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Subpart G—Allocation of Funds; Reports

ALLOCATIONS

§ 300.700 Special definition of the term "State".

For the purposes of §§ 300.701, and 300.703–300.714, the term *State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1411(h)(2))

§ 300.701 Grants to States.

(a) *Purpose of grants.* The Secretary makes grants to States and the outlying areas and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act.

(b) *Maximum amounts.* The maximum amount of the grant a State may receive under section 611 of the Act for any fiscal year is—

(1) The number of children with disabilities in the State who are receiving special education and related services—

(i) Aged 3 through 5 if the State is eligible for a grant under section 619 of the Act; and

(ii) Aged 6 through 21; multiplied by—

(2) Forty (40) percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a))

§ 300.702 Definition.

For the purposes of this section the term *average per-pupil expenditure in public elementary and secondary schools in the United States* means—

(a) Without regard to the source of funds—

(1) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus

(2) Any direct expenditures by the State for the operation of those agencies; divided by

(b) The aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1411(h)(1))

§ 300.703 Allocations to States.

(a) *General.* After reserving funds for studies and evaluations under section 674(e) of the Act, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under §§ 300.715 and 300.717–300.719, the Secretary allocates the remaining amount among the States in accordance with paragraph (b) of this section and §§ 300.706–300.709.

(b) *Interim formula.* Except as provided in §§ 300.706–300.709, the Secretary allocates the amount described in paragraph (a) of this section among the States in accordance with section 611(a)(3), (4), (5) and (b)(1), (2) and (3) of the Act, as in effect prior to June 4, 1997, except that the determination of the number of children with disabilities receiving special education and related services under section 611(a)(3) of the Act (as then in effect) may be calculated as of December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated.

(Authority: 20 U.S.C. 1411(d))

§§ 300.704–300.705 [Reserved]

§ 300.706 Permanent formula.

(a) *Establishment of base year.* The Secretary allocates the amount described in § 300.703(a) among the States in accordance with §§ 300.706–300.709 for each fiscal year beginning with the first fiscal year for which the amount appropriated under 611(j) of the Act is more than $4,924,672,200.

(b) *Use of base year.* (1) *Definition.* As used in this section, the term *base year* means the fiscal year preceding the first fiscal year in which this section applies.

(2) *Special rule for use of base year amount.* If a State received any funds

under section 611 of the Act for the base year on the basis of children aged 3 through 5, but does not make FAPE available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary computes the State's base year amount, solely for the purpose of calculating the State's allocation in that subsequent year under §§ 300.707–300.709, by subtracting the amount allocated to the State for the base year on the basis of those children.

(Authority: 20 U.S.C. 1411(e)(1) and (2))

§ 300.707 Increase in funds.

If the amount available for allocations to States under § 300.706 is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 300.708, the Secretary—

(1) Allocates to each State the amount it received for the base year;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1411(e)(3))

§ 300.708 Limitation.

(a) Allocations under § 300.707 are subject to the following:

(1) No State's allocation may be less than its allocation for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for the base year; and

(B) One-third of one percent of the amount by which the amount appropriated under section 611(j) of the Act exceeds the amount appropriated under section 611 of the Act for the base year; or

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under § 300.707 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocations to States under § 300.703 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1411(e)(3)(B) and (C))

§ 300.709 Decrease in funds.

If the amount available for allocations to States under § 300.706 is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State is allocated the sum of—

(1) The amount it received for the base year; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of those increases for all States.

(b)(1) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State is allocated the amount it received for the base year.

(2) If the amount available is insufficient to make the allocations described in paragraph (b)(1) of this section, those allocations are ratably reduced.

(Authority: 20 U.S.C. 1411(e)(4))

§ 300.710 Allocation for State in which by-pass is implemented for private school children with disabilities.

In determining the allocation under §§ 300.700–300.709 of a State in which the Secretary will implement a by-pass for private school children with disabilities under §§ 300.451–300.487, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§ 300.7(a) and 300.450) in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1412(f)(2))

§ 300.711 Subgrants to LEAs.

Each State that receives a grant under section 611 of the Act for any fiscal year shall distribute in accordance with § 300.712 any funds it does not retain under § 300.602 and is not required to distribute under §§ 300.622 and 300.623 to LEAs in the State that have established their eligibility under section 613 of the Act, and to State agencies that received funds under section 614A(a) of the Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613 of the Act, for use in accordance with Part B of the Act.

(Authority: 20 U.S.C. 1411(g)(1))

§ 300.712 Allocations to LEAs.

(a) *Interim procedure.* For each fiscal year for which funds are allocated to States under § 300.703(b) each State shall allocate funds under § 300.711 in accordance with section 611(d) of the Act, as in effect prior to June 4, 1997.

(b) *Permanent procedure.* For each fiscal year for which funds are allocated to States under §§ 300.706–300.709, each State shall allocate funds under § 300.711 as follows:

(1) *Base payments.* The State first shall award each agency described in § 300.711 the amount that agency would have received under this section for the base year, as defined in § 300.706(b)(1), if the State had distributed 75 percent of its grant for that year under section § 300.703(b).

(2) *Base payment adjustments.* For any fiscal year after the base year fiscal year—

(i) If a new LEA is created, the State shall divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.706(b)(2), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the State shall combine the base allocations of the merged LEAs; and

(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.706(b)(2), currently provided special education by each affected LEA.

(3) *Allocation of remaining funds.* The State then shall—

(i) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers

of children living in poverty, as determined by the SEA.

(iii) For the purposes of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

(Authority: 20 U.S.C. 1411(g)(2))

§ 300.713 Former Chapter 1 State agencies.

(a) To the extent necessary, the State—

(1) Shall use funds that are available under § 300.602(a) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994) receives, from the combination of funds under § 300.602(a) and funds provided under § 300.711, an amount no less than—

(i) The number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, subject to the limitation in paragraph (b) of this section; multiplied by

(ii) The per-child amount provided under that subpart for fiscal year 1994; and

(2) May use funds under § 300.602(a) to ensure that each LEA that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under § 300.602(a) and funds provided under § 300.711, an amount for each child, aged 3 through 21 to whom the agency was providing special education and related services on December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

(b) The number of children counted under paragraph (a)(1)(i) of this section may not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994).

(Authority: 20 U.S.C. 1411(g)(3))

§ 300.714 Reallocation of LEA funds.

If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under Part B of the Act that are not needed by that local agency to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

(Authority: 20 U.S.C. 1411(g)(4))

§ 300.715 Payments to the Secretary of the Interior for the education of Indian children.

(a) *Reserved amounts for Secretary of Interior*. From the amount appropriated for any fiscal year under 611(j) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with this section and § 300.716.

(b) *Provision of amounts for assistance*. The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under paragraph (a) of this section for that fiscal year.

(c) *Calculation of number of children*. In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (BIA) schools and that are required by the States in which these schools are located to attain or maintain State accreditation, and which

schools have this accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school may count those children for the purpose of distribution of the funds provided under this section to the Secretary of the Interior.

(d) *Responsibility for meeting the requirements of Part B.* The Secretary of the Interior shall meet all of the requirements of Part B of the Act for the children described in paragraphs (b) and (c) of this section, in accordance with § 300.260.

(Authority: 20 U.S.C. 1411(c); 1411(i)(1)(A) and (B))

§ 300.716 Payments for education and services for Indian children with disabilities aged 3 through 5.

(a) *General.* With funds appropriated under 611(j) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under § 300.715(a).

(b) *Distribution of funds.* The Secretary of the Interior shall distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(c) *Submission of information.* To receive a payment under this section, the tribe or tribal organization shall submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.

(d) *Use of funds.* (1) The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) *Biennial report.* To be eligible to receive a grant pursuant to paragraph (a) of this section, the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the two years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary required under section 611(i) of the Act. The Secretary may require any additional information from the Secretary of the Interior.

(f) *Prohibitions.* None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(Authority: 20 U.S.C. 1411(i)(3))

§ 300.717 Outlying areas and freely associated States.

From the amount appropriated for any fiscal year under section 611(j) of the Act, the Secretary reserves not more than one percent, which must be used—

(a) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(b) For fiscal years 1998 through 2001, to carry out the competition described in § 300.719, except that the amount reserved to carry out that competition may not exceed the amount reserved for fiscal year 1996 for the competition under Part B of the Act described under the heading ''SPECIAL EDUCATION'' in Public Law 104–134.

(Authority: 20 U.S.C. 1411(b)(1))

§ 300.718 Outlying area—definition.

As used in this part, the term outlying area means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1402(18))

§ 300.719 Limitation for freely associated States.

(a) *Competitive grants*. The Secretary uses funds described in § 300.717(b) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.

(b) *Award basis*. The Secretary awards grants under paragraph (a) of this section on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations must be made by experts in the field of special education and related services.

(c) *Assistance requirements*. Any freely associated State that wishes to receive funds under Part B of the Act shall include, in its application for assistance—

(1) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act;

(2) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;

(3) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and

(4) Such other information and assurances as the Secretary may require.

(d) *Termination of eligibility*. Notwithstanding any other provision of law, the freely associated States may not receive any funds under Part B of the Act for any program year that begins after September 30, 2001.

(e) *Administrative costs*. The Secretary may provide not more than five percent of the amount reserved for grants under this section to pay the administrative costs of the Pacific Region Educational Laboratory under paragraph (b) of this section.

