changes:* We have restructured § 300.323(d) and added a new paragraph (d)(2) to include the requirements in current § 300.342(b)(3)(i) and (b)(3)(ii).

IEPs for Children Who Transfer Public Agencies in the Same State (§ 300.323(e), IEPs for Children Who Transfer From Another State § 300.323(f), and Transmittal of Records § 300.323(g)) (Proposed Program for Children Who Transfer Public Agencies (§ 300.323(e))

*Comment:* None.

*Discussion:* Several technical changes are needed in proposed § 300.323(e) for clarity and improved readability. We believe that readability will be improved by reorganizing this provision into three separate paragraphs—paragraph (e), which will address transfers within the same State, paragraph (f), which will address transfers from another State, and paragraph (g), which will address the transmittal of records.

In addition, clarity will be improved by changing certain terms to align with terms that are more commonly used in this part. For example, while the Act uses the term "Program" in the title of this requirement (referring to an "individualized education program"), we believe it would be clearer to use "IEP" throughout this provision. In addition, as noted in the discussion of § 300.304(c)(5), we believe that it is important to include language stating that the requirements in § 300.323 are applicable to children with disabilities who have an IEP in effect in a previous

public agency and who transfer to a new school within the same "school year," rather than the same "academic year," because "school year" is the term most commonly understood by parents and school officials. Further, it is important that the regulations clearly and consistently differentiate between the responsibilities of the "new" public agency and the "previous" public agency.

*Changes:* We have restructured proposed § 300.323(e) into three separate paragraphs, and each paragraph has been re-named to comport with the three concepts in the statutory requirement. Proposed § 300.323(e)(1)(i) has been changed to new § 300.323(e), "IEPs for children who transfer public agencies in the same State." Proposed § 300.323(e)(1)(ii) has been changed to new § 300.323(f), "IEPs for children who transfer from another State." Proposed § 300.323(e)(2) has been changed to new § 300.323(g), "Transmittal of records."

We have substituted "IEP" for "program" in new § 300.323(e) (proposed § 300.323(e)(1)(i)), and have made the following changes to new § 300.323(e) (proposed § 300.323(e)(1)(i)) and new § 300.323(f) (proposed § 300.323(e)(1)(ii)): (1) added language to clarify that the requirements apply to a child with a disability who has an IEP in effect in a previous public agency and transfers to a new school within the same school year; (2) replaced the term "is consistent with Federal and State law" with "meets the applicable requirements in §§ 300.320 through 300.324;" and (3) clarified when a requirement applies to the "new" public agency to which the child transfers versus the "previous" public agency.

*Comment:* Several commenters requested that the regulations clarify the meaning of "comparable services."

*Discussion:* We do not believe it is necessary to define "comparable services" in these regulations because the Department interprets "comparable" to have the plain meaning of the word, which is "similar" or "equivalent." Therefore, when used with respect to a child who transfers to a new public agency from a previous public agency in the same State (or from another State), "comparable" services means services that are "similar" or "equivalent" to those that were described in the child's IEP from the previous public agency, as determined by the child's newly-designated IEP Team in the new public agency.

*Changes:* None.

IEPs for Children Who Transfer From Another State (New § 300.323(f)) (Proposed § 300.323(e)(1)(ii))

*Comment:* One commenter requested clarification regarding the responsibilities of LEAs who receive a child transferring from out of State.

*Discussion:* When a child transfers from another State, new § 300.323(f) (proposed § 300.323(e)(1)(ii)), consistent with section 614(d)(2)(C)(i)(II) of the Act, requires the LEA, in consultation with the parents, to provide the child with FAPE, including services comparable to those in the IEP from the previous public agency, until such time as the new public agency conducts an evaluation (if determined to be necessary) and adopts a new IEP.

*Changes:* None.

*Comment:* Several commenters requested that the regulations clarify what happens when a child transfers to a State with eligibility criteria that are different from the previous public agency's criteria.

*Discussion:* Under § 300.323(f)(1), if the new public agency determines that an evaluation of the child is necessary to determine whether the child is a child with a disability under the new public agency's criteria, the new public agency must conduct the evaluation. Until the evaluation is conducted, § 300.323(f) requires the new public agency, in consultation with the parent, to provide the child with FAPE, including services comparable to those described in the IEP from the previous public agency. The specific manner in which this is accomplished is best left to State and local officials and the parents to determine. We do not believe that any further clarification is necessary.

*Changes:* None.

*Comment:* One commenter requested clarification about whether parental consent must be obtained for the new public agency to evaluate a child with an IEP who transfers from another State. Another commenter requested that the regulations clarify that an evaluation of a child who transfers from another State is considered a reevaluation.

One commenter requested that the regulations address circumstances in which comparable services are considered unreasonable in the State receiving the child. Some commenters stated that the stay-put provision should be imposed by the new State if the parent disagrees with the new public agency about the comparability of services.

