services only in BIA-funded schools, and the Office of Indian Education Programs does not have jurisdiction over a State to ensure that the State is providing services to Indian children under Part B of the Act. In addition, the commenter stated that the term ''all Indian children'' was too broad, because the Secretary of the Interior is authorized to provide funding only for programs for children who are at least one-fourth Indian blood of a federally recognized tribe; residing on or near a reservation; and enrolled in a BIA-funded school.

Discussion: Section 300.713(a) and section 611(h)(5) of the Act do not require the Secretary of the Interior to provide services or funding to Indian children who are not at least one-fourth Indian blood of a federally recognized tribe, residing on or near a reservation, and enrolled in a BIA-funded school. These sections require the Secretary of the Interior to develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under Part B of the Act. In order to clarify the Secretary of the Interior's responsibility under this provision, we are revising § 300.713(a) to clarify that reservations covered under Part B of the Act means reservations served by elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior.

Section 300.713(a) and section 611(h)(5) of the Act require that the plan address the coordination of services for all Indian children residing on those reservations. This includes Indian children residing on those reservations that are enrolled in public schools in the local school district, as well as Indian children that are enrolled in BIA-funded schools. This also includes Indian students incarcerated in State, local, and tribal juvenile and adult correctional facilities. We are revising § 300.713(b) to ensure that the plan provides for coordination of services benefiting all Indian children with disabilities, including services provided by SEAs and State, local, and tribal juvenile and adult correctional facilities.

Changes: Section 300.713(a) has been revised to require the Secretary of the Interior to develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. Section 300.713(b) has been revised to require the plan to provide for the coordination of services benefiting these children from whatever source, including SEAs, and State, local, and tribal juvenile and adult correctional facilities.

Establishment of Advisory Board (§ 300.714)

Comment: One commenter requested definitions of ''collaboration'' and ''collaborated teachers.''

Discussion: We do not believe it is necessary to define ''collaboration'' in these regulations, because it is a commonly used term, which means working jointly with others, especially in an intellectual endeavor. Although the Act does not prohibit the Department from regulating on this issue, we do not believe it is necessary. The term ''collaborated teachers'' is not used in the Act or these regulations and, thus, is not appropriate for inclusion in the definitions in these regulations.

Changes: None.

Subpart H—Preschool Grants for Children with Disabilities

Allocation for State in Which By-Pass Is Implemented for Parentally-Placed Private School Children With Disabilities (§ 300.811)

Comment: None.

Discussion: We have determined that § 300.811, regarding allocation for a State in which by-pass is implemented for parentally-placed private school children with disabilities, is no longer applicable. Under section 619(c) of the Act, distribution of Part B funds to States is not based on child count. Section 300.191 details the amount of Part B funds the Secretary deducts from a State's allocation if a by-pass is implemented.

Changes: We are removing § 300.811 from the final regulations.

Subgrants to LEAs (§ 300.815)

Comment: One commenter asked whether the base year that applies to section 611 of the Act also applies to section 619 of the Act.

Discussion: The base year that applies to section 611 of the Act is not the same as the base year that applies to section 619 of the Act. The formula for allocating funds to LEAs under sections 611 and 619 of the Act is based on the amount of program funds received in a prior year (the base year), the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction, and the relative numbers of children living in poverty. Under section 619(g)(1)(A) of the Act, the base year for allocating section 619 funds to LEAs under the Preschool Grant program is Federal fiscal year (FFY) 1997. Under section 611(f)(2)(A) of the Act, the base year for allocating section 611 funds to LEAs under the Grants to States for the Education of Children with Disabilities Program is FFY 1999.

Changes: None.

Executive Order 12866

Costs and Benefits

Under Executive Order 12866, we have assessed the costs and benefits of this regulatory action.

Summary of Public Comments

The Department received four comments on the role of school psychologists in administering IQ tests as described in the proposed analysis of the costs and benefits of this regulatory action. The first commenter stated that it is inaccurate to conclude that fewer school psychologists will be needed, and asserted that school psychologists typically do more than administer IQ tests to students. The second commenter stated that public agencies could realize savings under the proposed regulation by reducing the amount of time school psychologists spend conducting cognitive assessments to document IQ discrepancies. The third commenter requested that the Department remove all language suggesting that potential savings may result from the need for fewer school psychologists to administer IQ tests. The fourth commenter stated that time saved on formal assessments as a result of the need to conduct fewer IQ tests could be used by school psychologists to train school staff in research-validated instructional and behavioral interventions, and to engage in other pro-active pre-referral policies.

All of these comments were considered in conducting the analysis of the costs and benefits of the final regulations. All of the Department's estimates and assumptions on which they are based are described below.

Summary of Costs and Benefits

Costs and Benefits of Statutory Changes

For the information of readers, the following is an analysis of the costs and benefits of the most significant statutory changes made by the Act that are incorporated into the final regulations governing the Assistance to States for the Education of Children with Disabilities program under Part B of the Act. In conducting this analysis, the Department examined the extent to which the regulations add to or reduce the costs for public agencies and others in relation to the costs of implementing the program regulations prior to the enactment of the new statute. Based on

this analysis, the Secretary has concluded that the statutory changes reflected in these final regulations will not impose significant net costs in any one year, and may result in savings to SEAs and LEAs. An analysis of specific provisions follows:

Requirement for State Certification for Highly Qualified Special Education Teachers

Section 300.156(c) requires that each person employed as a public school special education teacher who teaches in an elementary, middle, or secondary school be highly qualified, as defined in § 300.18, by the deadline established in section 1119(a)(2) of the ESEA, no later than the end of the 2005–2006 school year. Section 300.18(b)(1) requires that every public elementary and secondary school special education teacher obtain full State certification as a special education teacher or pass the State special education teacher licensing examination, and hold a license to teach in the State as a special education teacher as one of the conditions of being considered highly qualified to teach as a special education teacher. Previously, special education teachers were not required by Federal law to be certified as special education teachers in their States. The regulations preclude teachers for whom the special education certification or licensure requirements have been waived on an emergency, temporary, or provisional basis from meeting the definition of a highly qualified special education teacher. Teachers employed by a public charter school are exempt from these requirements and are subject to the requirements for highly qualified teachers in their State's public charter school law.

