

## SUMMARY OF MAJOR CHANGES IN THE REGULATIONS

The following is a summary of the major substantive changes in these final regulations from the regulations proposed in the NPRM prepared by the U. S. Department of Education (the rationale for each of these changes is discussed in the Analysis of Comments and Changes section of this preamble).

### SUBPART A--GENERAL

#### Definitions

- The definition of **child with a disability in §300.8** has been revised as follows:
  - (1) Section 300.8(b) (Children aged three through nine experiencing developmental delays) has been changed to clarify that the use of the term “**developmental delay**” is subject to the conditions described in §300.111(b).
  - (2) The definition of other health impairment in §300.8(c)(9)(i) has been changed to **add “Tourette Syndrome”** to the list of chronic or acute health problems.
- The definition of **excess costs in §300.16** has been revised to clarify that the computation of excess costs may not include capital outlay and debt service. In addition, a new “Appendix A to Part 300--Excess Cost Calculation” has been added to provide a description (and an example) of how to calculate excess costs under the Act and these regulations.
- The definition of **highly qualified special education teacher in §300.18** has been revised, as follows:
  - (1) Section 300.18(b), regarding requirements for highly qualified special education teachers in general, has been modified to clarify that, when used with respect to any special education teacher teaching in a charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State’s public charter school law.
  - (2) A **new §300.18(e), regarding separate “high objective uniform State standards of evaluation” (HOUSSE)**, has been added to provide that a State may develop a separate HOUSSE for special education teachers, provided that any adaptations of the State’s HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers. This provision also clarifies that a State may develop a separate HOUSSE for special education teachers, which may include single HOUSSE evaluations that cover multiple subjects.
  - (3) **Section 300.18(g)** (proposed §300.18(f) (“Applicability of definition to ESEA requirements; and clarification of new special education teacher”) has been revised as follows: (1) the heading has been revised, and (2) the language changed to clarify when a special education teacher is considered “new” for some purposes.
  - (4) Section 300.18(h) (proposed §300.18(g)) has been modified to clarify that the highly qualified special education teacher requirements also do not apply to private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138.
- The **definition of Indian and Indian tribe in §300.21** has been changed to clarify that nothing in the definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.
- The **definition of parent in §300.30** has been revised to substitute “biological” for “natural” each time it appears in the definition, and to add language clarifying that to be considered a parent under this definition a “guardian” must be a person generally authorized to act as the child’s parent, or authorized to make educational decisions for the child.
- The **definition of related services in §300.34** has been revised as follows:
  - (1) **Section 300.34(a) (General) has been modified** to (A) add the statutory term “early identification and assessment of disabilities in children,” which was inadvertently omitted from the NPRM, (B) **combine “school**

**health services” and “school nurse services,”** and (C) remove the clause relating to a free appropriate public education under “school nurse services” because it duplicates the clause in §300.34(c)(13).

(2) **Section 300.34(b) has been changed** to (A) expand the title to read **“Exception; services that apply to children with surgically implanted devices, including cochlear implants,”** and (B) clarify, in new paragraph (b)(1), that related services do not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(3) **A new §300.34(b)(2) has been added** to make clear that **nothing** in paragraph (b)(1) of §300.34 (A) **limits the right of a child with a surgically implanted device (e.g., a cochlear implant) to receive related services,** as listed in §300.34(a), that are determined by the IEP Team to be necessary for the child to receive FAPE; (B) limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or (C) prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in §300.113(b).

(4) The **definition of interpreting services in §300.34(c)(4)** has been changed to clarify that the term includes (A) transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for children who are deaf or hard of hearing, and (B) special interpreting services for children who are deaf-blind.

(5) The **definition of orientation and mobility services in §300.34(c)(7)** has been changed to remove the term “travel training instruction.” The term is under the definition of special education, and is defined in §300.39(b)(4).

(6) The **definition of school nurse services in 300.34(c)(13)** has been expanded and re-named school health services and school nurse services. The expanded definition clarifies that “school nurse services” are provided by a qualified school nurse, and “school health services” may be provided by a qualified school nurse or other qualified person.