*Discussion:* New § 300.323(f) (proposed § 300.323(e)(1)(ii)), consistent with section 614(d)(2)(C)(i)(II) of the

Act, states that, in the case of a child with a disability who enrolls in a new school in another State, the public agency, in consultation with the parents, must provide FAPE to the child, until such time as the public agency conducts an evaluation pursuant to §§ 300.304 through 300.306, if determined necessary by the public agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law. The evaluation conducted by the new public agency would be to determine if the child is a child with a disability and to determine the educational needs of the child. Therefore, the evaluation would not be a reevaluation, but would be an initial evaluation by the new public agency, which would require parental consent. If there is a dispute between the parent and the public agency regarding what constitutes comparable services, the dispute could be resolved through the mediation procedures in § 300.506 or, as appropriate, the due process hearing procedures in §§ 300.507 through 300.517. We believe these options adequately address circumstances in which comparable services are considered unreasonable.

With regard to the comment that the stay-put provisions should be imposed by the new State if the parent disagrees with the new public agency about the comparability of services, stay-put would not apply, because the evaluation is considered an initial evaluation and not a reevaluation.

*Changes:* None.

*Comment:* A few commenters requested clarification regarding the responsibilities of the new public agency for a child with a disability who moves during the summer.

*Discussion:* Section 614(d)(2)(a) is clear that at the beginning of each school year, each LEA, SEA, or other State agency, as the case may be, must have an IEP in effect for each child with a disability in the agency's jurisdiction. Therefore, public agencies need to have a means for determining whether children who move into the State during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year.

*Changes:* None.

*Comment:* Some commenters requested clarification regarding what a new public agency should do when a child's IEP is developed (or revised) by the child's previous public agency at the end of a school year (or during the summer), for implementation during the next school year, and the child moves to the new public agency before the next

school year begins (e.g., during the summer).

*Discussion:* This is a matter to be decided by each individual new public agency. However, if a child's IEP from the previous public agency was developed (or reviewed and revised) at or after the end of a school year for implementation during the next school year, the new public agency could decide to adopt and implement that IEP, unless the new public agency determines that an evaluation is needed. Otherwise, the newly designated IEP Team for the child in the new public agency could develop, adopt, and implement a new IEP for the child that meets the applicable requirements in §§ 300.320 through 300.324.

*Changes:* None.

Transmittal of Records (New § 300.323(g)) (Proposed § 300.323(e)(2))

*Comment:* Several commenters recommended that the regulations require the previous public agency to transmit a child's records to the new public agency within 15 business days after receiving the request. Other commenters recommended that the regulations require a specific timeframe for the school to obtain and review the previous educational placement and services of the transfer child.

*Discussion:* New § 300.323(g) (proposed § 300.323(e)(2)) follows the language in section 614(d)(2)(C)(ii) of the Act, and requires the new public agency to take reasonable steps to promptly obtain the child's records from the previous public agency in which the child was enrolled. New § 300.323(g) (proposed § 300.323(e)(2)) also requires the previous public agency to take reasonable steps to promptly respond to the request from the new public agency. There is nothing in the Act that would prevent a State from requiring its public agencies to obtain a child's records or respond to requests for a child's records within a specific timeframe. This is an issue appropriately left to States to determine.

*Changes:* None.

*Development of IEP*

Development, Review, and Revision of IEP (§ 300.324)

*Comment:* A few commenters recommended requiring all IEP members to sign the IEP.

*Discussion:* There is nothing in the Act that requires IEP members to sign the IEP and we believe it would be overly burdensome to impose such a requirement.

*Changes:* None.

*Comment:* A few commenters requested that the regulations require

the IEP Team to consider the social and cultural background of the child in the development, review, or revision of the child's IEP.

*Discussion:* Under § 300.306(c)(1)(i), a child's social or cultural background is one of many factors that a public agency must consider in interpreting evaluation data to determine if a child is a child with a disability under § 300.8 and the educational needs of the child. We do not believe it is necessary to repeat this requirement in § 300.324.

*Changes:* None.

*Comment:* A few commenters recommended retaining current § 300.343(a), regarding the public agency's responsibility to initiate and conduct meetings to develop, review, and revise a child's IEP.

*Discussion:* It is not necessary to retain § 300.343(a) because the requirements for the public agency to initiate and conduct meetings to develop, review, and revise a child's IEP are covered in § 300.112 and § 300.201. Section 300.112, consistent with section 614(a)(4) of the Act, requires the State to ensure that an IEP (or an IFSP that meets the requirements of section 636(d) of the Act) is developed, reviewed, and revised for each child with a disability. Section 300.201, consistent with section 613(a)(1) of the Act, requires LEAs to have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174, which include the requirements related to developing, reviewing, and revising an IEP for each child with a disability.

*Changes:* None.

*Comment:* A few commenters recommended retaining current § 300.346(a)(1)(iii), regarding the IEP Team's consideration of the results of the child's performance on any general State or districtwide assessment programs in developing the child's IEP. The commenter stated that it is important to retain this requirement because such testing informs the IEP Team of the child's success in the general education curriculum.

*Discussion:* The Department agrees that State and districtwide assessments provide important information concerning the child's academic performance and success in the general education curriculum. However, current § 300.346(a)(1)(iii) was removed, consistent with section 614(d)(3)(A)(iv) of the Act. Because the language from current § 300.346(a)(1)(iii) was specifically excluded from the Act, we do not believe it is appropriate to retain it in the regulations. We do not believe

that an explicit regulation is needed, however, because § 300.324(a)(1)(iv) requires the IEP Team, in developing each child's IEP, to consider the academic, developmental, and functional needs of the child. A child's performance on State or districtwide assessments logically would be included in the IEP Team's consideration of the child's academic needs. In addition, as a part of an initial evaluation or reevaluation, § 300.305(a) requires the IEP Team to review existing evaluation data, including data from current classroom based, local, and State assessments.