(f) *Eligibility for award*. An outlying area is not eligible for a competitive award under § 300.719 unless it receives assistance under § 300.717(a).

(Authority: 20 U.S.C. 1411(b)(2) and (3))

§ 300.720 Special rule.

The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to those areas or to the freely associated States under Part B of the Act.

(Authority: 20 U.S.C. 1411(b)(4))

§ 300.721 [Reserved]

§ 300.722 Definition.

As used in this part, the term *freely associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(Authority: 20 U.S.C. 1411(b)(6))

REPORTS

§ 300.750 Annual report of children served—report requirement.

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in the State who are receiving special education and related services.

(b) The SEA shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411(d)(2); 1418(a))

§ 300.751 Annual report of children served—information required in the report.

(a) For any year the SEA shall include in its report a table that shows the number of children with disabilities receiving special education and related services on December 1, or at the State's discretion on the last Friday in October, of that school year—

(1) Aged 3 through 5;

(2) Aged 6 through 17; and

(3) Aged 18 through 21.

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1, or, at the State's discretion, the last Friday in October.

(c) Reports must also include the number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.) within each disability category, as defined in the definition of ''children with disabilities'' in § 300.7; and

(d) The Secretary may permit the collection of the data in paragraph (c) of this section through sampling.

(e) The SEA may not report a child under paragraph (c) of this section under more than one disability category.

(f) If a child with a disability has more than one disability, the SEA shall report that child under paragraph (c) of this section in accordance with the following procedure:

(1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category ''deaf-blindness''.

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category ''multiple disabilities''.

(Authority: 20 U.S.C. 1411(d)(2); 1418(a) and (b))

§ 300.752 Annual report of children served—certification.

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided under § 300.751(a) is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

§ 300.753 Annual report of children served—criteria for counting children.

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that—

(1) Provides them with both special education and related services that meet State standards;

(2) Provides them only with special education, if a related service is not required, that meets State standards; or

(3) In the case of children with disabilities enrolled by their parents in private schools, provides them with special education or related services under §§ 300.452–300.462 that meet State standards.

(b) The SEA may not include children with disabilities in its report who are receiving special education funded solely by the Federal Government, including children served by the Department of Interior, the Department of Defense, or the Department of Education. However, the State may count children covered under § 300.184(c)(2).

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

§ 300.754 Annual report of children served—other responsibilities of the SEA.

In addition to meeting the other requirements of §§ 300.750–300.753, the SEA shall—

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.750–300.753; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

§ 300.755 Disproportionality.

(a) *General*. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State or in the schools operated by the Secretary of the Interior with respect to—

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; and

(2) The placement in particular educational settings of these children.

(b) *Review and revision of policies, practices, and procedures*. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior shall provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the Act.

(Authority: 20 U.S.C. 1418(c))

§ 300.756 Acquisition of equipment; construction or alteration of facilities.

(a) *General*. If the Secretary determines that a program authorized under Part B of the Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) *Compliance with certain regulations*. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of—

(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the ''Americans with Disabilities Accessibility Guidelines for Buildings and Facilities''); or

(2) Appendix A of part 101–19.6 of title 41, Code of Federal Regulations (commonly known as the ''Uniform Federal Accessibility Standards'').

(Authority: 20 U.S.C. 1405)

APPENDIX A TO PART 300—NOTICE OF INTERPRETATION

I. INVOLVEMENT AND PROGRESS OF EACH CHILD WITH A DISABILITY IN THE GENERAL CURRICULUM

1. What are the major Part B IEP requirements that govern the involvement and progress of children with disabilities in the general curriculum?

2. Must a child's IEP address his or her involvement in the general curriculum, regardless of the nature and severity of the child's disability and the setting in which the child is educated?

3. What must public agencies do to meet the requirements at §§ 300.344(a)(2) and 300.346(d) regarding the participation of a ''regular education teacher'' in the development review, and revision of the IEPs, for children age 3 through 5 who are receiving special education and related services?

4. Must the measurable annual goals in a child's IEP address all areas of the general curriculum, or only those areas in which the child's involvement and progress are affected by the child's disability?

II. INVOLVEMENT OF PARENTS AND STUDENTS

5. What is the role of the parents, including surrogate parents, in decisions regarding the educational program of their children?

6. What are the Part B requirements regarding the participation of a student (child) with a disability in an IEP meeting?

7. Must the public agency inform the parents of who will be at the IEP meeting?

8. Do parents have the right to a copy of their child's IEP?

9. What is a public agency's responsibility if it is not possible to reach consensus on what services should be included in a child's IEP?

10. Does Part B require that public agencies inform parents regarding the educational progress of their children with disabilities?

III. PREPARING STUDENTS WITH DISABILITIES FOR EMPLOYMENT AND OTHER POST-SCHOOL EXPERIENCES

11. What must the IEP team do to meet the requirements that the IEP include a statement of ''transition service needs'' beginning at age 14 (§300.347(b)(1), and a statement of ''needed transition services'' beginning at age 16 (§300.347(b)(2)?

12. Must the IEP for each student with a disability, beginning no later than age 16, include all ''needed transition services,'' as identified by the IEP team and consistent with the definition at §300.29, even if an agency other than the public agency will provide those services? What is the public agency's responsibility if another agency fails to provide agreed-upon transition services?

13. Under what circumstances must a public agency invite representatives from other agencies to an IEP meeting at which a child's need for transition services will be considered?

IV. OTHER QUESTIONS REGARDING IMPLEMENTATION OF IDEA

14. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?

15. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

16. For a child placed out of State by an educational or non-educational State or local agency, is the placing or receiving State responsible for the child's IEP?

17. If a disabled child has been receiving special education from one public agency and transfers to another public agency in the same State, must the new public agency develop an IEP before the child can be placed in a special education program?

18. What timelines apply to the development and implementation of an initial IEP for a child with a disability?

19. Must a public agency hold separate meetings to determine a child's eligibility for special education and related services, develop the child's IEP, and determine the child's placement, or may the agency meet all of these requirements in a single meeting?

20. How frequently must a public agency conduct meetings to review, and if appropriate revise, the IEP for each child with a disability?

21. May IEP meetings be audio or videotape-recorded?

22. Who can serve as the representative of the public agency at an IEP meeting?

23. For a child with a disability being considered for initial placement in special education, which teacher or teachers should attend the IEP meeting?

24. What is the role of a regular education teacher in the development, review, and revision of the IEP for a child who is, or may be, participating in the regular education environment?

25. If a child with a disability attends several regular classes, must all of the child's regular education teachers be members of the child's IEP team?

26. How should a public agency determine which regular education teacher and special education teacher will members of the IEP team for a particular child with a disability?

27. For a child whose primary disability is a speech impairment, may a public agency meet its responsibility under §300.344(a)(3) to ensure that the IEP team includes ''at least one special education teacher, or, if appropriate, at least one special education provider of the child'' by including a speech-language pathologist on the IEP team?

28. Do public agencies and parents have the option of having any individual of their choice attend a child's IEP meeting as participants on their child's IEP team?

29. Can parents or public agencies bring their attorneys to IEP meetings, and, if so under what circumstances? Are attorney's fees available for parents' attorneys if the parents are prevailing parties in actions or proceedings brought under Part B?

30. Must related services personnel attend IEP meetings?

31. Must the public agency ensure that all services specified in a child's IEP are provided?

32. Is it permissible for an agency to have the IEP completed before the IEP meeting begins?

33. Must a public agency include transportation in a child's IEP as a related service?

34. Must a public agency provide related services that are required to assist a child with a disability to benefit from special education, whether or not those services are included in the list of related services in §300.24?

35. Must the IEP specify the amount of services or may it simply list the services to be provided?

36. Under what circumstances is a public agency required to permit a child with a disability to use a school-purchased assistive technology device in the child's home or in another setting?

37. Can the IEP team also function as the group making the placement decision for a child with a disability?

38. If a child's IEP includes behavioral strategies to address a particular behavior, can a child ever be suspended for engaging in that behavior?

39. If a child's behavior in the regular classroom, even with appropriate interventions, would significantly impair the learning of others, can the group that makes the placement decision determine that placement in the regular classroom is inappropriate for that child?

40. May school personnel during a school year implement more than one short-term removal of a child with disabilities from his or her classroom or school for misconduct?

(Authority: Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1401, *et seq.*), unless otherwise noted.)

INDIVIDUALIZED EDUCATION PROGRAMS (IEPS) AND OTHER SELECTED IMPLEMENTATION ISSUES

Interpretation of IEP and Other selected Requirements under Part B of the Individuals with Disabilities Education Act (IDEA; Part B)

INTRODUCTION

The IEP requirements under Part B of the IDEA emphasize the importance of three core concepts: (1) the involvement and progress of each child with a disability in the general curriculum including addressing the unique needs that arise out of the child's disability; (2) the involvement of parents and students, together with regular and special education personnel, in making individual decisions to support each student's (child's) educational success, and (3) the preparation of students with disabilities for employment and other post-school activities.

The first three sections of this Appendix (I–III) provide guidance regarding the IEP requirements as they relate to the three core concepts described above. Section IV addresses other questions regarding the development and content of IEPs, including questions about the timelines and responsibility for developing and implementing IEPs, participation in IEP meetings, and IEP content. Section IV also addresses questions on other selected requirements under IDEA.