The impact of the requirement in the final regulations that all special education teachers have full special education certification depends on whether States and districts comply with the requirement by helping existing teachers who lack certification acquire it, or by hiring new fully-certified teachers, or some combination of the two.

According to State-reported data collected by the Department's Office of Special Education Programs, certification or licensure requirements have been waived for eight percent of special education teachers, or approximately 30,000 teachers. If States and districts respond to the statutory change reflected in the final regulations by hiring certified teachers to fill these positions, it could cost well over $1 billion to cover the salaries for a single year. (Occupational Employment and Wages Survey, November 2004, indicates a median national salary of $44,330 for elementary school teachers and $46,300 for secondary school teachers.) However, given that the *Study of Personnel Needs in Special Education* (SPENSE) found that in 1999–2000, 12,241 positions for special education teachers were left vacant or filled by substitute teachers because suitable candidates could not be found, it is unlikely that States and districts can meet this requirement through hiring.

The SPENSE study also found that 12 percent of special education teachers who lack full certification in their main teaching assignment field are fully certified in their main teaching assignment field in another State. This means that States should be able to certify an estimated 3,600 additional special education teachers at relatively little expense through reciprocal certification agreements with other States.

Responses to the 1999–2000 *Schools and Staffing Survey* indicate that nearly 10 percent (approximately 3,000 teachers) of special education teachers who lacked full certification, including those teaching under provisional, temporary, or emergency certification, were enrolled in a program to obtain State certification. If teachers already participating in a certification program are presumed to be within 10 semester hours of meeting their coursework requirements and the estimated cost of a semester hour in a university or college program is $200, then it would cost $6 million to help these teachers obtain full State certification. If teachers require more than 10 semester hours to complete their certification programs, it is unlikely they will be able to obtain certification through coursework in a timely manner.

States and districts are unlikely to be able to meet these requirements entirely through reciprocity agreements and college and university programs. The above estimates involve fewer than 7,000 of the approximately 30,000 teachers who lack full certification. Other options States and districts might use to certify the more than 23,000 remaining teachers include assessments of academic skill and subject matter knowledge and professional development. Assessment requirements for special education teachers vary across States and teaching assignment fields, but most States require at least two subject matter tests, a general test on core content knowledge, and a disability-specific test, for special education teacher certification. The average cost of each test is $75. The SPENSE study found that one-fourth of beginning special education teachers who took a certification test reported having to take it more than once before passing. If States and districts certified the remaining 23,000 teachers through existing assessments and 25 percent of the teachers took the tests twice, the cost would be approximately $4.3 million.

Some subset of special education teachers currently teaching through waivers will require additional training to obtain special education certification. The cost of certifying these teachers depends on State special education certification requirements and the types of professional development needed to help these teachers meet the requirements. Most studies in the year 2000 found that district expenditures for professional development range from one to four percent of a district's total budget or $2,062 per teacher. If 18,000 teachers need additional training, costing an average expenditure of $2,000 per teacher for professional development, the cost of certifying these teachers through training would be $36 million.

Because there is little information available on what is required to implement these statutory changes and the cost of doing so, the Secretary concludes that the cost may be significant given the number of special education teachers who lack certification. The Secretary further concludes that the benefits of State certification may not necessarily outweigh the costs.

The Secretary believes that teacher certification can be a valuable tool in ensuring that teachers have the knowledge and skills they need to help students meet high academic standards. Because the highly qualified teacher requirements in the ESEA, which focus on content knowledge, already applied to special education teachers providing instruction in core academic subjects, the benefits of requiring special education teachers to also meet State certification requirements for special education teachers will largely depend on the extent to which these requirements reflect pedagogical knowledge and other teacher characteristics that are likely to have a positive effect on achievement of students with disabilities. As of now, there is minimal research showing the relationship between special education certification and academic achievement for students with disabilities.

Special Education Teachers Teaching to Alternate Achievement Standards

Section 9101 of the ESEA requires that teachers of a core academic subject

have full State teacher certification, hold at least a bachelor's degree, and be able to demonstrate knowledge of the subject matter they teach. Elementary-level teachers may demonstrate subject matter expertise by passing a rigorous State test of their subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, but middle or secondary school teachers must demonstrate a high level of competence in each of the academic subjects that they teach.

Section 300.18(c) permits special education teachers who teach core academic subjects exclusively to children who are assessed against the alternate achievement standards, established under 34 CFR 200.1(d), to fulfill the highly qualified teacher requirements in section 9101(23)(B) or (C) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, to meet the requirements in section 9101(23)(B) or (C) for an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

The cost of demonstrating subject area competence depends on the number of special education teachers who teach core academic subjects exclusively to children assessed against alternate achievement standards, the number of these teachers who already would be considered highly qualified under section 9101(23) of the ESEA and the number who would not, and the cost of helping special education teachers who are not highly qualified meet the highly qualified teacher requirements for teaching core academic subjects at the middle and high school levels (or replacing them with highly qualified teachers). The final regulations will generate savings for public agencies to the extent that the cost of helping teachers demonstrate subject area competence at the elementary level and obtain the knowledge appropriate to the level of instruction needed to teach to alternate achievement standards is lower than the cost of demonstrating subject matter competence at the level (middle or high school) at which they are teaching.