- **A definition of scientifically based research has been added in new §300.35** that incorporates by reference the definition of that term from the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).
- With the addition of the new definition in §300.35, the definitions in subpart A, beginning with the definition of secondary school, have been renumbered.
- The **definition of special education in §300.39** (proposed §300.38) has been revised to remove the definition of vocational and technical education that was included in proposed §300.38(b)(6).
- The **definition of supplementary aids and services in §300.42** (proposed §300.41) has been modified to specify that aids, services, and other supports are also provided to enable children with disabilities to participate in extracurricular and nonacademic settings.

## **SUBPART B--STATE ELIGIBILITY**

### **FAPE Requirements**

- **Section 300.101(c) has been revised** to clarify that a **free appropriate public education (FAPE)** must be available to any individual child with a disability who needs special education and related services, even though the **child has not failed or been retained in a course, and is advancing from grade to grade.**
- **Section 300.102(a)(3), regarding exceptions to FAPE,** has been changed to clarify that a **regular high school diploma does not include an alternative degree** that is not fully aligned with the State’s academic standards, **such as a certificate or a general educational development credential (GED).**
- **Section 300.105, regarding assistive technology and proper functioning of hearing aids,** has been re-titled “Assistive technology,” and proposed paragraph (b), regarding the proper functioning of hearing aids, has been moved to new §300.113(a).
- **Section 300.107(a), regarding nonacademic services, has been revised** to specify the steps each public agency must take, including the provision of supplementary aids and services determined appropriate and necessary by the child’s IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

- **Proposed §300.108(a), regarding physical education services**, has been revised to specify that physical education must be made available to all children with disabilities receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
- **A new §300.113, regarding routine checking of hearing aids and external components of surgically implanted medical devices, has been added**, as follows:
  - (1) **Paragraph (a) of §300.113 requires** each public agency to **ensure that hearing aids** worn in school by children with hearing impairments, including deafness, **are functioning properly**.
  - (2) **A new §300.113(b)(1) requires** each public agency to **ensure that the external components of surgically implanted medical devices are functioning properly**. However, new §300.113(b)(2) has been added to make it clear that, for a child with a surgically implanted medical device who is receiving special education and related services, a public agency is **not responsible for the post-surgical maintenance, programming, or replacement of the medical device** that has been surgically implanted (or of an external component of the surgically implanted medical device).

### Least Restrictive Environment

- **Section 300.116(b)(3) and (c) regarding placements**, has been revised to remove the qualification “unless the parent agrees otherwise” from the requirements that (1) the **child’s placement be as close as possible to the child’s home**, and (2) the **child is educated in the school he or she would attend if not disabled**.
- **Section 300.117 (Nonacademic settings) has been changed** to clarify that each public agency **must ensure that each child with a disability has the supplementary aids and services** determined by the child’s individualized education program (IEP) Team to be appropriate and **necessary for the child to participate with nondisabled children in the extracurricular services and activities to the maximum extent appropriate** to the needs of that child.

### Children With Disabilities Enrolled by Their Parents in Private Schools

- **Section 300.130 (definition of parentally-placed private school children with disabilities)** has been revised to clarify that the term **means children with disabilities enrolled by their parents in private, including religious, schools or facilities**, that meet the definition of elementary school in §300.13 or secondary school in §300.36.
- **A new §300.131(f), regarding child find for out-of-State parentally-placed private school children with disabilities**, has been added to clarify that each LEA in which private (including religious) elementary schools and secondary schools are located must include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.
- **Section 300.133, regarding expenditures for parentally-placed private school children with disabilities**, has been revised, as follows:
  - (1) A new §300.133(a)(2)(ii), has been added to clarify that **children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents** in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.
  - (2) A new §300.133(a)(3) has been added to specify that, **if an LEA has not expended for equitable services for parentally-placed private school children with disabilities all of the applicable funds** described in §300.133(a)(1) and (a)(2) by the end of the fiscal year for which Congress appropriated the funds, the LEA **must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities** during a carry-over period of one additional year.
- **Section 300.136**, regarding compliance related to **parentally-placed private school children with disabilities**, has been **revised to remove the requirement that private school officials must submit complaints to the SEA** using the procedures in §§300.151 through 300.153.
- **Section 300.138(a)**, regarding the requirement that services to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, has been **modified to clarify that private elementary school and secondary school teachers** who are

providing equitable services to parentally-placed private school children with disabilities **do not have to meet the highly qualified special education teacher requirements** in §300.18