I. INVOLVEMENT AND PROGRESS OF EACH CHILD WITH A DISABILITY IN THE GENERAL CURRICULUM

In enacting the IDEA Amendments of 1997, the Congress found that research, demonstration, and practice over the past 20 years in special education and related disciplines have demonstrated that an effective educational system now and in the future must maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals. [Section 651(a)(6)(A) of the Act.]

Accordingly, the evaluation and IEP provisions of Part B place great emphasis on the involvement and progress of children with disabilities in the general curriculum. (The term ''general curriculum,'' as used in these regulations, including this Appendix, refers to the curriculum that is used with nondisabled children.)

While the Act and regulations recognize that IEP teams must make individualized decisions about the special education and related services, and supplementary aids and services, provided to each child with a disability, they are driven by IDEA's strong preference that, to the maximum extent appropriate, children with disabilities be educated in regular classes with their nondisabled peers with appropriate supplementary aids and services.

In many cases, children with disabilities will need appropriate supports in order to successfully progress in the general curriculum, participate in State and districtwide assessment programs, achieve the measurable goals in their IEPs, and be educated together with their nondisabled peers. Accordingly, the Act requires the IEP team to determine, and the public agency to provide, the accommodations, modifications, supports, and supplementary aids and services, needed by each child with a disability to successfully be involved in and progress in the general curriculum achieve the goals of the IEP, and successfully demonstrate his or her competencies in State and district-wide assessments.

1. What are the major Part B IEP requirements that govern the involvement and progress of children with disabilities in the general curriculum?

Present Levels of Educational Performance

Section 300.347(a)(1) requires that the IEP for each child with a disability include ''* * * a statement of the child's present levels of educational performance, including—(i) *how the child's disability affects the child's involvement and progress in the general curriculum;* or (ii) *for preschool children, as appropriate, how the child's disability affects the child's participation in appropriate activities* * * *'' (''Appropriate activities'' in this context refers to age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved.)

The IEP team's determination of how each child's disability affects the child's involvement and progress in the general curriculum is a primary consideration in the development of the child's IEP. In assessing children with disabilities, school districts may use a variety of assessment techniques to determine the extent to which these children can

be involved and progress in the general curriculum, such as criterion-referenced tests, standard achievement tests, diagnostic tests, other tests, or any combination of the above.

The purpose of using these assessments is to determine the child's present levels of educational performance and areas of need arising from the child's disability so that approaches for ensuring the child's involvement and progress in the general curriculum and any needed adaptations or modifications to that curriculum can be identified.

Measurable Annual Goals, including Benchmarks or Short-term ojectives

Measurable annual goals, including benchmarks or short-term objectives, are critical to the strategic planning process used to develop and implement the IEP for each child with a disability. Once the IEP team has developed measurable annual goals for a child, the team (1) can develop strategies that will be most effective in realizing those goals and (2) must develop either measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs.

The strong emphasis in Part B on linking the educational program of children with disabilities to the general curriculum is reflected in §300.347(a)(2), which requires that the IEP include:

A statement of measurable annual goals, including benchmarks or short-term objectives, related to—(i) *meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum;* and (ii) meeting each of the child's other educational needs that result from the child's disability.

As noted above, each annual goal must include either short-term objectives or benchmarks. The purpose of both is to enable a child's teacher(s), parents, and others involved in developing and implementing the child's IEP, to gauge, at intermediate times during the year, how well the child is progressing toward achievement of the annual goal. IEP teams may continue to develop short-term instructional objectives, that generally break the skills described in the annual goal down into discrete components. The revised statute and regulations also provide that, as an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and the needs of the child.

Special Education and Related Services and Supplementary Aids and Services

The requirements regarding services provided to address a child's present levels of educational performance and to make progress toward the identified goals reinforce the emphasis on progress in the general curriculum, as well as maximizing the extent to which children with disabilities are educated with nondisabled children. Section 300.347(a)(3) requires that the IEP include:

A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—(i) to advance appropriately toward attaining the annual goals; (ii) *to be involved and progress in the general curriculum* * * * and to participate in extracurricular and other nonacademic activities; and (iii) *to be educated and participate with other children with disabilities and nondisabled children in [extracurricular and other nonacademic activities*] * * * [Italics added.]

Extent to Which Child Will Participate With Nondisabled Children

Section 300.347(a)(4) requires that each child's IEP include ''An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in [extracurricular and other nonacademic] activities * * *'' This is consistent with the least restrictive environment (LRE) provisions at §§300.550–300.553, which include requirements that:

(1) each child with a disability be educated with nondisabled children to the maximum extent appropriate (§300.550(b)(1));

(2) each child with a disability be removed from the regular educational environment only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (§300.550(b)(1)); and

(3) to the maximum extent appropriate to the child's needs, each child with a disability participates with nondisabled children in nonacademic and extracurricular services and activities (§300.553).

All services and educational placements under Part B must be individually determined in light of each child's unique abilities and needs, to reasonably promote the child's educational success. Placing children with disabilities in this manner should enable each disabled child to meet high expectations in the future.

Although Part B requires that a child with a disability not be removed from the regular

educational environment if the child's education can be achieved satisfactorily in regular classes with the use of supplementary aids and services, Part B's LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully. Even though IDEA does not mandate regular class placement for every disabled student, IDEA presumes that the first placement option considered for each disabled student by the student's placement team, which must include the parent, is the school the child would attend if not disabled, with appropriate supplementary aids and services to facilitate such placement. Thus, before a disabled child can be placed outside of the regular educational environment, the full range of supplementary aids and services that if provided would facilitate the student's placement in the regular classroom setting must be considered. Following that consideration, if a determination is made that particular disabled student cannot be educated satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that student then could be placed in a setting other than the regular classroom. Later, if it becomes apparent that the child's IEP can be carried out in a less restrictive setting, with the provision of appropriate supplementary aids and services, if needed, Part B would require that the child's placement be changed from the more restrictive setting to a less restrictive setting. In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs, and not solely on factors such as category of disability, significance of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. Rather, each student's IEP forms the basis for the placement decision.

Further, a student need not fail in the regular classroom before another placement can be considered. Conversely, IDEA does not require that a student demonstrate achievement of a specific performance level as a prerequisite for placement into a regular classroom.

Participation in State or District-Wide Assessments of Student Achievement

Consistent with §300.138(a), which sets forth a presumption that children with disabilities will be included in general State and district-wide assessment programs, and provided with appropriate accommodations if necessary, §300.347(a)(5) requires that the IEP for each student with a disability include: ''(i) a statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and (ii) if the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment of student achievement), a statement of—(A) Why that assessment is not appropriate for the child; and (B) How the child will be assessed.''

Regular Education Teacher Participation in the Development, Review, and Revision of IEPs

Very often, regular education teachers play a central role in the education of children with disabilities (H. Rep. No. 105–95, p. 103 (1997); S. Rep. No. 105–17, p. 23 (1997)) and have important expertise regarding the general curriculum and the general education environment. Further, with the emphasis on involvement and progress in the general curriculum added by the IDEA Amendments of 1997, regular education teachers have an increasingly critical role (together with special education and related services personnel) in implementing the program of FAPE for most children with disabilities, as described in their IEPs.

Accordingly, the IDEA Amendments of 1997 added a requirement that each child's IEP team must include at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment (see §300.344(a)(2)). (See also §§300.346(d) on the role of a regular education teacher in the development, review and revision of IEPs.)

2. Must a child's IEP address his or her involvement in the general curriculum, regardless of the nature and severity of the child's disability and the setting in which the child is educated?

Yes. The IEP for each child with a disability (including children who are educated in separate classrooms or schools) must address how the child will be involved and progress in the general curriculum. However, the Part B regulations recognize that some children have other educational needs resulting from their disability that also must be met, even though those needs are not directly linked to participation in the general curriculum.

Accordingly, §300.347(a)(1)(2) requires that each child's IEP include:

A statement of measurable annual goals, including benchmarks or short-term objectives related to—(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and (ii) meeting each of the child's other educational needs that result from the child's disability. [Italics added.]

Thus, the IEP team for each child with a disability must make an individualized determination regarding (1) how the child will

be involved and progress in the general curriculum and what needs that result from the child's disability must be met to facilitate that participation; (2) whether the child has any other educational needs resulting from his or her disability that also must be met; and (3) what special education and other services and supports must be described in the child's IEP to address both sets of needs (consistent with §300.347(a)). For example, if the IEP team determines that in order for a child who is deaf to participate in the general curriculum he or she needs sign language and materials which reflect his or her language development, those needs (relating to the child's participation in the general curriculum) must be addressed in the child's IEP. In addition, if the team determines that the child also needs to expand his or her vocabulary in sign language that service must also be addressed in the applicable components of the child's IEP. The IEP team may also wish to consider whether there is a need for members of the child's family to receive training in sign language in order for the child to receive FAPE.

3. What must public agencies do to meet the requirements at §§300.344(a)(2) and 300.346(d) regarding the participation of a ''regular education teacher'' in the development, review, and revision of IEPs, for children aged 3 through 5 who are receiving preschool special education services?

If a public agency provides ''regular education'' preschool services to non-disabled children, then the requirements of §§300.344(a)(2) and 300.346(d) apply as they do in the case of older children with disabilities. If a public agency makes kindergarten available to nondisabled children, then a regular education kindergarten teacher could appropriately be the regular education teacher who would be a member of the IEP team, and, as appropriate, participate in IEP meetings, for a kindergarten-aged child who is, or may be, participating in the regular education environment.

If a public agency does not provide regular preschool education services to nondisabled children, the agency could designate an individual who, under State standards, is qualified to serve nondisabled children of the same age.