Under 34 CFR 200.1(d), States are permitted to assess up to one percent of students against alternate achievement standards. Based on estimated 2005–2006 school enrollment data compiled by the National Center for Education Statistics (NCES), States could assess up to 257,650 students in the middle and secondary levels (grades 6–12) against alternate achievement standards. Based on a typical ratio of one teacher for every six students for instruction based on alternate achievement standards, as many as 43,000 special education teachers would be eligible to demonstrate that they fulfill the requirements for highly qualified teachers in section 9101 of the ESEA by demonstrating subject matter knowledge appropriate to the level of instruction being provided instead of the student's grade level. The number of affected teachers would depend on the extent to which these special education teachers are teaching exclusively children assessed against alternate achievement standards.

Although it is difficult to estimate the savings from these final regulations, the Secretary expects some savings to be produced because affected special education teachers are not required to demonstrate the same level of content knowledge as other middle and high school teachers of core academic subjects, thereby reducing the amount of additional coursework or professional development that is needed to meet State standards. The savings depend on the gap between what State standards require in terms of content knowledge for middle and high school teachers in various academic areas and what the affected teachers are able to demonstrate in the academic subjects they are teaching. Any savings will be offset in part by the cost of developing a means for the affected teachers to demonstrate subject matter knowledge appropriate to the level of instruction being provided. However, this cost is not expected to be significant. On balance, the Secretary concludes that the final regulations could produce significant savings without adversely affecting the quality of instruction provided to children assessed against alternate achievement standards.

Special Education Teachers Teaching Multiple Subjects

Section 300.18(d) permits special education teachers who are not new to the profession and teach two or more core academic subjects exclusively to children with disabilities to demonstrate competence in all the core academic subjects that the teacher teaches in the same manner as other elementary, middle, and secondary school teachers who are new to the profession under 34 CFR 200.56(c), including through a High Objective Uniform State Standards of Evaluation (HOUSSE) covering multiple subjects. The final regulations allow more time (two years after the date of employment) for new special education teachers who teach multiple subjects and who have met the highly qualified requirements for mathematics, language arts, or science to demonstrate competence in other core academic subjects that they teach, as required by 34 CFR 200.56(c). The final regulations also clarify in § 300.18(e) that States have the option of developing separate HOUSSE standards for special education teachers, including a single HOUSSE for special education teachers of multiple subjects. States may not establish lesser standards for content knowledge for special education teachers, however.

We are unable to estimate the number of new teachers who teach two or more core academic subjects exclusively to children with disabilities who might be affected by the additional time afforded by the regulation. However, the extent of savings relates to the number of subjects taught by teachers of multiple subjects and the benefits of enabling the affected teachers to take whatever coursework they need to demonstrate competence in those additional areas over a longer period of time. Under prior law, public agencies might have needed to employ additional teachers (or redeploy some existing teachers) in those subject areas in which their newly hired teachers could not immediately demonstrate competence. The Secretary concludes that the benefits of being able to hire teachers who are qualified in at least one subject area outweigh any costs to students being taught by teachers who currently do not meet the requirements in other areas but are working to demonstrate their knowledge in other areas in which they teach.

Since States are not permitted to establish a lesser standard for the content knowledge requirements for special education teachers, they are not likely to realize additional savings due to reduced expenses for coursework or professional development for special education teachers who have not demonstrated content area knowledge. States may realize administrative savings, however, by being able to use separate HOUSSE standards that are both aligned with their licensing or certification standards for special education teachers and that cover multiple subjects. The Secretary concludes that the final regulations could produce administrative savings for States without adversely affecting the quality of instruction provided to children taught by special education teachers assessed through a separate mechanism that upholds the same standards for content knowledge.

Limitation on Number of Reevaluations in a Single Year

Section 300.303(b)(1) prohibits conducting more than one reevaluation in a single year without the agreement of the school district and the parent. The previous regulations required reevaluations when conditions warranted one or at the request of either the child's parent or teacher.

Multiple evaluations in a single year are rare and are conducted when parents are not satisfied with the evaluation findings or methodology, children have a degenerative condition that affects the special education and related services needed, or very young children (ages three through four) are experiencing rapid development that may affect the need for services. The final regulations will not significantly affect the number of evaluations in the latter two instances because public agencies and parents are likely to agree that multiple evaluations are warranted. These cases, however, account for a very small number of the cases in which multiple evaluations are conducted each year.

Because evaluation findings may be used to support requests for due process hearings, we can use data on the number of requests for due process hearings to estimate the number of cases in which more than one evaluation in a single year would have been conducted because parents were not satisfied with the evaluation findings or methodology. Based on data from the recent Government Accountability Office (GAO) report, ''Special Education: Numbers of Formal Disputes Are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts'' (GAO–03–897), in which States reported receiving 11,068 requests for due process hearings during 1999–2000, we estimate that States would receive 20 requests for every 10,000 students with disabilities during the 2006–2007 school year. Based on the prevalence of complaints by parents, we estimate that, of the 1.7 million children estimated to be eligible for reevaluation in 2006–2007, multiple evaluations would have been requested by parents for an estimated 3,400 children. If we assume that these additional evaluations would cost about $1,000 each, public agencies could save $3.4 million under the final regulations by not agreeing to more than one evaluation of children in these instances.

Triennial Evaluations

The previous regulations required a school district to conduct an evaluation of each child served under the Act every three years to determine, among other things, whether the child was still eligible for special education. The previous regulations also permitted the evaluation team to dispense with additional tests to determine the child's continued eligibility if the team concluded that this information was not needed and the parents provided consent. Section 300.303(b)(2) permits districts to dispense with the triennial evaluation when the child's parents and the public agency agree that a reevaluation is unnecessary. The impact of this change depends on the following factors: the number of children eligible for a reevaluation, the cost of the evaluation, and the extent to which districts and parents agree to waive reevaluations.