*Changes:* None.

#### Consideration of Special Factors (§ 300.324(a)(2))

*Comment:* Many commenters recommended changing § 300.324(a)(2)(i) to require that the positive behavioral interventions and supports for a child whose behavior impedes the child's learning or that of others be based on a functional behavioral assessment.

*Discussion:* Section 300.324(a)(2)(i) follows the specific language in section 614(d)(3)(B)(i) of the Act and focuses on interventions and strategies, not assessments, to address the needs of a child whose behavior impedes the child's learning or that of others. Therefore, while conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies, we do not believe it is appropriate to include this language in § 300.324(a)(2)(i).

*Changes:* None.

*Comment:* A few commenters recommended that § 300.324(a)(2)(i) refer specifically to children with internalizing and externalizing behaviors.

*Discussion:* We do not believe it is necessary to make the recommended change because § 300.324(a)(2)(i) is written broadly enough to include children with internalizing and externalizing behaviors.

*Changes:* None.

*Comment:* Many commenters expressed concern that the consideration of special factors in § 300.324(a)(2)(i) is not sufficient to address the behavioral needs of children with disabilities in the IEP process and recommended strengthening the regulations by encouraging school districts to utilize research-based positive behavioral supports and systematic and individual research-based interventions. One commenter recommended training teachers regarding the use of positive behavioral interventions and supports.

*Discussion:* We do not believe that the changes recommended by the commenters need to be made to § 300.324(a)(2)(i). Whether a child needs positive behavioral interventions and supports is an individual determination that is made by each child's IEP Team. Section 300.321(a)(2)(i) requires the IEP Team, in the case of a child whose behavior impedes the child's learning or that of others, to consider the use of positive behavioral supports, and other strategies to address that behavior. We believe that this requirement emphasizes and encourages school personnel to use positive behavioral interventions and supports.

In addition, the regulations reflect the Department's position that high-quality professional development, including the use of scientifically based instructional practices, is important to ensure that personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities. Section 300.207, consistent with section 613(a)(3) of the Act, requires each LEA to ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements in § 300.156 and section 2122 of the ESEA.

Section 300.156(a), consistent with section 612(a)(14) of the Act, clearly states that each State must 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. Further, section 2122(b)(1)(B) of the ESEA requires an LEA's application to the State for title II funds (Preparing, training, and recruiting high quality teachers and principals) to address how the LEA's activities will be based on a review of scientifically based research.

In addition, the implementation of early intervening services in § 300.226 specifically focuses on professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, and providing educational and behavioral evaluations, services, and supports. We expect that the professional development activities and the services authorized under § 300.226(b)(1) will be derived from scientifically based research.

Finally, because the definition of *scientifically based research* is important to the implementation of Part B of the Act, a reference to section 9101(37) of the ESEA has been added in new § 300.35, and the full definition of

the term has been included in the discussion to the new § 300.35. Under the definition, scientifically based research must be accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. In short, we believe that the Act and the regulations place a strong emphasis on research based supports and interventions, including positive behavioral interventions and supports.

*Changes:* None.

*Comment:* One commenter recommended requiring positive behavioral interventions and supports for all children identified as having an emotional disturbance.

*Discussion:* Section 300.324(a)(2)(i), consistent with section 614(d)(3)(B)(i) of the Act, requires the IEP Team to consider the use of positive behavioral interventions and supports, and other strategies to address the behavior of a child whose behavior impedes the child's learning or that of others. We do not believe there should be a requirement that the IEP Team consider such interventions, supports, and strategies for a particular group of children, or for all children with a particular disability, because such decisions should be made on an individual basis by the child's IEP Team.

*Changes:* None.

*Comment:* A few commenters expressed concern that the regulations regarding special factors for the IEP Team to consider in developing IEPs imply that particular methods, strategies, and techniques should be used.

*Discussion:* The requirements in § 300.324 are not intended to imply that a particular method, strategy, or technique should be used to develop a child's IEP. For example, while § 300.324(a)(2)(i) requires the IEP Team to consider the use of positive behavioral interventions and supports, and other strategies, it does not specify the particular interventions, supports, or strategies that must be used.

*Changes:* None.

*Comment:* Some commenters recommended that the special factors for a child who is blind or visually impaired include a requirement for a clinical low vision evaluation to determine whether the child has the potential to utilize optical devices for near and distance information before providing instruction in Braille and the use of Braille.

*Discussion:* Section 614(d)(3)(B)(iii) of the Act requires instruction in Braille to be provided unless the IEP Team

determines that instruction in Braille or in the use of Braille is not appropriate for the child. However, the Act does not require a clinical low vision evaluation, and we do not believe it would be appropriate to include such a requirement in the regulations. Whether a clinical low vision evaluation is conducted is a decision that should be made by the child's IEP Team.

*Changes:* None.