4. Must the measurable annual goals in a child's IEP address all areas of the general curriculum, or only those areas in which the child's involvement and progress are affected by the child's disability?

Section 300.347(a)(2) requires that each child's IEP include ''A statement of measurable annual goals, including benchmarks or short-term objectives, related to—(i) *meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum* * * *; and (ii) meeting each of the child's other educational needs that result from the child's disability. . . .'' (Italics added).

Thus, a public agency is not required to include in an IEP annual goals that relate to areas of the general curriculum in which the child's disability does not affect the child's ability to be involved in and progress in the general curriculum. If a child with a disability needs only modifications or accommodations in order to progress in an area of the general curriculum, the IEP does not need to include a goal for that area; however, the IEP would need to specify those modifications or accommodations.

Public agencies often require all children, including children with disabilities, to demonstrate mastery in a given area of the general curriculum before allowing them to progress to the next level or grade in that area. Thus, in order to ensure that each child with a disability can effectively demonstrate competencies in an applicable area of the general curriculum, it is important for the IEP team to consider the accommodations and modifications that the child needs to assist him or her in demonstrating progress in that area.

II. INVOLVEMENT OF PARENTS AND STUDENTS

The Congressional Committee Reports on the IDEA Amendments of 1997 express the view that the Amendments provide an opportunity for strengthening the role of parents, and emphasize that one of the purposes of the Amendments is to expand opportunities for parents and key public agency staff (e.g., special education, related services, regular education, and early intervention service providers, and other personnel) to work in new partnerships at both the State and local levels (H. Rep. 105–95, p. 82 (1997); S. Rep. No. 105–17, p. 4 and 5 (1997)). Accordingly, the IDEA Amendments of 1997 require that parents have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (§300.501(a)(2)). Thus, parents must now be part of: (1) the group that determines what additional data are needed as part of an evaluation of their child (§300.533(a)(1)); (2) the team that determines their child's eligibility (§300.534(a)(1)); and (3) the group that makes decisions on the educational placement of their child (§300.501(c)).

In addition, the concerns of parents and the information that they provide regarding their children must be considered in developing and reviewing their children's IEPs (§§300.343(c)(iii) and 300.346(a)(1)(i) and (b)); and the requirements for keeping parents informed about the educational progress of their children, particularly as it relates to their progress in the general curriculum, have been strengthened (§300.347(a)(7)).

The IDEA Amendments of 1997 also contain provisions that greatly strengthen the involvement of students with disabilities in decisions regarding their own futures, to facilitate movement from school to post-school activities. For example, those amendments (1) retained, essentially verbatim, the ''transition services'' requirements from the IDEA Amendments of 1990 (which provide that a statement of needed transition services must be in the IEP of each student with a disability, beginning no later than age 16); and (2) significantly expanded those provisions by adding a new annual requirement for the IEP to include ''transition planning'' activities for students beginning at age 14. (See section IV of this appendix for a description of the transition services requirements and definition.)

With respect to student involvement in decisions regarding transition services, §300.344(b) provides that (1) ''the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of—(i) The student's transition services needs under §300.347(b)(1); or (ii) The needed transition services for the student under §300.347(b)(2); or (iii) Both;'' and (2) ''If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.'' (§300.344(b)(2)).

The IDEA Amendments of 1997 also give States the authority to elect to transfer the rights accorded to parents under Part B to each student with a disability upon reaching the age of majority under State law (if the student has not been determined incompetent under State law) (§300.517). (Part B requires that if the rights transfer to the student, the public agency must provide any notice required under Part B to both the student and the parents.) If the State elects to provide for the transfer of rights from the parents to the student at the age of majority, the IEP must, beginning at least one year before a student reaches the age of majority under State law, include a statement that the student has been informed of any rights that will transfer to him or her upon reaching the age of majority. (§300.347(c)).

The IDEA Amendments of 1997 also permit, but do not require, States to establish a procedure for appointing the parent, or another appropriate individual if the parent is not available, to represent the educational interests of a student with a disability who has reached the age of majority under State law and has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to his or her educational program.

5. What is the role of the parents, including surrogate parents, in decisions regarding the educational program of their children?

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

As previously noted in the introduction to section II of this Appendix, Part B specifically provides that parents of children with disabilities—

- Have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of FAPE to the child (including IEP meetings) (§§300.501(b), 300.344(a)(1), and 300.517;
- Be part of the groups that determine what additional data are needed as part of an evaluation of their child (§300.533(a)(1)), and determine their child's eligibility (§300.534(a)(1)) and educational placement (§300.501(c));
- Have their concerns and the information that they provide regarding their child considered in developing and reviewing their child's IEPs (§§300.343(c)(iii) and 300.346(a)(1)(i) and (b)); and
- Be regularly informed (by such means as periodic report cards), as specified in their child's IEP, at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals in the IEP and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year (§300.347(a)(7)).

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when no parent (as defined at §300.20) is known, the agency, after reasonable efforts, cannot locate the child's parents, or the child is a ward of the State under the laws of the State. A surrogate parent has all of the rights and responsibilities of a parent under Part B (§300.515.)

6. What are the Part B requirements regarding the participation of a student (child) with a disability in an IEP meeting?

If a purpose of an IEP meeting for a student with a disability will be the consideration of the student's transition services needs or needed transition services under §300.347(b)(1) or (2), or both, the public agency must invite the student and, as part of

the notification to the parents of the IEP meeting, inform the parents that the agency will invite the student to the IEP meeting.

If the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered. (See §300.344(b)).

Section §300.517 permits, but does not require, States to transfer procedural rights under Part B from the parents to students with disabilities who reach the age of majority under State law, if they have not been determined to be incompetent under State law. If those rights are to be transferred from the parents to the student, the public agency would be required to ensure that the student has the right to participate in IEP meetings set forth for parents in §300.345. However, at the discretion of the student or the public agency, the parents also could attend IEP meetings as ''* * * individuals who have knowledge or special expertise regarding the child * * *'' (see §300.344(a)(6)).

In other circumstances, a child with a disability may attend ''if appropriate.'' (§300.344(a)(7)). Generally, a child with a disability should attend the IEP meeting if the parent decides that it is appropriate for the child to do so. If possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance would be (1) helpful in developing the IEP or (2) directly beneficial to the child or both. The agency should inform the parents before each IEP meeting—as part of notification under §300.345(a)(1)—that they may invite their child to participate.

7. Must the public agency inform the parents of who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency ''must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*'' (§300.345(b), italics added.) In addition, if a purpose of the IEP meeting will be the consideration of a student's transition services needs or needed transition services under §300.347(b)(1) or (2) or both, the notice must also inform the parents that the agency is inviting the student, and identify any other agency that will be invited to send a representative.

The public agency also must inform the parents of the right of the parents and the agency to invite other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate to be members of the IEP team. (§300.345(b)(1)(ii).)

It also may be appropriate for the agency to ask the parents to inform the agency of any individuals the parents will be bringing to the meeting. Parents are encouraged to let the agency know whom they intend to bring. Such cooperation can facilitate arrangements for the meeting, and help ensure a productive, child-centered meeting.

8. Do parents have the right to a copy of their child's IEP?

Yes. Section 300.345(f) states that the public agency shall give the parent a copy of the IEP at no cost to the parent.

9. What is a public agency's responsibility if it is not possible to reach consensus on what services should be included in a child's IEP?

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the (1) child's needs and appropriate goals; (2) extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and (3) services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs (§§300.343(c)(iii) and 300.346(a)(1) and (b)).

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority ''vote.'' If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resort to a due process hearing. However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B.

10. Does Part B require that public agencies inform parents regarding the educational progress of their children with disabilities?

Yes. The Part B statute and regulations include a number of provisions to help ensure that parents are involved in decisions regarding, and are informed about, their child's educational progress, including the child's progress in the general curriculum. First, the parents will be informed regarding their child's present levels of educational performance through the development of the

IEP. Section 300.347(a)(1) requires that each IEP include:

* * * A statement of the child's present levels of educational performance, including—(i) how the child's disability affects the child's involvement and progress in the general curriculum; or (ii) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities * * *

Further, § 300.347(a)(7) sets forth new requirements for regularly informing parents about their child's educational progress, as regularly as parents of nondisabled children are informed of their child's progress. That section requires that the IEP include:

A statement of—(i) How the child's progress toward the annual goals * * * will be measured; and (ii) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—(A) their child's progress toward the annual goals; and (B) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

One method that public agencies could use in meeting this requirement would be to provide periodic report cards to the parents of students with disabilities that include both (1) the grading information provided for all children in the agency at the same intervals; and (2) the specific information required by § 300.347(a)(7)(ii)(A) and (B).

Finally, the parents, as part of the IEP team, will participate at least once every 12 months in a review of their child's educational progress. Section 300.343(c) requires that a public agency initiate and conduct a meeting, at which the IEP team:

* * * (1) Reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and (2) revises the IEP as appropriate to address—(i) any lack of expected progress toward the annual goals * * * and in the general curriculum, if appropriate; (ii) The results of any reevaluation * * *; (iii) Information about the child provided to, or by, the parents * * *; (iv) The child's anticipated needs; or (v) Other matters.