Published estimates of the cost of multidisciplinary evaluations range from $500 to $2,500, but these estimates may overestimate potential savings because testing is a significant factor in the cost of evaluations, and districts are already permitted to dispense with additional testing when extant data are sufficient for reevaluation. The extent to which States and districts eliminated unnecessary testing during triennial evaluations under the previous regulations is unclear, but program officers estimate that additional testing or observation by a school psychologist is not needed for as many as half of the approximately 1.7 million children eligible for triennial evaluations each year. In the estimated 850,000 cases in which additional testing is not needed, review of the extant data may still be warranted to determine if a child still needs special education and related services under the Act or to assess whether any additions or modifications to the special education and related services being provided are needed to help the child meet the child's IEP goals. Even if additions or modifications to special education and related services are not likely, parents may not want to dispense with the triennial evaluation if they believe further information could be gained from the extant data or they want to compare their child's progress against his or her previous assessments. If parents and the district agree that a reevaluation is not needed in 15 percent, or 127,500, of these cases and a reevaluation using only extant data would have cost $150, the final regulations could save $19.125 million.

These savings will be partially offset by increased administrative costs associated with obtaining consent from parents to dispense with reevaluation. To estimate the cost of obtaining parental consent, the Department assumes that schools could use a standard pre-printed document that would take approximately 15 minutes of administrative personnel time to fill out and send to parents. In addition, we estimate that an average of 2.5 additional written notices or telephone calls would be needed to obtain consent, requiring 15 minutes of administrative personnel time per additional contact. At an average hourly compensation of $25, the cost to public agencies of obtaining parental consent would be $2.8 million, resulting in estimated net savings to public agencies from the final regulations of $16.3 million.

IEP Team Attendance

Section 300.321(e)(1) permits certain members of the IEP Team to be excused from attending an IEP Team meeting, in whole or in part, if the parent of the child with a disability and the public agency agree in writing that the member's attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed. The previous regulations required that all IEP Team meetings include the parents of the child, at least one regular education teacher (if the child is, or may be, participating in the regular education environment), at least one special education teacher, a representative of the public agency, and someone who could interpret the instructional implications of the evaluation results (who may be one of the other required IEP Team members). The extent to which public agencies will realize savings from the final regulations depends on which team members are excused from how much of the meeting. If the average IEP Team meeting lasts 1.5 hours and requires a half an hour of teacher preparation, then we estimate that the opportunity costs for a teacher of attending a meeting (based on average compensation per hour of $48) would be $96. If we assume an average of 1.2 IEP Team meetings are held for each of the 6.947 million children with disabilities, then 8.34 million IEP Team meetings will be held in 2006–2007. If one teacher could be excused from five percent of these meetings, the final regulation could result in savings of $40 million.

These savings will be partially offset by increased administrative costs associated with obtaining written consent from parents and public agency staff. Based on the above estimate of the cost of obtaining consent from parents under § 300.303(b)(2), the Department estimates that the cost to public agencies of obtaining written consent from these parents would be $9.1

million, resulting in net savings to public agencies from the final regulations of $30.9 million.

Section 300.321(e)(2) permits certain members of an IEP Team to be excused from attending an IEP Team meeting that involves a modification to or discussion of the member's area of the curriculum or related service if the parent and the public agency consent in writing to the excusal and the member submits written input to the parent and the other members of the IEP Team prior to the meeting. The change is unlikely to generate notable savings because reduced time spent in meetings is likely to be offset by the time required to draft written input, send it to the parents and other IEP Team members, and secure the consent of parents and public agency to the excusal. In cases in which IEP Team meetings take longer than the average time of 1.5 hours, there are likely to be controversial issues or significant modifications to the IEP under discussion. Parents are presumably less likely to consent to the excusal of team members in these instances.

Definition of Individualized Education Program (IEP)

Section 300.320(a)(2)(i) requires that each IEP include a statement of measurable annual goals, including academic and functional goals, for the child. The previous regulations required that each IEP contain benchmarks or short-term objectives for each of the annual goals. By eliminating the need to develop benchmarks or short-term objectives, the final regulations could result in teachers spending less time on each IEP. Under § 300.320(a)(2)(ii), however, IEPs for the estimated 486,000 children with disabilities who take alternate assessments aligned to alternate achievement standards would still be required to include a statement of benchmarks or short-term objectives.

Based on average compensation for teachers of $48 per hour, a reduction in time as modest as 15 minutes could save approximately $12 per IEP or $77.5 million total in opportunity costs for teachers related to the development of IEPs during the 2006–2007 school year for the 6.461 million children with disabilities who do not take alternate assessments aligned to alternate achievement standards.

Amendments to an IEP

When changes to a child's IEP are needed after the annual IEP Team meeting for the school year has been held, § 300.324(a)(4) allows the parent of a child with a disability and the public agency to agree to forego a meeting and develop a written document to amend or modify the child's current IEP. Under the previous regulations, the IEP Team was required to reconvene in order to make amendments to an IEP. Based on our estimate of an average of 1.2 IEP Team meetings per child per year, approximately 1.4 million IEP Team meetings beyond the required annual IEP Team meeting would be held during the 2006–2007 school year. If half of these meetings concerned amendments or modifications to an IEP and parents and agency representatives agreed to forego a meeting and develop a written document in half of these cases, then 350,000 IEP Team meetings would not be needed. The combined opportunity costs for personnel participating in a typical IEP Team meeting are estimated at $307. If drafting a written document to amend or modify an IEP is assumed to cost half as much as a meeting, then this change could result in savings of $53.7 million.