- **Section 300.140, regarding due process complaints and State complaints**, has been revised to make the following changes:

- (1) Section 300.140(b)(1) (proposed §300.140(a)(2)), regarding **child find complaints**, has been changed to clarify that the procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §300.131, including the requirements in §§300.301 through 300.311.

- (2) A **new paragraph (b)(2) has been added** to provide that **any due process complaint regarding the child find requirements** (as described in §300.140(b)(1)) **must be filed with the LEA in which the private school is located** and a copy of the complaint must be forwarded to the SEA.

- (3) A **new §300.140(c), regarding State complaints by private school officials**, has been added to clarify that (A) any complaint that an SEA or LEA has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through 300.153, and (B) a complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b).

### Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue

#### §300.148 Placement of children by parents if FAPE is at issue.

- A new §300.148(b), regarding **disagreements about FAPE**, has been added (from current §300.403(b)) to **clarify that disagreements** between a parent and a public agency regarding the availability of a program appropriate for a child with a disability, and the **question of financial reimbursement, are subject to the due process procedures** in §§300.504 through 300.520.

#### State Complaint Procedures

- **Section 300.152(a)(3)(ii)** (proposed paragraph (a)(3)(B)) has been revised to **clarify that each SEA's complaint procedures must provide the public agency with an opportunity to respond to a complaint** filed under §300.153, including, at a minimum, an **opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation** consistent with §300.506.

- **Section 300.152(b)(1)(ii), regarding time extensions for filing a State complaint**, has been revised to clarify that it would be permissible to **extend the 60-day timeline if the parent** (or individual or organization if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) **and the public agency agree to engage in mediation or to engage in other alternative means of dispute resolution**, if available in the State.

- **Section 300.152(c), regarding complaints** filed under §300.152 and due process hearings under §300.507 and §§300.530 through 300.532, has been revised to clarify that **if a written complaint is received that is also the subject of a due process hearing** under §§300.507 or 300.530 through 300.532, or contains multiple issues of which one or more are part of a due process hearing, the State **must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing**. However, any issue in the complaint that is not part of the due process hearing must be resolved using the time limit and procedures described elsewhere in the State complaint procedures. A new paragraph (c)(3) also has been added to **require SEAs to resolve complaints alleging a public agency's failure to implement a due process hearing**. This is the same requirement in current §300.661(c)(3).

- **Section 300.153(c), regarding the one year time limit from the date the alleged violation occurred and the date the complaint is received** in accordance with §300.151, has been revised by **removing the exception clause** related to complaints covered under §300.507(a)(2).

#### Methods of Ensuring Services

- **Section 300.154(d), regarding children with disabilities who are covered by public benefits or insurance**, has been revised to clarify that the public agency must (1) obtain parental consent each time that access to the parent's public benefits or insurance is sought, and (2) notify parents that refusal to allow access to their public

benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

### Additional Eligibility Requirements

- **Section 300.156(e), regarding personnel qualifications**, has been revised (1) to add “or a class of students,” to clarify that a **judicial action on behalf of a class of students may not be filed for failure of a particular SEA or LEA employee to be highly qualified**, and (2) to substitute the word “employee” for “staff person,” to be more precise in the rule of construction in new §300.18(f) (proposed §300.18(e)).
- **Section 300.160 (participation in assessments) has been removed**, and the section has been designated as “Reserved.” Participation in assessments is the subject of a new notice of proposed rulemaking issued on December 15, 2005 (70 FR 74624) to amend the regulations governing programs under Title I of the ESEA and Part B of the IDEA regarding additional flexibility for States to measure the achievement of children with disabilities based on modified achievement standards.