III. Preparing Students With Disabilities for Employment and Other Post-School Experiences

One of the primary purposes of the IDEA is to "* * * ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living * * *" (§ 300.1(a)). Section 701 of the Rehabilitation Act of 1973 describes the philosophy of independent living as including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society. Because many students receiving services under IDEA will also receive services under the Rehabilitation Act, it is important, in planning for their future, to consider the impact of both statutes.

Similarly, one of the key purposes of the IDEA Amendments of 1997 was to "promote improved educational results for children with disabilities through early intervention, preschool, and educational experiences that prepare them for later educational challenges and employment." (H. Rep. No. 105–95, p. 82 (1997); S. Rep. No. 105–17, p. 4 (1997)).

Thus, throughout their preschool, elementary, and secondary education, the IEPs for children with disabilities must, to the extent appropriate for each individual child, focus on providing instruction and experiences that enable the child to prepare himself or herself for later educational experiences and for post-school activities, including formal education, if appropriate, employment, and independent living. Many students with disabilities will obtain services through State vocational rehabilitation programs to ensure that their educational goals are effectively implemented in post-school activities. Services available through rehabilitation programs are consistent with the underlying purpose of IDEA.

Although preparation for adult life is a key component of FAPE throughout the educational experiences of students with disabilities, Part B sets forth specific requirements related to transition planning and transition services that must be implemented no later than ages 14 and 16, respectively, and which require an intensified focus on that preparation as these students begin and prepare to complete their secondary education.

11. What must the IEP team do to meet the requirements that the IEP include "a statement of * * * transition service needs" beginning at age 14 (§ 300.347(b)(1)(i)),'' and a statement of needed transition services'' no later than age 16 (§ 300.347(b)(2)?

Section 300.347(b)(1) requires that, beginning no later than age 14, each student's IEP include specific transition-related content, and, beginning no later than age 16, a statement of needed transition services:

Beginning at age 14 and younger if appropriate, and updated annually, each student's IEP must include:

"* * * a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses

or a vocational education program)'' (§300.347(b)(1)(i)).

Beginning at age 16 (or younger, if determined appropriate by the IEP team), each student's IEP must include:

''* * * a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.'' (§300.347(b)(2)).

The Committee Reports on the IDEA Amendments of 1997 make clear that the requirement added to the statute in 1997 that beginning at age 14, and updated annually, the IEP include ''a statement of the transition service needs'' is ''* * * designed to augment, and not replace,'' the separate, preexisting requirement that the IEP include, ''* * * beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services * * *'' (H. Rep. No. 105–95, p. 102 (1997); S. Rep. No. 105–17, p. 22 (1997)). As clarified by the Reports, ''The purpose of [the requirement in §300.347(b)(1)(i)] is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school.'' (H. Rep. No. 105–95, pp. 101–102 (1997); S. Rep. No. 105–17, p. 22 (1997)). The Reports further explain that ''[F]or example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation.'' (H. Rep. No. 105–95, p. 102 (1997); S. Rep. No. 105–17, p. 22 (1997)).

Thus, beginning at age 14, the IEP team, in determining appropriate measurable annual goals (including benchmarks or short-term objectives) and services for a student, must determine what instruction and educational experiences will assist the student to prepare for transition from secondary education to post-secondary life.

The statement of transition service needs should relate directly to the student's goals beyond secondary education, and show how planned studies are linked to these goals. For example, a student interested in exploring a career in computer science may have a statement of transition services needs connected to technology course work, while another student's statement of transition services needs could describe why public bus transportation training is important for future independence in the community.

Although the focus of the transition planning process may shift as the student approaches graduation, the IEP team must discuss specific areas beginning at least at the age of 14 years and review these areas annually. As noted in the Committee Reports, a disproportionate number of students with disabilities drop out of school before they complete their secondary education: ''Too many students with disabilities are failing courses and dropping out of school. Almost twice as many students with disabilities drop out as compared to students without disabilities.'' (H. Rep. No. 105–95, p. 85 (1997), S. Rep. No. 105–17, p. 5 (1997).)

To help reduce the number of students with disabilities that drop out, it is important that the IEP team work with each student with a disability and the student's family to select courses of study that will be meaningful to the student's future and motivate the student to complete his or her education.

This requirement is distinct from the requirement, at §300.347(b)(2), that the IEP include:

* * * beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

The term ''transition services'' is defined at §300.29 to mean:

* * * a coordinated set of activities for a student with a disability that—(1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual student's needs, taking into account the student's preferences and interests; and (3) Includes—(i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

Thus, while §300.347(b)(1) requires that the IEP team begin by age 14 to address the student's need for instruction that will assist the student to prepare for transition, the IEP must include by age 16 a statement of needed transition services under §300.347(b)(2) that includes a ''coordinated set of activities * * *, designed within an outcome-oriented process, that promotes movement from school to post-school activities * * *.'' (§300.29) Section 300.344(b)(3) further requires that, in implementing §300.347(b)(1), public agencies (in addition to required participants for all IEP meetings), must also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. Thus, §300.347(b)(2) requires a broader focus on coordination of services across, and linkages between, agencies beyond the SEA and LEA.

12. Must the IEP for each student with a disability, beginning no later than age 16, include all ''needed transition services,'' as identified by the IEP team and consistent

with the definition at §300.29, even if an agency other than the public agency will provide those services? What is the public agency's responsibility if another agency fails to provide agreed-upon transition services?

Section 300.347(b)(2) requires that the IEP for each child with a disability, beginning no later than age 16, or younger if determined appropriate by the IEP team, include all ''needed transition services,'' as identified by the IEP team and consistent with the definition at §300.29, regardless of whether the public agency or some other agency will provide those services. Section 300.347(b)(2) specifically requires that the statement of needed transition services include, ''* * * if appropriate, a statement of the interagency responsibilities or any needed linkages.''

Further, the IDEA Amendments of 1997 also permit an LEA to use up to five percent of the Part B funds it receives in any fiscal year in combination with other amounts, which must include amounts other than education funds, to develop and implement a coordinated services system. These funds may be used for activities such as: (1) linking IEPs under Part B and Individualized Family Service Plans (IFSPs) under Part C, with Individualized Service Plans developed under multiple Federal and State programs, such as Title I of the Rehabilitation Act; and (2) developing and implementing interagency financing strategies for the provision of services, including transition services under Part B.

The need to include, as part of a student's IEP, transition services to be provided by agencies other than the public agency is contemplated by §300.348(a), which specifies what the public agency must do if another agency participating in the development of the statement of needed transition services fails to provide a needed transition service that it had agreed to provide.

If an agreed-upon service by another agency is not provided, the public agency responsible for the student's education must implement alternative strategies to meet the student's needs. This requires that the public agency provide the services, or convene an IEP meeting as soon as possible to identify alternative strategies to meet the transition services objectives, and to revise the IEP accordingly.

Alternative strategies might include the identification of another funding source, referral to another agency, the public agency's identification of other district-wide or community resources that it can use to meet the student's identified needs appropriately, or a combination of these strategies. As emphasized by §300.348(b), however:

Nothing in [Part B] relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

However, the fact that an agency other than the public agency does not fulfill its responsibility does not relieve the public agency of its responsibility to ensure that FAPE is available to each student with a disability. (Section 300.142(b)(2) specifically requires that if an agency other than the LEA fails to provide or pay for a special education or related service (which could include a transition service), the LEA must, without delay, provide or pay for the service, and may then claim reimbursement from the agency that failed to provide or pay for the service.)

13. Under what circumstances must a public agency invite representatives from other agencies to an IEP meeting at which a child's need for transition services will be considered?

Section 300.344 requires that, ''In implementing the requirements of [§300.347(b)(1)(ii) requiring a statement of needed transition services], the public agency shall also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.'' To meet this requirement, the public agency must identify all agencies that are ''likely to be responsible for providing or paying for transition services'' for each student addressed by §300.347(b)(1), and must invite each of those agencies to the IEP meeting; and if an agency invited to send a representative to a meeting does not do so, the public agency must take other steps to obtain the participation of that agency in the planning of any transition services.

If, during the course of an IEP meeting, the team identifies additional agencies that are ''likely to be responsible for providing or paying for transition services'' for the student, the public agency must determine how it will meet the requirements of §300.344.

IV. Other Questions Regarding the Development and Content of IEPS

14. For a child with a disability receiving special education for the first time, when must an IEP be developed—before or after the child begins to receive special education and related services?

Section 300.342(b)(1) requires that an IEP be ''*in effect* before special education and related services are provided to an eligible child * * *'' (Italics added.)

The appropriate placement for a particular child with a disability cannot be determined until after decisions have been made about the child's needs and the services that the public agency will provide to meet those needs. These decisions must be made at the IEP meeting, and it would not be permissible first to place the child and then develop the IEP. Therefore, the IEP must be developed

before placement. (Further, the child's placement must be based, among other factors, on the child's IEP.)

This requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to assist a public agency in determining the appropriate placement for the child. However, it is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an *interim* IEP for the child that sets out the specific conditions and timelines for the trial placement. (See paragraph c, following.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation, finalizing the IEP, and determining the appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

15. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer as to which public agency has direct responsibility for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA will vary from State to State, depending upon State law, policy, or practice. The SEA is ultimately responsible for ensuring that all Part B requirements, including the IEP requirements, are met for eligible children within the State, including those children served by a public agency other than an LEA. Thus, the SEA must ensure that every eligible child with a disability in the State has FAPE available, regardless of which State or local agency is responsible for educating the child. (The only exception to this responsibility is that the SEA is not responsible for ensuring that FAPE is made available to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons, if the State has assigned that responsibility to a public agency other than the SEA. (See §300.600(d)).