Procedural Safeguards Notice

Section 300.504(a), which incorporates changes in section 615(d)(1) of the Act, requires that a copy of the procedural safeguards notice be given to parents of children with disabilities only once a school year, except that a copy must also be given when an initial evaluation or parent request for an evaluation occurs; the first time a due process hearing is requested during a school year; when the decision to take disciplinary action is made; and when a parent requests the notice. The prior law required that a copy of the procedural safeguards notice be given to the parents upon initial referral for an evaluation, each notification of an IEP Team meeting, each reevaluation of the child, and the registration of each request for a due process hearing. Under the final regulations, a copy of the procedural safeguards notice no longer has to be given to parents with each notice for an IEP Team meeting or every time a request for a due process hearing is received. Instead, the document only has to be given to parents once a year, and the first time a due process hearing is requested in a year, when the decision to take disciplinary action is made, when a copy of the document is specifically requested by a parent, or when an initial evaluation or request for a reevaluation occurs.

To determine the impact of this change, it is necessary to estimate the savings created by providing fewer notices to parents who are notified about more than one IEP Team meeting during the year or who file more than one request for a due process hearing. Given the small number of hearing requests in a year (about 20 per 10,000 children with disabilities), our analysis will focus on the number of parents involved in more than one IEP Team meeting. Although we lack detailed data on the number of IEP Team meetings conducted each year, we estimate that approximately 6.947 million children with disabilities will be served in school year 2006–2007. For the vast majority of these children, we believe there will be only one IEP Team meeting during the year. For purposes of estimating an upper limit on savings, if we assume an average of 1.2 meetings per year per child, 1.39 million children will have two IEP Team meetings each year and the change reflected in § 300.504(a) will result in 1.39 million fewer procedural notices provided to parents. While some people may believe this change represents a significant reduction in paperwork for schools, the actual savings are likely to be minimal given the low cost of producing a notice of this size (about 10 pages) and the small amount of administrative staff time involved in providing this notice to parents (about 10 minutes). Taking all of this into consideration, total savings are unlikely to exceed $5 million.

Due Process Request Notices

Section 300.511(d) prohibits the party who requested the due process hearing from raising issues not raised in the due process request notice, unless the other party agrees. Under previous regulations, there was no prohibition on raising issues at due process hearings that were not raised in the due process notice.

By encouraging the party requesting the hearing to clearly identify and articulate issues sooner, the final regulations could generate actual savings by facilitating early resolution of disagreements through less costly means, such as mediation or resolution meetings. But early identification of issues could come at the cost of more extensive involvement of attorneys earlier in the process. At the same time, prohibiting the party requesting the hearing from raising new issues at the time of the hearing could result in additional complaints or protracted conflict and litigation. On balance, net costs or savings are not likely to be significant.

Using data from recent State data collections conducted by the Consortium for Appropriate Dispute Resolution in Special Education (CADRE), in which States reported receiving 12,914 requests for due process hearings during 2000–2001, we

estimate that there will be approximately 14,059 requests in 2006–2007. Because some parties already hire attorneys or consult other resources such as advocates or parent training centers to develop the request for due process, the Department assumes that only a portion of the requests would be affected by this new requirement. Although we have no reliable data on average attorneys' fees in due process cases, for purposes of this analysis, the Department assumes an hourly rate of $300 as an upper limit. The Department further assumes that each instance in which a party chooses to hire an attorney sooner as a result of this change will involve no more than three additional hours of work. Even if we assume that parties requesting the hearing will incur this additional cost in the case of 8,000 of the expected requests for due process, the total costs would not be significant (less than $8 million), and could be outweighed by the benefits of early identification and resolution of issues. Although such benefits are largely unquantifiable, early identification and resolution of disputes would likely benefit all parties involved in disputes.

Resolution Meetings

Section 300.510 requires the parents, relevant members of the IEP Team, and a representative of the public agency to participate in a resolution meeting, prior to the initiation of a due process hearing, unless the parents and LEA agree to use mediation or agree to waive the requirement for a resolution meeting. The impact of these final regulations will depend on the following factors: the number of requests for due process hearings, the extent to which disagreements are already resolved without formal hearings, the likelihood that parties will agree to participate in mandatory resolution meetings instead of other potentially more expensive alternatives to due process hearings (*e.g.*, mediation), and the likelihood that parties will avoid due process hearings by reaching agreement as a result of mandatory resolution meetings.

Available data suggest that overall savings are not likely to be significant because of the small number of due process requests and the extent to which disagreements are already being successfully resolved through mediation.

Based on data reported in a recent CADRE State data collection in which States reported receiving 12,914 requests for due process hearings during 2000–2001, we estimate that there will be approximately 14,059 requests for due process hearings in school year 2006–2007. Based on data from the same study, we also estimate that the large majority of these disagreements will be successfully resolved through mediation or dropped. Out of the 12,914 requests for school year 2000–2001, approximately 5,536 went to mediation and only 3,659 ended up in formal hearings. Assuming no change in the use and efficacy of mediation, we predict that 6,028 requests would go to mediation in school year 2006–2007. We further predict that another 4,047 complaints will be dropped, leaving no more than 3,985 requests for due process hearings that would require resolution meetings.