### Other Provisions Required for State Eligibility

- **Section 300.172, regarding access to instructional materials**, has been revised: (1) to make clear that States must adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to these final regulations; (2) to establish a **definition of “timely manner,”** for purposes of §300.172(b)(2) and (b)(3) if the State is not coordinating with the National Instructional Materials Access Center (NIMAC), or §300.172(b)(3) and (c)(2) if the State is coordinating with the NIMAC; (3) to add a new §300.172(b)(4) to require SEAs to ensure that all public agencies take all reasonable steps to **provide instructional materials in accessible formats to children with disabilities** who need those instructional materials at the same time as other children receive instructional materials; and (4) to add a new §300.172(e)(2) to clarify, that all definitions in §300.172(e)(1) apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.
- A new **§300.177 has been added** to include a provision **regarding “States’ sovereign immunity.”** That provision, which has been added to incorporate the language in section 604 of the Act, makes clear that a **State that accepts funds under Part B of the Act waives its immunity under the 11th amendment** of the Constitution of the United States from suit in Federal court for a violation of Part B of the Act.

## SUBPART D--EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

### Parental Consent

- **Section 300.300, regarding parental consent**, has been revised, as follows:
  - (1) Paragraph (a) of §300.300, regarding **consent for initial evaluation**, has been changed to provide that the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation. A new paragraph (a)(1)(iii) has been added to **require a public agency to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation.**
  - (2) Section 300.300(a)(3), regarding a **parent’s failure to provide consent for initial evaluation**, has been changed to clarify, in a new paragraph (a)(3)(ii), that the public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.
  - (3) Section 300.300(b), regarding **parental consent for services**, has been modified by a new paragraph (b)(2) that **requires a public agency to make reasonable efforts to obtain informed consent** from the parent **for the initial provision of special education and related services.**
  - (4) Section 300.300(c)(1), regarding **parental consent for reevaluations**, has been modified to clarify that **if a parent refuses to consent to a reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures** in §300.300(a)(3), and the public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(5) A new §300.300(d)(4) has been added to provide that **if a parent of a child who is home schooled or placed in a private school by the parent at the parent's expense, does not provide consent** for an initial evaluation or a reevaluation, **or the parent fails to respond to a request to provide consent**, the public agency (A) **may not use the consent override procedures** (described elsewhere in §300.300), and (B) **is not required to consider the child eligible for services** under the requirements relating to parentally-placed private school children with disabilities (§§300.132 through 300.144).

(6) A new §300.300(d)(5) has been added to clarify that in order **for a public agency to meet the reasonable efforts requirement to obtain informed parental consent** for an initial evaluation, initial services, or a reevaluation, a public agency **must document its attempts to obtain parental consent** using the procedures in §300.322(d).

### **Additional Procedures for Evaluating Children With Specific Learning Disabilities (SLD)**

- **Section 300.307 (Specific learning disabilities)** has been revised, as follows:

(1) Proposed **paragraph (a)(1) of §300.307, which allowed a State to prohibit the use of a severe discrepancy between intellectual ability and achievement for determining if a child has an SLD, has been removed**, and proposed paragraph (a)(2) of §300.307 has been redesignated as paragraph (a)(1).

(2) **Section 300.307(a)(2) (proposed paragraph (a)(3)) has been changed to clarify that the criteria adopted by the State must permit the use of a process based on the child's response to scientific, research-based intervention.**

- **Section 300.308 (Group members)** has been changed to **require the eligibility group for children suspected of having SLD to include the child's parents and a team of qualified professionals, which must include the child's regular teacher** (or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age) or for a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; **and at least one person qualified to conduct individual diagnostic examinations of children**, such as a school psychologist, speech-language pathologist, or remedial reading teacher. These are the same requirements in current §300.540.