*Comment:* Some commenters recommended that the regulations include language requiring that instruction in Braille be considered at all stages of IEP development, review, and revision. These commenters also stated that consideration should be given to providing services and supports to improve a child's skills in the areas of socialization, independent living, orientation and mobility, and the use of assistive technology devices.

*Discussion:* The issues raised by the commenters are already covered in the regulations. Section 300.324(a)(2)(iii), consistent with section 614(d)(3)(B)(iii) of the Act, requires the IEP Team, in the case of a child who is blind or visually impaired, to 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) that instruction in Braille or the use of Braille is not appropriate. As noted earlier, a new paragraph (b)(2) has been added to § 300.324 to require the IEP Team to consider the special factors in § 300.324(a)(2) when the IEP is reviewed and revised. This includes considering instruction in Braille and the use of Braille for a child who is blind or visually impaired.

In addition, § 300.324(a)(1)(iv) requires the IEP Team to consider, for all children with disabilities, the academic, developmental, and functional needs of the child, which could include, as appropriate, the child's need to develop skills in the areas of socialization, independent living, and orientation and mobility. Consideration of a child's needs for assistive technology devices and services is required by § 300.324(a)(2)(v).

*Changes:* None.

*Comment:* Several commenters recommended that the regulations require IEP Teams, for a child who is deaf, to consider the child's communication abilities, ensure that the child can access language and communicate with peers and adults, and ensure that the child has an educational placement that will meet the child's communication needs. The

commenters also recommended that the IEP Team be required to consider the qualifications of the staff delivering the child's educational program.

*Discussion:* The commenters' concerns are already addressed in the regulations. Section 300.324(a)(2)(iv), consistent with section 614(d)(3)(B)(iv) of the Act, requires the IEP Team to 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.

With respect to the commenters' recommendation regarding qualified staff to deliver the child's educational program, § 300.156, consistent with section 612(a)(14) of the Act, requires the SEA to establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of the Act are appropriately and adequately prepared and trained to serve children with disabilities.

*Changes:* None.

*Comment:* Some commenters suggested that § 300.324(a)(2)(iv) explain that: (a) a primary language assessment and assessment of communication abilities may be required to determine the child's most effective language; (b) program and placement decisions must be based on such assessments; (c) a child must be in an educational placement where the child may communicate with peers and adults; and (d) a deaf child's educational placement must include a sufficient number of peers and adults who can communicate fluently in the child's primary language.

*Discussion:* It is not necessary to include in the regulations the additional language recommended by the commenters. Section 300.324(a)(1)(iii), consistent with section 614(d)(3)(A)(iii) of the Act, requires the IEP Team to consider, among other things, the results of the initial or most recent evaluation of the child, which for a child who is deaf, may include an assessment of a child's communication abilities. Further, § 300.324(a)(2)(iv), consistent with section 614(d)(3)(B)(iv) of the Act, requires the IEP Team to consider 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. We believe this adequately addresses the commenters' concerns.

*Changes:* None.

*Comment:* One commenter requested that emotional issues be considered an additional special factor that can impede learning. The commenter stated that emotional issues can be addressed through individual interventions focused on the child's needs and systemic interventions to improve the overall school climate.

*Discussion:* Section 614(d)(3)(B) of the Act does not include emotional issues as a special factor to be considered by the IEP Team. We decline to add it to the regulations because there are already many opportunities for the IEP Team to consider the affect of emotional issues on a child's learning. For example, § 300.324(a)(1), consistent with section 614(d)(3)(A) of the Act, requires the IEP Team to consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial evaluation or most recent evaluation of the child; and the academic, developmental, and functional needs of the child, all of which could be affected by emotional issues and would, therefore, need to be considered by the IEP Team.

*Changes:* None.

*Comment:* A few commenters requested that children with medical conditions that are degenerative be added to the list of special factors considered by the IEP Team. The commenters stated that the IEP Team should consider the need for children with degenerative conditions to maintain their present levels of functioning by including related therapeutic services prior to the loss of their abilities, such as occupational and physical therapy, and other services to address the child's needs in the areas of self-help, mobility, and communication.

*Discussion:* Section 614(d)(3)(B) of the Act does not include consideration of children with degenerative conditions as a special factor. We decline to add it to the regulations because we believe that the regulations already address the commenters' concerns. As with any child with a disability, the child's IEP Team, which includes the parent, determines the special education and related services that are needed in order for the child to receive FAPE. For children with degenerative diseases, this may include related services such as physical and occupational therapy (or other services to address the child's needs in the areas of self-help, mobility, and communication) to help maintain the child's present levels of functioning for as long as possible in order for the



child to benefit from special education. In addition, as part of an evaluation or reevaluation, § 300.305 requires the IEP Team and other qualified professionals, as appropriate, to review existing evaluation data on the child to determine the child's needs, which may include evaluations and information from parents, as well as medical professionals who know the child and the child's specific medical condition.

S. Rpt. No. 108–185, p. 33, and H. Rpt. No. 108–77, p. 112, recognized the special situations of children with medical conditions that are degenerative (*i.e.*, diseases that result in negative progression and cannot be fully corrected or fully stabilized). For children with degenerative diseases who are eligible for services under the Act, both reports state that special education and related services can be provided to help maintain the child's present levels of functioning for as long as possible in order for the child to fully benefit from special education services. The reports also state, "The IEP Team can include related services designed to provide therapeutic services prior to loss of original abilities to extend current skills and throughout the child's enrollment in school. These services may include occupational and physical therapy, self-help, mobility, and communication, as appropriate."