Because of the high cost of due process hearings and the low expected cost of conducting a resolution meeting, there would likely be some savings for all parties involved if resolution meetings were relatively successful in resolving disagreements. For example, California reports an average cost of $18,600 for a due process hearing, while Texas reports having spent an average of $9,000 for a hearing officer's services. Anticipating that attorneys will participate in approximately 40 percent of the predicted 3,985 resolution meetings (including drafting legally binding agreements when parties reach agreement), we expect resolution meetings to cost just over twice the average cost of IEP Team meetings, or approximately $700 per meeting. Even with a very low success rate (eight percent), given the expected costs of these meetings compared to the high cost of conducting a hearing, all parties involved would likely realize some modest savings. However, because disputes that result in formal hearings tend to be the most difficult to resolve, we do not expect that mandatory resolution meetings will be highly successful in resolving such cases. By definition, these are cases in which the parties are not amenable to using existing alternatives to formal hearings such as mediation. Moreover, assuming an average cost of between $10,000 and $20,000 per due process hearing, even if as many as 20 percent of the 3,985 complaints were successfully resolved through resolution meetings, net savings still would not exceed $10 million. (Note that it is unclear to what extent data on average mediation and due process hearing costs account for LEA opportunity costs (e.g., cost per teacher and/or administrator participating). To the extent that these data do not reflect the opportunity costs of participating LEA officials and staff, we have overestimated the potential savings from resolution meetings).

Beyond those savings to all parties resulting from reductions in the total number of formal hearings, we also expect some additional savings to result from parties agreeing to participate in resolution meetings instead of mediation, particularly if the resolution meetings are as effective as mediation in resolving disagreements. However, unlike due process hearings, the expected cost of conducting a resolution meeting ($700 per meeting) is only somewhat less than the cost of a mediation session (between $600 and $1,800 per session). Because the cost differential between resolution meetings and mediations is relatively small (compared to the difference in cost between resolution meetings and due process hearings) the potential for savings generated by parties agreeing to resolution meetings instead of mediation is minimal.

The Secretary concludes that requiring parties to participate in resolution meetings prior to due process hearings could generate modest savings for all parties to disputes, insofar as mandatory resolution meetings could result in fewer due process hearings and may be used as a less expensive alternative to mediation.

Manifestation Determination Review Procedures

Section 300.530(e) and (f) incorporate the change in the statutory standard for conducting manifestation determination reviews. Under the prior law, the IEP Team could conclude that the behavior of a child with a disability was not a manifestation of the child's disability only after considering a list of factors, determining that the child's IEP and placement were appropriate, and that FAPE, supplemental services, and behavioral intervention strategies were being provided in a manner consistent with the child's IEP. Previous law also required the IEP Team to consider whether a child's disability impaired the child's ability to understand the impact and consequences of the behavior in question, and to control such behavior. The Act eliminated or substantially revised these requirements. The final regulations simply require an IEP Team to review all relevant information in the child's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct in question was the direct result of the LEA's failure to implement the IEP. The purpose of the change in the law is to simplify the discipline process and

make it easier for school officials to discipline children with disabilities when discipline is appropriate and justified.

Because fewer factors need to be considered during each manifestation determination review, the time required to conduct such reviews will likely be reduced, and some minimal savings may be realized. However, the more significant impact relates to secondary effects. Because it will be less burdensome for school personnel to conduct manifestation determinations, it is reasonable to expect an overall increase in the number of these reviews as school personnel take advantage of the streamlined process to pursue disciplinary actions against those children with disabilities who commit serious violations of student codes of conduct. This prediction is consistent with a recent GAO report (''Student Discipline: Individuals with Disabilities Education Act'' (GAO–01–210)), which found that a ''sizable minority of principals'' voiced concern that discipline policies under previous law impeded proper disciplinary action for students with disabilities, and that some of these comments ''may have stemmed from the additional time and resources that principals reportedly use to discipline special education students compared with regular education students.'' Even more importantly, the changes in the law will make it easier for review team members to conclude that the behavior in question is not a manifestation of a child's disability, enabling school personnel to apply disciplinary sanctions in more cases involving children with disabilities.

We have minimal data on the number of manifestation determination reviews being conducted. However, State-reported data for the 2002–2003 school year suggest that schools are conducting a relatively small number of manifestation reviews. According to these data, for every 1,000 children with disabilities, approximately 11 will be suspended or expelled for longer than 10 days during the school year (either through a single suspension or as a result of multiple short-term suspensions)—the disciplinary action triggering a manifestation review. (Please note that we have no way of accurately estimating what portion of short-term suspensions that add up to 10 days would be determined by school personnel to constitute a change in placement. Therefore, we assume, for purposes of this analysis, that 100 percent of these instances would require a manifestation review because they would be deemed a change in placement). Based on a recent GAO study (''Student Discipline: Individuals with Disabilities Education Act'' (GAO–01–210)), we assume that under previous law at least 85 percent of manifestation reviews resulted in disciplinary actions (e.g., long-term suspensions or expulsion). In other words, approximately 15 percent of all manifestation reviews did not result in disciplinary action because the behavior in question was determined to be a manifestation of the child's disability.

Without taking into consideration increases in the frequency of manifestation reviews, using suspension and expulsion data from previous years, we estimate that the total number of manifestation reviews in 2006–2007 will be approximately 87,880. If we assume that the streamlining reflected in the regulations will produce a 20 percent increase in the total number of manifestation reviews, we predict that 17,576 additional meetings will occur, for a total of 105,456 meetings.

Under the final regulations, the Secretary also expects an increase in the total number of manifestation reviews resulting in disciplinary actions, but it is not likely to be a significant increase. GAO's finding that there is little practical difference in how school personnel disciplined regular and special education students under previous law suggests that manifestation reviews are already highly likely to result in disciplinary actions.

The Secretary concludes that the final regulations will generate some minimal savings from the reduction in time required to conduct the manifestation reviews. Schools would also realize some qualitative benefits related to the increased likelihood that the outcome of the review will result in disciplinary action, thereby fostering a school environment that is safer, more orderly, and more conducive to learning. The Secretary acknowledges that the final regulations could create additional costs for parents of children who, but for this change, would not have been subject to disciplinary removals, to the extent that such parents disagree with the manifestation determination and choose to appeal it. On balance, the Secretary believes that the benefits likely to result from this change relating to school safety and order outweigh the costs to families.