Although the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), the SEA must ensure that no eligible child with a disability is denied FAPE due to jurisdictional disputes among agencies.

When an LEA is responsible for the education of a child with a disability, the LEA remains responsible for developing the child's IEP, regardless of the public or private school setting into which it places the child.

16. For a child placed out of State by an educational or non-educational State or local agency, is the placing or receiving State responsible for the child's IEP?

Regardless of the reason for the placement, the ''placing'' State is responsible for ensuring that the child's IEP is developed and that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, the SEA in the placing State is ultimately responsible for ensuring that the child has FAPE available.

17. If a disabled child has been receiving special education from one public agency and transfers to another public agency in the same State, must the new public agency develop an IEP before the child can be placed in a special education program?

If a child with a disability moves from one public agency to another in the same State, the State and its public agencies have an ongoing responsibility to ensure that FAPE is made available to that child. This means that if a child moves to another public agency the new agency is responsible for ensuring that the child has available special education and related services in conformity with an IEP.

The new public agency must ensure that the child has an IEP in effect before the agency can provide special education and related services. The new public agency may meet this responsibility by either adopting the IEP the former public agency developed for the child or by developing a new IEP for the child. (The new public agency is strongly encouraged to continue implementing the IEP developed by the former public agency, if appropriate, especially if the parents believe their child was progressing appropriately under that IEP.)

Before the child's IEP is finalized, the new public agency may provide interim services agreed to by both the parents and the new public agency. If the parents and the new public agency are unable to agree on an interim IEP and placement, the new public agency must implement the old IEP to the extent possible until a new IEP is developed and implemented.

In general, while the new public agency must conduct an IEP meeting, it would not be necessary if: (1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new public agency determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the new public agency or the parent believes that it is not appropriate, the new public agency must develop a new IEP

through appropriate procedures within a short time after the child enrolls in the new public agency (normally, within one week).

18. What timelines apply to the development and implementation of an initial IEP for a child with a disability?

Section 300.343(b) requires each public agency to ensure that within a reasonable period of time following the agency's receipt of parent consent to an initial evaluation of a child, the child is evaluated and, if determined eligible, special education and related services are made available to the child in accordance with an IEP. The section further requires the agency to conduct a meeting to develop an IEP for the child within 30 days of determining that the child needs special education and related services.

Section 300.342(b)(2) provides that an IEP must be implemented as soon as possible following the meeting in which the IEP is developed.

19. Must a public agency hold separate meetings to determine a child's eligibility for special education and related services, develop the child's IEP, and determine the child's placement, or may the agency meet all of these requirements in a single meeting?

A public agency may, after a child is determined by ''a group of qualified professionals and the parent'' (see §300.534(a)(1)) to be a child with a disability, continue in the same meeting to develop an IEP for the child and then to determine the child's placement. However, the public agency must ensure that it meets: (1) the requirements of §300.535 regarding eligibility decisions; (2) all of the Part B requirements regarding meetings to develop IEPs (including providing appropriate notification to the parents, consistent with the requirements of §§300.345, 300.503, and 300.504, and ensuring that all the required team members participate in the development of the IEP, consistent with the requirements of §300.344;) and (3) ensuring that the placement is made by the required individuals, including the parent, as required by §§300.552 and 300.501(c).

20. How frequently must a public agency conduct meetings to review, and, if appropriate, revise the IEP for each child with a disability?

A public agency must initiate and conduct meetings periodically, but at least once every twelve months, to review each child's IEP, in order to determine whether the annual goals for the child are being achieved, and to revise the IEP, as appropriate, to address: (a) Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate; (b) the results of any reevaluation; (c) information about the child provided to, or by, the parents; (d) the child's anticipated needs; or (e) other matters (§300.343(c)).

A public agency also must ensure that an IEP is in effect for each child at the beginning of each school year (§300.342(a)). It may conduct IEP meetings at any time during the year. However, if the agency conducts the IEP meeting prior to the beginning of the next school year, it must ensure that the IEP contains the necessary special education and related services and supplementary aids and services to ensure that the student's IEP can be appropriately implemented during the next school year. Otherwise, it would be necessary for the public agency to conduct another IEP meeting.

Although the public agency is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. For example, if the parents believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting.

If a child's teacher feels that the child's IEP or placement is not appropriate for the child, the teacher should follow agency procedures with respect to: (1) calling or meeting with the parents or (2) requesting the agency to hold another IEP meeting to review the child's IEP.

The legislative history of Public Law 94–142 makes it clear that there should be as many meetings a year as any one child may need (121 Cong. Rec. S20428–29 (Nov. 19, 1975) (remarks of Senator Stafford)). Public agencies should grant any reasonable parent request for an IEP meeting. For example, if the parents question the adequacy of services that are provided while their child is suspended for short periods of time, it would be appropriate to convene an IEP meeting.

In general, if either a parent or a public agency believes that a required component of the student's IEP should be changed, the public agency must conduct an IEP meeting if it believes that a change in the IEP may be necessary to ensure the provision of FAPE.

If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the child or the educational placement of the child, and the agency refuses to convene an IEP meeting to determine whether such a change is needed, the agency must provide written notice to the parents of the refusal, including an explanation of why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student.

Under §300.507(a), the parents or agency may initiate a due process hearing at any time regarding any proposal or refusal regarding the identification, evaluation, or educational placement of the child, or the

provision of FAPE to the child, and the public agency must inform parents about the availability of mediation.

21. May IEP meetings be audio- or videotape-recorded?

Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, an SEA or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.

If a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. An SEA or school district that adopts a rule regulating the tape recording of IEP meetings also should ensure that it is uniformly applied.

Any recording of an IEP meeting that is maintained by the public agency is an ''education record,'' within the meaning of the Family Educational Rights and Privacy Act (''FERPA''; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR part 99) and part B (§§ 300.560–300.575).

Parents wishing to use audio or video recording devices at IEP meetings should consult State or local policies for further guidance.

22. Who can serve as the representative of the public agency at an IEP meeting?

The IEP team must include a representative of the public agency who: (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) is knowledgeable about the general curriculum; and (c) is knowledgeable about the availability of resources of the public agency (§ 300.344(a)(4)).

Each public agency may determine which specific staff member will serve as the agency representative in a particular IEP meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

A public agency may designate another public agency member of the IEP team to also serve as the agency representative, so long as that individual meets the requirements of § 300.344(a)(4).

23. For a child with a disability being considered for initial provision of special education and related services, which teacher or teachers should attend the IEP meeting?

A child's IEP team must include at least one of the child's regular education teachers (if the child is, or may be participating in the regular education environment) and at least one of the child's special education teachers, or, if appropriate, at least one of the child's special education providers (§ 300.344(a)(2) and (3)).

Each IEP must include a statement of the present levels of educational performance, including a statement of how the child's disability affects the child's involvement and progress in the general curriculum (§ 300.347(a)(1)). At least one regular education teacher is a required member of the IEP team of a child who is, or may be, participating in the regular educational environment, regardless of the extent of that participation.

The requirements of § 300.344(a)(3) can be met by either: (1) a special education teacher of the child; or (2) another special education provider of the child, such as a speech pathologist, physical or occupational therapist, etc., if the related service consists of specially designed instruction and is considered special education under applicable State standards.

Sometimes more than one meeting is necessary in order to finalize a child's IEP. In this process, if the special education teacher or special education provider who will be working with the child is identified, it would be useful to have that teacher or provider participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. If this is not possible, the public agency must ensure that the teacher or provider has access to the child's IEP as soon as possible after it is finalized and before beginning to work with the child.

Further, (consistent with § 300.342(b)), the public agency must ensure that each regular education teacher, special education teacher, related services provider and other service provider of an eligible child under this part (1) has access to the child's IEP, and (2) is informed of his or her specific responsibilities related to implementing the IEP, and of the specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP. This requirement is crucial to ensuring that each child receives FAPE in accordance with his or her IEP, and that the IEP is appropriately and effectively implemented.

24. What is the role of a regular education teacher in the development, review and revision of the IEP for a child who is, or may be, participating in the regular education environment?

As required by § 300.344(a)(2), the IEP team for a child with a disability must include at least one regular education teacher of the child if the child is, or may be, participating

in the regular education environment. Section 300.346(d) further specifies that the regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in—(1) the determination of appropriate positive behavioral interventions and strategies for the child; and (2) the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the child, consistent with 300.347(a)(3) (§300.344(d)).

Thus, while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child's needs and the purpose of the specific IEP team meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting. For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment.

Depending upon the specific circumstances, however, it may not be necessary for the regular education teacher to participate in discussions and decisions regarding, for example, the physical therapy needs of the child, if the teacher is not responsible for implementing that portion of the child's IEP.

In determining the extent of the regular education teacher's participation at IEP meetings, public agencies and parents should discuss and try to reach agreement on whether the child's regular education teacher that is a member of the IEP team should be present at a particular IEP meeting and, if so, for what period of time. The extent to which it would be appropriate for the regular education teacher member of the IEP team to participate in IEP meetings must be decided on a case-by-case basis.

25. If a child with a disability attends several regular classes, must all of the child's regular education teachers be members of the child's IEP team?

No. The IEP team need not include more than one regular education teacher of the child. If the participation of more than one regular education teacher would be beneficial to the child's success in school (e.g., in terms of enhancing the child's participation in the general curriculum), it would be appropriate for them to attend the meeting.