*Changes:* None.

*Comment:* Some commenters stated that the IEP Team's review of the special factors in § 300.324(a)(2) is duplicative and should be eliminated.

*Discussion:* The requirements in § 300.324(a)(2) are directly from section 614(d)(3)(B) of the Act and cannot be removed.

*Changes:* None.

*Comment:* Many commenters recommended that the regulations retain current § 300.346(b) and require the IEP Team to consider the special factors in § 300.324(a)(2) when the IEP is reviewed and revised. The commenters stated that these special factors may affect a child's instructional needs and ability to obtain FAPE beyond the period when an IEP is initially developed.

*Discussion:* The Department agrees that the IEP Team should consider the special factors in § 300.324(a)(2) when an IEP is reviewed and revised. We will, therefore, add this requirement to the regulations.

*Changes:* A new paragraph (b)(2) has been added to § 300.324 to require the IEP Team to consider the special factors in § 300.324(a)(2) when the IEP is reviewed and revised. Proposed § 300.324(b)(2) has been redesignated accordingly.

*Comment:* One commenter requested changing § 300.324(a)(2)(v), regarding the IEP Team's consideration of a child's need for assistive technology devices and services, to require assistive technology devices and services that are needed for a child to be included in the child's IEP.

*Discussion:* Section 300.320(a)(4) requires the IEP to include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child. This would include any assistive technology devices and services determined by the IEP Team to be needed by the child in order for the child to receive FAPE. Therefore, it is unnecessary to repeat this in § 300.324(a)(2)(v).

*Changes:* None.

Agreement (§ 300.324(a)(4))

*Comment:* Many commenters expressed concern that permitting changes to a child's IEP without an IEP Team meeting will be detrimental to the child's overall education. Several commenters requested that § 300.324(a)(4) clarify whether such changes to the IEP can only be made between the annual IEP Team meetings to review the IEP and not in place of an annual IEP Team meeting. These commenters also requested clarification regarding the types of revisions that could be made without an IEP Team meeting. A few commenters recommended limiting the circumstances under which an IEP may be revised without convening an IEP Team meeting. One commenter requested that the regulations include safeguards to ensure that key elements of a child's IEP are not altered without a discussion of the changes with the parent.

*Discussion:* Section 300.324(a)(4), consistent with section 614(d)(3)(D) of the Act, allows a parent and a public agency to agree not to convene an IEP Team meeting to make changes to the child's IEP, and instead, to develop a written document to amend or modify the child's current IEP. The Act does not place any restrictions on the types of changes that may be made, so long as the parent and the public agency agree. Accordingly, we do not believe it would be appropriate to include restrictions on such changes in the regulations.

We do not believe that an amendment to an IEP can take the place of an annual IEP Team meeting. It is unnecessary to regulate on this issue because section 614(d)(4)(A)(i) of the Act clearly requires the IEP Team to review the child's IEP annually to determine whether the annual goals for the child

are being achieved. We believe that the procedural safeguards in §§ 300.500 through 520 are sufficient to ensure that a child's IEP is not changed without prior notice by a public agency and an opportunity to discuss any changes with the public agency.

*Changes:* None.

*Comment:* Several commenters asked whether the agreement to make changes to a child's IEP without an IEP Team meeting must be in writing. Many commenters recommended requiring informed written consent to amend an IEP without an IEP Team meeting.

*Discussion:* Section 614(d)(3)(D) of the Act does not require the agreement between the parent and the public agency to be in writing. In addition, the parent is not required to provide consent, as defined in § 300.9, to amend the IEP without an IEP Team meeting. However, it would be prudent for the public agency to document the terms of the agreement in writing, in the event that questions arise at a later time. Of course, changes to the child's IEP would have to be in writing.

*Changes:* None.

*Comment:* One commenter requested that the regulations include safeguards to ensure that key elements of a child's prior IEP program are not altered without discussion of the change with parents, and that parents are provided with information that will allow them to fully consider the alternatives.

*Discussion:* Section 300.324(a)(4), consistent with section 614(d)(3)(D) of the Act, permits the public agency and the parent to agree to amend the child's IEP without an IEP Team meeting. If the parent needs further information about the proposed change or believes that a discussion with the IEP Team is necessary before deciding to change the IEP, the parent does not have to agree to the public agency's request to amend the IEP without an IEP Team meeting.

*Changes:* None.

*Comment:* A few commenters recommended that when an IEP is changed without an IEP Team meeting, all personnel with responsibility for implementing the revised IEP should be informed of the changes with respect to their particular responsibilities and have access to the revised IEP. Some commenters recommended that once the parent has approved the IEP changes, the IEP Team members should be notified and trained on the amended IEP within one calendar week of the changes.

*Discussion:* We agree that when the parent and the public agency agree to change the IEP without an IEP Team meeting, it is important that the personnel responsible for implementing

the revised IEP be notified and informed of the changes with respect to their particular responsibilities. We will add language to address this in § 300.324(a)(4). We do not believe that it is necessary to regulate on the timeframe within which a public agency must make the IEP accessible to the service providers responsible for implementing the changes, or otherwise notify them of the changes, as this will vary depending on the circumstances (e.g., whether the changes are minor or major changes) and is, therefore, best left to State and local public agency officials to determine.