- **Section 300.309 (Determining the existence of a specific learning disability)** has been revised, as follows:

(1) **Paragraph (a) of §300.309** has been changed (A) to clarify that the group described in 300.306 **may determine that a child has a specific learning disability if the child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of eight areas** (e.g., oral expression, basic reading skill, etc.), when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards; and (B) to **add "limited English proficiency"** to the other five **conditions that could account for the child's learning problems**, and that the group considers in determining whether the child has an SLD.

(2) **Section 300.309(b)** has been changed to clarify (A) that, in order **to ensure that underachievement in a child suspected of having an SLD is not due to lack of appropriate instruction in reading or math, the group must consider**, as part of the evaluation described in §§300.304 through 300.306, **data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel**, and (B) to **replace** (in paragraph (b)(1)) the term **"high quality research-based instruction"** with **"appropriate instruction."**

(3) **Section 300.309(c)** has been changed to provide that the public agency **must promptly request parental consent to evaluate a child suspected of having an SLD who has not made adequate progress after an appropriate period of time when provided appropriate instruction**, and whenever a child is referred for an evaluation.

- **Section 300.310, regarding Observation, has been revised**, as follows:

(1) **Paragraph (a) of proposed §300.310** has been revised (A) to remove the phrase "trained in observation, and (B) to specify that the public agency must ensure that the child is observed in the child's learning environment.

(2) A **new §300.310(b)** has been added to require the eligibility group to decide to (A) use information obtained from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation, or (B) have at least one member of the group described in

§300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained. Paragraph (b) of proposed §300.310 has been redesignated as new §300.310(c).

- **Section 300.311 (Written report)** has been renamed “**Specific documentation for the eligibility determination,**” and has been revised, as follows:

(1) **Section 300.311(a)(5), regarding whether the child does not achieve commensurate with the child's age,** has been modified and expanded to add whether the child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1), and (A) the child does not make sufficient progress to meet age or to meet State-approved grade-level standards consistent with §300.309(a)(2)(i), or (B) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii).

(2) **Proposed §300.311(a)(6), regarding whether there are strengths or weaknesses or both in performance or achievement or both relative to intellectual development, has been removed.**

(3) A **new §300.311(a)(6)** has been added to clarify that the documentation must include a statement of the determination of the group concerning the effects of visual, hearing, or motor disability, mental retardation, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency on the child's achievement level.

- (4) A **new §300.311(a)(7)** has been added to provide that **if the child has participated in a process that assesses the child's response to scientific, research-based intervention,** the documentation must include the instructional strategies used and the student-centered data collected, and documentation that the child's parents were notified about (A) the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided, (B) strategies for increasing the child's rate of learning, and (C) the parents' right to request an evaluation.

### Individualized Education Programs

- **Section 300.320 (Definition of IEP)** has been revised in paragraph (a)(5) to replace “regular education environment” with “regular class,” in order to be consistent with the language in the Act.

- **Section 300.321(e), regarding attendance at IEP Team meetings,** has been revised to clarify that the excusal of IEP Team members from attending an IEP Team meeting under certain circumstances, refers to the IEP Team members in §300.320(a)(2) through (a)(5).

- **Section 300.322, regarding parent participation,** has been revised to: (1) include, in §300.322(d), examples of the records a public agency must keep of its attempts to involve the parents in IEP meetings; (2) add a new §300.322(e), which requires the public agency to take whatever action is necessary to ensure that the parent understands the proceedings of the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English; and (3) redesignate paragraph (e) as paragraph (f) accordingly.

- **Section 300.323(d)** has been revised to require public agencies to **ensure that each regular teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of a child's IEP, is informed of his or her specific responsibilities** related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the child's IEP. These are the same requirements in current §300.342(b)(3)(i) and (b)(3)(ii).