Authority To Remove Students With Disabilities to Interim Alternative Educational Settings

Sections 300.530(g) through 300.532 incorporate two significant statutory changes relating to the authority of school personnel to remove children with disabilities to interim alternative educational settings. First, the Act now gives school personnel the authority to remove to interim alternative educational settings children who have inflicted serious bodily injury to themselves, or others. Under previous law, school personnel were authorized to remove children to alternative settings only for misconduct involving: (1) The use and possession of weapons; and (2) the knowing possession, sale, or use of illegal drugs or controlled substances. The Act added the commission of serious bodily injury to this list. In cases involving serious bodily injury, school personnel would be able to unilaterally remove children with disabilities to interim alternative educational settings for up to 45 school days without having to request that a hearing officer review the facts to determine whether or not the child is substantially likely to harm him or herself or others. Second, the 45-day rule has changed. Under previous law, students could not be removed to interim alternative educational settings for more than 45 days. Now, under the Act, the comparable time limitation is 45 school days.

Although the addition of serious bodily injury significantly simplifies the process for removing a child who has engaged in such misconduct, the data suggest that the savings from the final regulations will be minimal. Recent Department of Justice data show that ''fighting without a weapon'' is by far the most common type of serious misconduct engaged in by all students. However, State-reported data suggest that, of the 20,000 instances in 2002–2003 in which children with disabilities were suspended or expelled for longer than 10 days, only 1,200 involved serious bodily injury or removal ''by a hearing officer for likely injury.'' We estimate that approximately 6.947 million children with disabilities will be served during the 2006–2007 school year. Using these data, we project that there would have been approximately 1,283 instances in 2006–2007 in which a school district might have requested approval from a hearing officer to remove a child for inflicting serious bodily injury, if the law had not been changed. Taking into account the time that would have been spent by both relevant school administrators and the hearing officers and their estimated hourly wages (about $125 per hour for hearing officers and $50 per hour for school administrators), we conclude that the unilateral authority afforded school officials under the final regulations produce only minimal savings (less than $1 million).

A much more significant benefit relates to the enhanced ability of school officials to provide for a safe and orderly environment for all students in the 1,283 cases in which school officials would have been expected to seek and secure hearing officer approval for removing a child with a disability to an alternative setting and the other cases in which they might not have taken such action, but where removal of a child with a disability who has caused injury is justified and produces overall benefits for the school.

The change in how days are to be counted (*e.g.,* from ''calendar days'' under previous law to ''school days'' under the final regulations) allows school officials to extend placements in alternative settings for approximately two additional weeks. This generates some savings to the extent that it obviates the need for school officials to seek hearing officer approval to extend a child's placement in an alternative setting.

While school personnel are not required to use the new authority to remove children who have inflicted serious bodily injury or to remove children for the total amount of time that is authorized, we acknowledge that it would create additional costs for schools that choose to take full advantage of this authority because of the added costs of providing services in interim alternative educational settings. Using data from a recent GAO study (''Student Discipline: Individuals with Disabilities Education Act'' (GAO–01–210)), we estimate that approximately 3,007 children will be removed to an interim alternative educational setting in 2006–2007 for misconduct involving drugs or weapons and at least another 1,283 for misconduct involving serious bodily injury. Although we do not have data on the costs of educating these children in an alternative setting for 45 school days, the Secretary concludes that the costs of doing so will be outweighed by the qualitative benefits to schools associated with ensuring children a safe and orderly environment that is conducive to learning.

Costs and Benefits of Non-Statutory Final Regulatory Provisions

The following is an analysis of the costs and benefits of the non-statutory final regulatory provisions that includes consideration of the special effects these changes may have on small entities.

The final regulations primarily affect SEAs and LEAs, which are responsible for carrying out the requirements of Part B of the Act as a condition of receiving Federal financial assistance under the Act. Some of the changes also affect children attending private schools and consequently indirectly affect private schools.

For purposes of this analysis as it relates to small entities, the Secretary has focused on LEAs because these regulations most directly affect local public agencies. The analysis uses a definition of small school district developed by the NCES for purposes of its recent publication, *Characteristics of Small and Rural School Districts.* In that publication, NCES defines a small school district as ''one having fewer students in membership than the sum of (a) 25 students per grade in the elementary grades it offers (usually K–8) and (b) 100 students per grade in the secondary grades it offers (usually 9–12)''. Using this definition, approximately 38 percent of the Nation's public agencies in the 2002–2003 *Common Core of Data* were considered small and served three percent of the Nation's students. Approximately 17 percent of children in small districts had IEPs.

Both small and large districts will be affected economically by the final regulations, but no data are available to analyze the effect on small districts separately. For this reason, this analysis assumes that the effect of the final regulations on small entities will be roughly proportional to the number of children with disabilities served by those districts.

For school year 2006–2007, we project that approximately 48.6 million children will be enrolled in public elementary and secondary schools. Using the NCES definition and assuming that all districts grew at the same rate between school years 2002–2003 and 2005–2006, we estimate that in the 2006–2007 school year, approximately 1.46 million children will be enrolled in small districts. Based on the percentage of students in small districts with IEPs in 2002–2003, we estimate that in the 2006–2007 school year, these districts will serve approximately 248,000 children with disabilities of the 6.947 million children with disabilities served nationwide.

There are many provisions in the final regulations that will result in economic impacts, both positive and negative. The following analysis estimates the impact of the final regulations that were not required by the Act:

Procedures for Evaluating Children With Specific Learning Disabilities

Section 300.307(a) requires that States adopt criteria for determining whether a child has a specific learning disability. Under the final regulations, States may not require that LEAs use criteria based on a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. The final regulations also require that criteria adopted by States permit the use of a process that determines if the child responds to scientific, research-based intervention. States are also permitted to use other alternative procedures to determine if a child has a specific learning disability.