26. How should a public agency determine which regular education teacher and special education teacher will be members of the IEP team for a particular child with a disability?

The regular education teacher who serves as a member of a child's IEP team should be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to teach the child.

If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as IEP team member(s), taking into account the best interest of the child.

In a situation in which not all of the child's regular education teachers are members of the child's IEP team, the LEA is strongly encouraged to seek input from the teachers who will not be attending. In addition, (consistent with §300.342(b)), the LEA must ensure that each regular education teacher (as well as each special education teacher, related services provider, and other service provider) of an eligible child under this part (1) has access to the child's IEP, and (2) is informed of his or her specific responsibilities related to implementing the IEP, and of the specific accommodations, modifications and supports that must be provided to the child in accordance with the IEP.

In the case of a child whose behavior impedes the learning of the child or others, the LEA is encouraged to have a regular education teacher or other person knowledgeable about positive behavior strategies at the IEP meeting. This is especially important if the regular education teacher is expected to carry out portions of the IEP.

Similarly, the special education teacher or provider of the child who is a member of the child's IEP team should be the person who is, or will be, responsible for implementing the IEP. If, for example, the child's disability is a speech impairment, the special education teacher on the IEP team could be the speech-language pathologist.

27. For a child whose primary disability is a speech impairment, may a public agency meet its responsibility under §300.344(a)(3) to ensure that the IEP team includes ''at least one special education teacher, or, if appropriate, at least one special education provider of the child'' by including a speech-language pathologist on the IEP team?

Yes, if speech is considered special education under State standards. As with other children with disabilities, the IEP team must also include at least one of the child's *regular education* teachers if the child is, or may be, participating in the regular education environment.

28. Do parents and public agencies have the option of inviting any individual of their choice be participants on their child's IEP team?

The IEP team may, at the discretion of the parent or the agency, include ''other individuals *who have knowledge or special expertise regarding the child* * * *'' (§300.344(a)(6), italics added). Under §300.344(a)(6), these individuals are members of the IEP team. This is a change from prior law, which provided, without qualification, that parents or agencies could have other individuals as members of the IEP team at the discretion of the parents or agency.

Under §300.344(c), the determination as to whether an individual has knowledge or special expertise, within the meaning of §300.344(a)(6), shall be made by the parent or public agency who has invited the individual to be a member of the IEP team.

Part B does not provide for including individuals such as representatives of teacher organizations as part of an IEP team, unless they are included because of knowledge or special expertise regarding the child. (Because a representative of a teacher organization would generally be concerned with the interests of the teacher rather than the interests of the child, and generally would not possess knowledge or expertise regarding the child, it generally would be inappropriate for such an official to be a member of the IEP team or to otherwise participate in an IEP meeting.)

29. Can parents or public agencies bring their attorneys to IEP meetings, and, if so under what circumstances? Are attorney's fees available for parents' attorneys if the parents are prevailing parties in actions or proceedings brought under Part B?

Section 300.344(a)(6) authorizes the addition to the IEP team of other individuals at the discretion of the parent or the public agency only if those other individuals have knowledge or special expertise regarding the child. The determination of whether an attorney possesses knowledge or special expertise regarding the child would have to be made on a case-by-case basis by the parent or public agency inviting the attorney to be a member of the team.

The presence of the agency's attorney could contribute to a potentially adversarial atmosphere at the meeting. The same is true with regard to the presence of an attorney accompanying the parents at the IEP meeting. Even if the attorney possessed knowledge or special expertise regarding the child (§300.344(a)(6)), an attorney's presence would have the potential for creating an adversarial atmosphere that would not necessarily be in the best interests of the child.

Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged. Further, as specified in Section 615(i)(3)(D)(ii) of the Act and §300.513(c)(2)(ii), Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation conducted prior to the request for a due process hearing.

30. Must related services personnel attend IEP meetings?

Although Part B does not expressly require that the IEP team include related services personnel as part of the IEP team (§300.344(a)), it is appropriate for those persons to be included if a particular related service is to be discussed as part of the IEP meeting. Section 300.344(a)(6) provides that the IEP team also includes ''at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, *including related services personnel as appropriate.* * * *'' (Italics added.)

Further, §300.344(a)(3) requires that the IEP team for each child with a disability include ''at least one special education teacher, or, if appropriate, at least one special education provider of the child * * *'' This requirement can be met by the participation of either (1) a special education teacher of the child, or (2) another special education provider such as a speech-language pathologist, physical or occupational therapist, etc., if the related service consists of specially designed instruction and is considered special education under the applicable State standard.

If a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. As explained in the Committee Reports on the IDEA Amendments of 1997, ''Related services personnel should be included on the team when a particular related service will be discussed at the request of the child's parents or the school.'' (H. Rep. No. 105–95, p. 103 (1997); S. Rep. No. 105–17, p. 23 (1997)). For example, if the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, special transportation services, school social work services, school health services, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child. This written recommendation could be a part of the evaluation report.

A public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child's unique needs, and ensure the provision of FAPE to the child, participate in the child's IEP meeting.

31. Must the public agency ensure that all services specified in a child's IEP are provided?

Yes. The public agency must ensure that all services set forth in the child's IEP are provided, consistent with the child's needs as

identified in the IEP. The agency may provide each of those services directly, through its own staff resources; indirectly, by contracting with another public or private agency; or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see §300.301(a)); but the services must be at no cost to the parents, and the public agency remains responsible for ensuring that the IEP services are provided in a manner that appropriately meets the student's needs as specified in the IEP. The SEA and responsible public agency may not allow the failure of another agency to provide service(s) described in the child's IEP to deny or delay the provision of FAPE to the child. (See §300.142, Methods of ensuring services.)

32. Is it permissible for an agency to have the IEP completed before the IEP meeting begins?

No. Agency staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion, of the child's needs and the services to be provided to meet those needs before the IEP is finalized.

Public agencies must ensure that, if agency personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the child's parents, before the child's IEP is finalized, regarding drafted content and the child's needs and the services to be provided to meet those needs.

33. Must a public agency include transportation in a child's IEP as a related service?

As with other related services, a public agency must provide transportation as a related service if it is required to assist the disabled child to benefit from special education. (This includes transporting a preschool-aged child to the site at which the public agency provides special education and related services to the child, if that site is different from the site at which the child receives other preschool or day care services.)

In determining whether to include transportation in a child's IEP, and whether the child needs to receive transportation as a related service, it would be appropriate to have at the IEP meeting a person with expertise in that area. In making this determination, the IEP team must consider how the child's disability affects the child's need for transportation, including determining whether the child's disability prevents the child from using the same transportation provided to nondisabled children, or from getting to school in the same manner as nondisabled children.

The public agency must ensure that any transportation service included in a child's IEP as a related service is provided at public expense and at no cost to the parents, and that the child's IEP describes the transportation arrangement.

Even if a child's IEP team determines that the child does not require transportation as a related service, Section 504 of the Rehabilitation Act of 1973, as amended, requires that the child receive the same transportation provided to nondisabled children. If a public agency transports nondisabled children, it must transport disabled children under the same terms and conditions. However, if a child's IEP team determines that the child does not need transportation as a related service, and the public agency transports only those children whose IEPs specify transportation as a related service, and does not transport nondisabled children, the public agency would not be required to provide transportation to a disabled child.

It should be assumed that most children with disabilities receive the same transportation services as nondisabled children. For some children with disabilities, integrated transportation may be achieved by providing needed accommodations such as lifts and other equipment adaptations on regular school transportation vehicles.

34. Must a public agency provide related services that are required to assist a child with a disability to benefit from special education, whether or not those services are included in the list of related services in §300.24?

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. This could, depending upon the unique needs of a child, include such services as nutritional services or service coordination.

These determinations must be made on an individual basis by each child's IEP team.

35. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members (§300.347(a)(6)). The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

The amount of a special education or related service to be provided to a child may be stated in the IEP as a range (e.g., speech therapy to be provided three times per week

for 30–45 minutes per session) only if the IEP team determines that stating the amount of services as a range is necessary to meet the unique needs of the child. For example, it would be appropriate for the IEP to specify, based upon the IEP team's determination of the student's unique needs, that particular services are needed only under specific circumstances, such as the occurrence of a seizure or of a particular behavior. A range may not be used because of personnel shortages or uncertainty regarding the availability of staff.

36. Under what circumstances is a public agency required to permit a child with a disability to use a school-purchased assistive technology device in the child's home or in another setting?

Each child's IEP team must consider the child's need for assistive technology (AT) in the development of the child's IEP (§300.346(a)(2)(v)); and the nature and extent of the AT devices and services to be provided to the child must be reflected in the child's IEP (§300.346(c)).

A public agency must permit a child to use school-purchased assistive technology devices at home or in other settings, if the IEP team determines that the child needs access to those devices in nonschool settings in order to receive FAPE (to complete homework, for example).

Any assistive technology devices that are necessary to ensure FAPE must be provided at no cost to the parents, and the parents cannot be charged for normal use, wear and tear. However, while ownership of the devices in these circumstances would remain with the public agency, State law, rather than Part B, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly owned equipment used at home or in other settings in accordance with a child's IEP.

37. Can the IEP team also function as the group making the placement decision for a child with a disability?

Yes, a public agency may use the IEP team to make the placement decision for a child, so long as the group making the placement decision meets the requirements of §§300.552 and 300.501(c), which requires that the placement decision be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

38. If a child's IEP includes behavioral strategies to address a particular behavior, can a child ever be suspended for engaging in that behavior?