- **Section 300.323(e), regarding IEPs for children who transfer** public agencies, has been revised to: (1) divide the provision into three separate paragraphs (§300.323(e), (f), and (g)) for purposes of clarity and improved readability (e.g., transfers within the same State, transfers from another State, and transmittal of records); (2) adopt “school year” in lieu of “academic year” as the term commonly used by parents and public agencies; and (3) adopt other modifiers (e.g., “new” and “previous”) to distinguish between States and public agencies that are involved in transfers by children with disabilities.

- **Section 300.324(a)(4), regarding changes to an IEP after the annual IEP meeting** for a school year, has been restructured into two paragraphs, and a new paragraph (a)(4)(ii) has been added to require the public agency to ensure that, if changes are made to a child's IEP without an IEP meeting, that the child's IEP Team is informed of the changes.

- **Section 300.324(b)**, regarding the review and revision of IEPs, has been changed to include a new paragraph (b)(2), to clarify that, in conducting a review of a child's IEP, the IEP Team must consider the same special factors it considered when developing the child's IEP.

## SUBPART E--PROCEDURAL SAFEGUARDS

- **Section 300.502**, regarding independent educational evaluations, has been revised, as follows:
  - (1) A new §300.502(b)(5) has been added to make clear that a **parent is entitled to only one independent educational evaluation at public expense** each time the public agency conducts an evaluation with which the parent disagrees.
  - (2) Section 300.502(c) has been changed to clarify that **if a parent obtains an independent evaluation at public expense or shares with the public agency an evaluation obtained at private expense**, the public agency **must consider the evaluation**, if it meets agency criteria, **in any decision made with respect to the provision of FAPE** to the child.
- **Section 300.504 (Procedural safeguards notice)** has been revised, as follows:
  - (1) **Paragraph (a)(2) of §300.504** has been changed to add that a copy of the procedural safeguards notice must be given upon receipt of the first due process complaint under §300.507 in a school year, as well as upon receipt of the first State complaint under §300.151 through 300.153.
  - (2) A **new §300.504(a)(3)** has been added to provide that the notice must be given to the parents of a child with a disability in accordance with the discipline procedures in §300.530(h).
  - **Section 300.506(b)**, regarding the requirements for mediation, has been revised by (1) removing the provision about the “confidentiality pledge,” in proposed paragraph (b)(9), because it is no longer required under the Act, and (2) changing paragraph (b)(8), regarding the prohibition against using discussions that occur in the mediation process, to clarify that “civil proceedings” includes any Federal court or State court of a State receiving assistance under this part.
- **Section 300.509**, regarding model forms to assist parents and public agencies in filing due process complaints and parents and other parties in filing State complaints, has been revised to add, with respect to due process complaints, “public agencies,” and with respect to State complaints, “other parties,” as well as parents, and to clarify that (1) while each SEA must develop model forms, the SEA or LEA may not require the use of the forms, and (2) parents, public agencies, and other parties may either use the appropriate model form, or another form or other document, so long as the form or document meets, as appropriate, the requirements for filing a due process complaint or a State complaint.
- **Section 300.510 (Resolution process)** has been revised, as follows:
  - (1) **Section 300.510(b)(1)**, regarding the resolution period, has been changed to state that a due process hearing “may occur” (in lieu of “must occur”) by the end of the resolution period, if the parties have not resolved the dispute that formed the basis for the due process complaint.
  - (2) A **new §300.510(b)(3)** has been added to provide that, except where the parties have jointly agreed to waive the resolution process or to use mediation (notwithstanding §300.510(b)(1) and (2)), the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
  - (3) A **new §300.510(b)(4)** has been added to provide that if an LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, and documented using the procedures in §300.322(d), the LEA may, at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's due process complaint.
  - (4) A **new paragraph (b)(5) of §300.510** has been added to provide that, if the LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timelines.
  - (5) A **new §300.510(c) (Adjustments to the 30-day resolution period)** has been added that **specifies exceptions to the 30-day resolution period** (e.g., (A) both parties agree in writing to waive the resolution meeting; (B) after

either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or (C) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process). Subsequent paragraphs have been renumbered accordingly.