Before determining that a child has a specific learning disability, § 300.309(b) requires that the evaluation team consider data that demonstrate that prior to, or as part of the referral process, the child received appropriate instruction in regular education settings and that data-based documentation of repeated assessments of achievement during instruction was provided to the child's parents. If the child has not made adequate progress under these conditions after an appropriate period of time, the final regulations further require that the public agency refer the child for an evaluation to determine if special education and related services are needed. Under the final regulations, the child's parents and the team of qualified professionals, described in § 300.306(a)(1), are permitted to extend the evaluation timelines described in §§ 300.301 through 300.303 by mutual written agreement.

If the estimated number of initial evaluations each year is 1.7 million and the percentage of evaluations involving children with specific learning disabilities is equivalent to the percentage of all children served under Part B of the Act with specific learning disabilities, then the final regulations will affect approximately 816,000 evaluations each year. Depending on the criteria adopted by their States pursuant to § 300.307(a), public agencies could realize savings under the final regulations by reducing the amount of a school psychologist's time involved in conducting cognitive assessments that would have been needed to document an IQ discrepancy. However, these savings could be offset by increased costs associated with documenting student achievement through regular formal assessments of their progress, as required under § 300.309(b).

Although the cost of evaluating children suspected of having specific learning disabilities might be affected by the final regulations, the Department expects that the most significant benefits of the changes will be achieved through improved identification of children suspected of having specific learning disabilities. By requiring that States permit alternatives to an IQ-

discrepancy criterion, the final regulations facilitate more appropriate and timely identification of children with specific learning disabilities, so that they can benefit from research-based interventions that have been shown to produce better achievement and behavioral outcomes.

The final regulations may impose additional costs on small public agencies that currently lack capacity to conduct repeated assessments of achievement during instruction and provide parents with documentation of the formal assessments of their child's progress. These costs are likely to be offset by reduced need for psychologists to administer intellectual assessments. To the extent that small districts may not employ school psychologists, the revised criteria may alleviate testing burdens felt disproportionately by small districts under an IQ discrepancy evaluation model.

Transition Requirements

Section 300.321(b) modifies previous regulations regarding transition services planning for children with disabilities who are 16 through 21 years old. Public agencies are still required to invite other agencies that are likely to be responsible for providing or paying for transition services to the child's IEP Team meeting. If the invited agency does not send a representative, public agencies are no longer required to take additional steps to obtain the participation of those agencies in the planning of transition, as required under former § 300.344(b)(3)(ii).

Public agencies will realize savings from the change to the extent that they will not have to continue to contact agencies that declined to participate in IEP Team meetings on transition planning. In school year 2006–2007, we project that public agencies will conduct 1.193 million meetings for children with disabilities who are 16 through 21 years old. We used data from the *National Longitudinal Transition Study 2* (NLTS2) on school contacts of outside agency personnel to project the number of instances in which outside agencies would be invited to IEP Team meetings during the 2006–2007 school year. Based on these data, we project that schools will invite 1.492 million personnel from other agencies to IEP Team meetings for these students during the 2006–2007 school year. The NLTS2 also collected data on the percentage of children with a transition plan for whom outside agency staff were actively involved in transition planning. Based on these data, we project that 432,800 (29 percent) of the contacts will result in the active participation of outside agency personnel in transition planning for children with disabilities who are age 16 through 21.

We base our estimate of the savings from the change on the projected 1,059,200 (71 percent) instances in which outside agencies will not participate in transition planning despite school contacts that, under the previous regulations, would have included both an invitation to participate in the child's IEP Team meeting and additional follow-up attempts. If public agencies made only one additional attempt to contact the outside agency and each attempt required 15 minutes of administrative personnel time, then the change will save $6.6 million (based on an average hourly compensation for office and administrative support staff of $25).

Studies of best practices conducted by the National Center on Secondary Education and Transition indicate that effective transition planning requires structured interagency collaboration. Successful approaches cited in the studies included memoranda of understanding between relevant agencies and interagency teams or coordinators to ensure that educators, State agency personnel and other community service providers share information with parents and children with disabilities. The previous regulations focused on administrative contact instead of active strategic partnerships between agencies that facilitate seamless transitions for children with disabilities between school and adult settings. For this reason, the Department believes that the elimination of the non-statutory requirement that public agencies make additional attempts to contact other agencies will reduce administrative burden and allow public agencies to focus their efforts on interagency collaborative transition planning for children with disabilities.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

These final regulations include 9 information collection requirements associated with the following provisions: §§ 300.100 through 300.176, § 300.182, § 300.199, §§ 300.201 through 300.213, § 300.224, § 300.226, §§ 300.506 through 300.507, § 300.511, §§ 300.601 through 300.602, § 300.640, § 300.704, and § 300.804. A description of these provisions is given below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Collection of Information: Annual State Application under Part B of the Act. §§ 300.100 through 300.176, § 300.182, and § 300.804. Each State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the eligibility criteria under Part B of the Act and these final regulations. Under the Act, States are no longer required to have on file with the Secretary policies and procedures to demonstrate to the satisfaction of the Secretary that the State meets specific conditions for assistance under Part B of the Act. Information collection 1820–0030 has been revised to reflect this change in the Act and these regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average twelve hours for each response for 60 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0030 is estimated to be 720 hours.

Collection of Information: Part B State Performance Plan (SPP) and Annual Performance Report (APR). §§ 300.600 through 300.602. Each State must have in place, not later than one year after the date of enactment of the Act, a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act and these final regulations and describe how the State will improve such implementation. Each State shall report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan. The State must report annually to the Secretary on the performance of the State under the State's performance plan.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 325 hours for each response for 60 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the