*Changes:* We have restructured § 300.324(a)(4) and added a new paragraph (a)(4)(ii) to require a public agency to ensure that the child's IEP Team is informed of changes made to a child's IEP when changes to the IEP are made without an IEP Team meeting.

*Comment:* One commenter asked whether States must allow parents and school districts to agree to change the IEP without an IEP Team meeting.

*Discussion:* The provisions in section 614(d)(3)(D) of the Act are intended to benefit parents by providing the flexibility to amend an IEP without convening an IEP Team meeting. Therefore, a State must allow changes to an IEP without an IEP Team meeting when a parent and public agency agree not to convene an IEP Team meeting, and instead develop a written document to amend or modify a child's current IEP, consistent with § 300.324(a)(4) and section 614(d)(3)(D) of the Act.

*Changes:* None.

#### Amendments (§ 300.324(a)(6))

*Comment:* Many commenters requested revising § 300.324(a)(6) to require public agencies to provide a copy of a revised IEP to the parent without requiring the parent to request the copy when amendments are made to the IEP. The commenters stated that this safeguard is needed to ensure that negotiated amendments are actually instituted. Some commenters recommended that, at a minimum, the parent should be provided with notice that they have the right to receive a copy of the revised IEP.

*Discussion:* The requirement for a public agency to provide a parent with a revised copy of the IEP upon the request of a parent is in section 614(d)(3)(F) of the Act. There is nothing in the Act that would prevent a school from providing a copy of a revised IEP to a parent whenever amendments are made. However, under the Act, the school is not required to provide the parent a copy of the revised IEP absent the parent's request for a copy. It would

be inconsistent with the Act to include such a requirement in the regulations.

*Changes:* None.

*Comment:* Some commenters recommended that changes to the IEP should not take effect until a notice has been sent to the parent explaining the changes and written consent from the parent has been obtained. One commenter recommended that the regulations require a core group of the IEP Team to meet and address any changes to the IEP.

*Discussion:* To implement the commenters' recommendations would be inconsistent with the Act. Section 614(d)(3)(F) of the Act cross-references section 614(d)(3)(D) of the Act, which provides that changes to the IEP may be made either by the entire IEP Team, which includes the parent, at an IEP Team meeting, or amended without an IEP Team meeting when the parent and public agency agree. The phrase "at an IEP Team meeting" following "by the entire IEP Team" was inadvertently omitted in § 300.324(a)(6). We will, therefore, add the phrase to clarify that changes to an IEP may be made by the entire IEP Team at an IEP Team meeting, or amended without an IEP Team meeting when the parent and public agency agree.

*Changes:* We have added the phrase "at an IEP Team meeting" following "by the entire IEP Team."

#### Failure To Meet Transition Objectives (§ 300.324(c))

*Comment:* One commenter recommended that § 300.324(c) emphasize collaboration between public agencies providing education and transportation in order to resolve problems concerning a child's transportation IEP objectives related to transition.

*Discussion:* Section 300.321(b)(3) requires the IEP Team to invite a representative of any agency that is likely to be responsible for providing or paying for transition services, when appropriate, and with the consent of the parent (or a child who has reached the age of majority). In addition, § 300.154(a), consistent with section 612(a)(12) of the Act, requires each State to ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency and the SEA, in order to ensure that services needed to ensure FAPE are provided. Section 300.154(b) and section 612(a)(12)(B)(i) of the Act specifically refer to interagency agreements or other mechanisms for interagency coordination with agencies assigned responsibility under State policy to

provide special education or related services relating to transition. This would include a public agency that is responsible for transportation under State policy. We believe this is sufficient to address the commenter's concern.

*Changes:* None.

*Comment:* A few commenters requested that § 300.324(c)(1) clarify that public agencies are under a legal obligation to provide services related to the transition objectives in a child's IEP.

*Discussion:* It is not necessary to include additional language in § 300.324(c)(1). Section 300.101, consistent with section 612(a)(1)(A) of the Act, requires each SEA to ensure that the special education and related services that are necessary for the child to receive FAPE are provided in conformity with the child's IEP. If an agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency must reconvene the IEP Team to develop alternative strategies to meet the transition objectives for the child set out in the child's IEP, consistent with section 614(d)(6) of the Act and § 300.324(c)(1).

*Changes:* None.

#### Children With Disabilities in Adult Prisons (§ 300.324(d))

*Comment:* A few commenters stated that guidance is needed regarding what requirements apply when serving incarcerated children with disabilities. One commenter recommended requiring that children with disabilities incarcerated in local jails continue with their established school schedules and IEP services, which States may provide directly or through an LEA.

*Discussion:* No change to the regulations is needed. Section 300.324(d)(1), consistent with section 614(d)(7) of the Act, specifies the requirements of the Act that do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons. If a child with a disability is incarcerated, but is not convicted as an adult under State law and is not incarcerated in an adult prison, the requirements of the Act apply. Whether the special education and related services are provided directly by the State or through an LEA is a decision that is best left to States and LEAs to determine.

*Changes:* None.