(6) **Paragraph (d)(2) of §300.510** (proposed paragraph(c)(2)), regarding the **enforceability of a written settlement agreement** in any State court of competent jurisdiction or in a district court of the United States, has been expanded to add the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to a new §300.537.

- **Section 300.513(a) (Decision of hearing officer)** has been revised by (1) changing the paragraph title to read “Decision of hearing officer on the provision of FAPE,” and (2) clarifying that a hearing officer’s determination of whether a child received FAPE must be based on substantive grounds.
- **Section 300.515(a), regarding timelines and convenience of hearings and reviews**, has been revised to include a specific reference to the adjusted time periods described in §300.510(c).
- **Section 300.516(b), regarding the 90-day time limitation** from the date of the decision of the hearing to file a civil action, has been revised to provide that the 90-day period begins from the date of the decision of the hearing officer or the decision of the State review official.
- **Section 300.518 (Child’s status during proceedings)** has been revised by adding a new paragraph (c), which provides that if a complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned 3, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.
- **Section 300.520(b), regarding a special rule about the transfer of parental rights at the age of majority**, has been revised to more clearly state that a State must establish procedures for appointing the parent of a child with a disability, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the child’s eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child’s educational program.

### Discipline Procedures

- **Section 300.530(d)(1)(i), regarding services**, has been revised to be consistent with section 615(k)(1)(D)(i) of the Act, by adding a reference to the FAPE requirements in §300.101(a).
- **Section 300.530(d)(4), regarding the removal of a child with a disability from the child’s current placement** for 10 school days in the same school year, has been revised to remove the reference to school personnel, in consultation with at least one of the child’s teachers, determining the location in which services will be provided.
- **Section 300.530(d)(5), regarding removals** that constitute a change of placement under §300.536, has been revised to remove the reference to the IEP Team determining the location in which services will be provided.
- A new **§300.530(e)(3)**, has been added to provide that, if the LEA, the parent, and members of the **child’s IEP Team determine that the child’s behavior was the direct result of the LEA’s failure to implement the child’s IEP**, the LEA must take immediate steps to remedy those deficiencies.
- **Section 300.530(h), regarding notification**, has been changed to specify that, on the date on which a decision is made to make a removal that constitutes a change in the placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.
- **Section 300.532 (Appeal)** has been revised, as follows:
  - (1) **Paragraph (a) of §300.532, regarding the conditions in which** the parent of a child with a disability or an LEA **may request a hearing**, has been modified to clarify that the hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

- (2) **Section 300.532(b)(3)** has been changed to more definitively provide that if the LEA believes that returning the child to his or her original placement is substantially likely to result in injury to the child or others.
- (3) **Section 300.532(c)(3), regarding an expedited due process hearing**, has been adjusted to provide that unless the parents and an LEA agree in writing to waive a resolution meeting, or agree to use the mediation process described in §300.506, the resolution meeting must occur within seven days of receiving notice of the due process complaint, and the hearing may proceed within 15 days of receipt of the due process complaint unless the matter has been resolved to satisfaction of both parties.
- (4) **Proposed §300.532(c)(4), regarding the two-day timeframe** for disclosing information to the opposing party prior to an expedited due process hearing, has been removed.
- **Section 500.536(a)(2)(ii)** (proposed §300.536(b)(2)) has been revised to **remove the requirement that a child's behavior must have been a manifestation of the child's disability** before determining that a series of removals constitutes a change in placement under §300.536. Paragraph (a)(2)(ii) has also been amended to reference the child's behavior in "previous" incidents that resulted in the series of removals.
  - A **new §300.536(b)** has been added to clarify that the public agency (subject to review through the due process and judicial proceedings) **makes the determination, on a case-by-case basis, whether a pattern of removals constitutes a change in placement** and that the determination is subject to review through due process and judicial determinations.
  - A **new §300.537 (State enforcement mechanisms)** has been added to clarify that notwithstanding §300.506(b)(7) and §300.510(c)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or resolution meeting, nothing in this part would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

## END OF IDEA 2004 REGULATIONS: SUMMARY OF CHANGES