*Comment:* One commenter stated that SEAs and LEAs should not be allowed to restrict the types of services provided to children with disabilities simply because they are incarcerated.

*Discussion:* We disagree with the commenter. The Act allows services to be restricted for a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison. Section 614(d)(7)(B) of the Act states that the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. Further, the LRE requirements in § 300.114 and the requirements related to transition services in § 300.320 do not apply.

*Changes:* None.

#### Private School Placements by Public Agencies (§ 300.325)

*Comment:* One commenter stated that § 300.325, regarding private school placements by public agencies, is not in the Act and should be removed.

*Discussion:* We disagree with the commenter. Section 612(a)(10)(B) of the Act provides that children with disabilities who are placed in private schools and facilities are provided special education and related services, in accordance with an IEP, and have all the rights the children would have if served by a public agency. In order to comply with this statutory requirement, § 300.325 explains the responsibilities of the public agency that places a child with a disability in a private school or facility with respect to developing, reviewing, and revising the child's IEP.

*Changes:* None.

*Comment:* A few commenters requested clarifying § 300.325(b)(1), which allows the private school or facility to initiate and conduct IEP Team meetings to review and revise the child's IEP at the discretion of the public agency. The commenters stated that this should be changed to "only with the consent of the public agency."

*Discussion:* We do not believe the suggested change is necessary. Section 300.325(c) is clear that for publicly-placed children with disabilities, even if a private school or facility implements a child's IEP, responsibility for compliance with Part B of the Act remains with the public agency and the SEA. Therefore, it is up to the public agency to determine whether the private school or facility can initiate and conduct an IEP Team meeting to review and revise a child's IEP.

*Changes:* None.

#### Educational Placements (§ 300.327)

*Comment:* A few commenters stated that the terms "educational placement"

and "placement" are used throughout the regulations and recommended that only one of the terms be used to avoid confusion. A few commenters suggested that the term "educational placement" be defined to include location, supports, and services provided.

*Discussion:* The terms "educational placement" and "placement" are used throughout the Act, and we have followed the language of the Act whenever possible. We do not believe it is necessary to define "educational placement." Section 300.116, consistent with section 612(a)(5) of the Act, states that the determination of the educational placement of a child with a disability must be based on a child's IEP. The Department's longstanding position is that placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school.

*Changes:* None.

#### Alternative Means of Meeting Participation (§ 300.328)

*Comment:* One commenter requested that electronic mail be used as an alternative means of communication for administrative matters if the parents and the public agency agree.

*Discussion:* There is nothing in the Act or these regulations that prohibits the use of electronic mail to carry out administrative matters under section 615 of the Act, so long as the parent of the child with a disability and the public agency agree.

*Changes:* None.

*Comment:* A few commenters recommended that the regulations clarify that video conferences may be used to allow general education teachers to participate in IEP Team meetings.

*Discussion:* The regulations already address the use of video conferences. Section 300.328, consistent with section 614(f) of the Act, allows the use of video conferences and other alternative means of meeting participation if the parent of the child with a disability and the public agency agree.

*Changes:* None.

*Comment:* One commenter recommended that the regulations specify that the cost of using alternative means of meeting participation shall be borne by the LEA and not the parent.

*Discussion:* If a public agency uses an alternative means of meeting participation that results in additional costs, the public agency is responsible for paying the additional costs. We do not believe it is necessary to include this additional language in the regulations. Section 300.101, consistent with section 612(a)(1)(A) of the Act,

requires that the public education provided to children with disabilities must be free and appropriate. The benefits of including parents in the IEP process by providing alternative means by which parents can participate is an important part of ensuring that a child receives FAPE and far outweighs any additional costs for the alternative means of participation that a public agency may incur.

*Changes:* None.

*Comment:* A few commenters recommended requiring the parent's agreement to use alternative means of meeting participation to conform to the consent requirements in § 300.9.

*Discussion:* Section 614(f) of the Act allows the parent and a public agency to agree to use alternative means of meeting participation. *Consent*, as defined in § 300.9 is not required by the Act. Therefore, we do not believe it should be required by regulation.

*Changes:* None.

*Comment:* One commenter recommended that there be additional requirements when using alternative means of meeting participation. The commenter stated that parents should be informed of their right to refuse a telephone conference and should be required to provide consent at least seven days prior to the meeting. Another commenter recommended clarifying that alternative means of meeting should only be used when necessary.

*Discussion:* Section 614(f) of the Act allows a parent and a public agency to agree to use alternative means of meeting participation. The Act does not specify any additional requirements or restrictions. We view this provision as providing flexibility for parents and public agencies in arranging convenient meetings and believe that additional requirements would be inconsistent with that purpose.

*Changes:* None.

*Comment:* One commenter recommended that the regulations require LEAs to provide the parent with an IEP in a timely manner (within five business days) when alternative means of meeting participation are used for an IEP Team meeting. The commenter stated this was necessary so that the parent can verify the contents of the IEP.

*Discussion:* New 300.322(f) (proposed § 300.322(e)) requires the public agency to give the parent a copy of the child's IEP at no cost to the parent. We believe the specific timeframe in which the public agency provides a copy of the IEP to the parent is best left to the public agency to determine.

*Changes:* None.

*Comment:* One commenter stated that the requirements for alternative means of meeting participation in § 300.328 should be placed in the regulations following § 300.321, because the requirements add flexibility to the special education process.

*Discussion:* The requirements in § 300.328, regarding alternative means of meeting participation, apply to IEP Team meetings as well as placement meetings, and carrying out administrative matters under section 615 of the Act. Therefore, it would not be appropriate to move § 300.328 to the location in the regulations suggested by the commenter.

*Changes:* None.

### Subpart E—Procedural Safeguards

#### *Due Process Procedures for Parents and Children*

##### Opportunity To Examine Records; Parent Participation in Meetings (§ 300.501)

*Comment:* One commenter recommended adding language in § 300.501(a) stating that parents have the right to obtain a free copy of all education records.

*Discussion:* Section 300.501(a), consistent with section 615(b)(1) of the Act, affords parents an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. Specific procedures for access to records are contained in the confidentiality provisions in §§ 300.613 through 300.621. A participating agency, consistent with § 300.613(b)(2), however, must provide copies of a child's education records to a parent, if failure to do so would effectively prevent a parent from exercising the right to inspect and review the records, such as if a parent lives outside of commuting distance of the agency. This provision is consistent with the access rights afforded under FERPA in 34 CFR 99.10(d)(1).

We decline to make the change requested by the commenter because such a change would impose a significant new burden on public agencies that is not necessary. Public agencies, however, are free to provide copies whenever requested by the parent, if they choose to do so. We have, however, made a change to this section to correct the cross-references to the procedures for inspection and review of records.

*Changes:* We have corrected the cross-references to the procedures for inspection and review of records to §§ 300.613 through 300.621.

*Comment:* One commenter recommended adding a provision to § 300.501 that would give parents the opportunity to prepare their own reports and provide information that would become part of the child's education record.

*Discussion:* The Act and these regulations encourage parental input and involvement in all aspects of a child's educational program, and provide many opportunities for parents to provide information that becomes part of the child's education record. For example, § 300.304(a)(1), consistent with section 614(b)(2)(A) of the Act, requires any evaluation to include information provided by the parent; § 300.305(a)(2), consistent with section 614(c)(1)(B) of the Act, requires the review of existing data for evaluations and reevaluations to include input from the child's parents; § 300.306(a)(1), consistent with section 614(b)(4) of the Act, requires the parent to be part of the group that determines whether the child is a child with a disability and the educational needs of the child; and § 300.321(a)(1), consistent with section 614(d)(1)(B)(i) of the Act, requires the IEP Team that is responsible for developing, reviewing and revising the child's IEP to include the parent. In addition, § 300.322(a) specifies the steps a public agency must take to ensure that one or both parents are present at the IEP Team meeting and afforded the opportunity to participate in the meeting. Therefore, we do not believe that it is necessary to regulate on this issue. However, if a parent provides a report for the child's education record and the public agency chooses to maintain a copy of the written report, that report becomes part of the child's education record and is subject to the confidentiality of information requirements in §§ 300.610 through 300.627, and FERPA and its implementing regulations in 34 CFR part 99.

*Changes:* None.

*Comment:* Many commenters suggested adding language in § 300.501(b)(2) requiring the public agency to take whatever action is necessary to ensure that parents understand the proceedings at any of the meetings described in this section. The commenters stated that this requirement is not unnecessarily duplicative and removing it gives the impression that interpreters are no longer required. Several commenters recommended that if school staff determines that a parent has difficulty understanding the procedural safeguards, the public agency must explain the parent's rights at any time

that a change in services is contemplated.

*Discussion:* It is not necessary to add language to § 300.501(b)(2) to require a public agency to take whatever action is necessary to ensure that parents understand the proceedings at any of the meetings described in this section. Public agencies are required by other Federal statutes to take appropriate actions to ensure that parents who themselves have disabilities and limited English proficient parents understand proceedings at any of the meetings described in this section. The other Federal statutory provisions that apply in this regard are Section 504 of the Rehabilitation Act of 1973 and its implementing regulations in 34 CFR part 104 (prohibiting discrimination on the basis of disability by recipients of Federal financial assistance), title II of the Americans With Disabilities Act and its implementing regulations in 28 CFR part 35 (prohibiting discrimination on the basis of disability by public entities, regardless of receipt of Federal funds), and title VI of the Civil Rights Act of 1964 and its implementing regulations in 34 CFR part 100 (prohibiting discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance).

As noted in the *Analysis of Comments and Changes* section to subpart D, we have retained the requirements in current § 300.345(e), which require the public agency to take whatever action is necessary to ensure that the parent understands the proceedings at an IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. This requirement is in new § 300.322(e). We have also included a cross reference to new § 300.322(e) in § 300.501(c)(2) to clarify that.

It is not necessary to include regulations to require a public agency to explain the procedural safeguards to parents any time that a change in services is contemplated. Section 300.503 already requires prior written notice to be given to the parents of a child with a disability a reasonable time before the public agency proposes (or refuses) to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. As required in § 300.503(b)(4), the prior written notice must include a statement that the parents have protections under the procedural safeguards of this part. Consistent with §§ 300.503(c) and 300.504(d), the prior written notice and the procedural safeguards notice, respectively, must be written in language understandable to the general