If a child's behavior impedes his or her learning or that of others, the IEP team, in developing the child's IEP, must consider, if appropriate, development of strategies, including positive behavioral interventions, strategies and supports to address that behavior, consistent with §300.346(a)(2)(i). This means that in most cases in which a child's behavior that impedes his or her learning or that of others is, or can be readily anticipated to be, repetitive, proper development of the child's IEP will include the development of strategies, including positive behavioral interventions, strategies and supports to address that behavior. See §300.346(c). This includes behavior that could violate a school code of conduct. A failure to, if appropriate, consider and address these behaviors in developing and implementing the child's IEP would constitute a denial of FAPE to the child. Of course, in appropriate circumstances, the IEP team, which includes the child's parents, might determine that the child's behavioral intervention plan includes specific regular or alternative disciplinary measures, such as denial of certain privileges or short suspensions, that would result from particular infractions of school rules, along with positive behavior intervention strategies and supports, as a part of a comprehensive plan to address the child's behavior. Of course, if short suspensions that are included in a child's IEP are being implemented in a manner that denies the child access to the ability to progress in the educational program, the child would be denied FAPE.

Whether other disciplinary measures, including suspension, are ever appropriate for behavior that is addressed in a child's IEP will have to be determined on a case by case basis in light of the particular circumstances of that incident. However, school personnel may not use their ability to suspend a child for 10 days or less at a time on multiple occasions in a school year as a means of avoiding appropriately considering and addressing the child's behavior as a part of providing FAPE to the child.

39. If a child's behavior in the regular classroom, even with appropriate interventions, would significantly impair the learning of others, can the group that makes the placement decision determine that placement in the regular classroom is inappropriate for that child?

The IEP team, in developing the IEP, is required to consider, when appropriate, strategies, including positive behavioral interventions, strategies and supports to address the behavior of a child with a disability whose behavior impedes his or her learning or that of others. If the IEP team determines that such supports, strategies or interventions are necessary to address the behavior of the child, those services must be included in the child's IEP. These provisions are designed to foster increased participation of children with disabilities in regular education environments or other less restrictive environments, not to serve as a basis for placing children with disabilities in more restrictive settings.

The determination of appropriate placement for a child whose behavior is interfering with the education of others requires careful consideration of whether the child can appropriately function in the regular classroom if provided appropriate behavioral supports, strategies and interventions. If the child can appropriately function in the regular classroom with appropriate behavioral supports, strategies or interventions, placement in a more restrictive environment would be inconsistent with the least restrictive environment provisions of the IDEA. If the child's behavior in the regular classroom, even with the provision of appropriate behavioral supports, strategies or interventions, would significantly impair the learning of others, that placement would not meet his or her needs and would not be appropriate for that child.

40. May school personnel during a school year implement more than one short-term removal of a child with disabilities from his or her classroom or school for misconduct?

Yes. Under §300.520(a)(1), school personnel may order removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as these removals do not constitute a change of placement under §300.519(b). However, these removals are permitted only to the extent they are consistent with discipline that is applied to children without disabilities. Also, school personnel should be aware of constitutional due process protections that apply to suspensions of all children. *Goss* v. *Lopez,* 419 U.S. 565 (1975). Section 300.121(d) addresses the extent of the obligation to provide services after a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year.

APPENDIX B TO PART 300—INDEX FOR IDEA—PART B REGULATIONS (34 CFR PART 300)

APPENDIX B
INDEX FOR IDEA— PART B REGULATIONS
(34 CFR Part 300)

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[64 FR 34049, June 24, 1999]

APPENDIX C TO PART 300;—IMPLEMENTATION OF THE 20 PERCEBT RULE UNDER § 300.233

This appendix is intended to assist States and LEAs to implement the ''20 percent rule'' under Part B (section 613(a)(2)(C)) of the Individuals with Disabilities Education Act (IDEA), and, specifically, the regulation implementing that provision in § 300.233. The purposes of the appendix are to—(1) provide background information about the 20 percent rule and its intended effect, including specifying which funds under Part B of the Act are covered by the provision (as described in § 300.233), and the basis for the Department's

decision regarding those funds; and (2) include examples showing how the 20 percent rule would apply in several situations.

A. BACKGROUND

1. *Purpose of 20 Percent Rule.* The IDEA Amendments of 1997 (Pub. L. 105–17) added a provision related to the permissive treatment of a portion of Part B funds by LEAs for maintenance of effort and non-supplanting purposes in certain fiscal years (see section 613(a)(2)(C) of the Act and §300.233). Under that provision, for any fiscal year (FY) for which the appropriation for section 611 of IDEA exceeds $4.1 billion, an LEA may treat as local funds, for maintenance of effort and non-supplanting purposes, up to 20 percent of the amount it receives that exceeds the amount it received under Part B during the prior year.

Thus, under §300.233, an LEA is able to meet the maintenance of effort requirement of §300.231 and the non-supplanting requirement of §300.230(c) even though it reduces the amount it spends of other local or local and State funds, as the case may be, by an amount equal to the amount of Federal funds that may be treated as local funds.

2. *20 Percent Rule Applies Only to LEA Subgrants.* Following enactment of the IDEA Amendments of 1997 (and publication of Part B regulations on March 12, 1999), State and local educational agency officials stated that it is not clear from the Act and regulations whether the funds affected by the 20 percent rule are only those that an LEA receives through statutory subgrants under section 611(g), or whether the provision also applies to other Part B funding sources (*i.e.*, subgrants to LEAs for capacity-building and improvement under section 611(f)(4); other funds the SEA may provide to LEAs under section 611(f); or funds provided under section 619 (Preschool Grants program)).

Further, because section 613(a)(2)(C) refers to an amount of funds that an LEA ''receives'' in one fiscal year compared to the amount it ''received'' in the prior fiscal year (and because agencies may, at any one point in time, be using funds appropriated in several Federal fiscal years), agency officials were uncertain as to how to determine that an LEA had ''received'' Federal funds.

Because the statute and regulations were not sufficiently clear with respect to which precise funds are affected by the 20 percent rule, this could have resulted in the provision being interpreted and applied differently from LEA to LEA. If that situation were to occur, it could result in a significant increase in the number of audit exceptions against LEAs.

Given the confusion about which funding sources are affected by the 20 percent rule, there was a critical need to set out in the regulations a clear interpretation of section 613(a)(2)(C) in order to support its consistent application across LEAs and States, and to reduce the potential for audit exceptions. Thus, on June 10, 2000, the Department published a notice of proposed rulemaking (NPRM) regarding this provision (65 FR 30314). The NPRM stated that—

In light of the statutory structure for distribution of Federal funds to LEAs, we believe that the most reasonable interpretation is to apply that provision *only to subgrants to LEAs under section 611(g)* of the Act (§300.712 of the regulations) from funds appropriated from one Federal fiscal year compared to funds appropriated for the prior Federal fiscal year. (Emphasis added.)

Thus, the NPRM proposed to exclude the other Federal funds under Part B of the Act (*i.e.*, Subgrants to LEAs for capacity-building and improvement under section 611(f)(4) (§300.622); other funds the SEA may provide to LEAs under section 611(f) (§300.602); and preschool grant funds under section 619 (34 CFR part 301)) from the funds that could be treated as local funds. The reasons for excluding these other Part B funds were stated in the NPRM, as follows:

• If IDEA funds that States have the authority to provide to LEAs on a discretionary basis (such as those identified in the preceding paragraph) are included in the 20 percent calculation, it would result in some LEAs receiving a proportionately greater benefit from this provision than other LEAs, based on receipt of funds that may be earmarked for a specific, time-limited purpose. This would lead to inequitable results of the §300.233 exception across LEAs in a State.

• Including section 619 formula grant funds (34 CFR part 301) in the calculation does not appear to be justified as the ''trigger'' appropriation amount applies only with respect to the amount appropriated under section 611.

The Department subsequently determined that the position taken in the NPRM (that the provision under §300.233 should apply only to LEA subgrant funds under section 611(g) of the Act) is the most appropriate and reasonable position to follow in implementing the 20 percent rule. Therefore, the proposed provision in §300.233(a)(1) was retained, without change, in the final regulations.

B. APPLICATION OF THE 20 PERCENT RULE

1. Examples Related to Implementing the 20 percent rule

The following are examples showing how the 20 percent provision would apply under several situations:

• *Example 1:* An LEA receives $100,000 in Federal LEA Subgrant funds under section 611(g) of the Act from the appropriation for one fiscal year (FY–1), and $120,000 in section 611(g) funds from the appropriation for the following fiscal year (FY–2). The LEA may

spend and treat as local funds up to 20 percent of the $20,000 in section 611(g) funds it receives from FY–2 (i.e., up to $4,000), since this is the amount that exceeds the amount it received from the prior year.

• *Example 1–A:* In Example 1, an LEA in FY–2 is uncertain whether to exercise its option to treat as local funds during FY–2 up to $4,000 of its section 611(g) funds received from FY–2, and wishes to wait until the carry-over year to make a decision. If the LEA decides to exercise its option during the carry-over period regarding the $4,000 from the FY–2 appropriation, it could do so as long as those funds are used within the carry-over period for FY–2.

• *Example 1–B:* An LEA receives $100,000 in section 611(g) funds from FY–1, $120,000 from FY–2 and $140,000 from FY–3. The LEA may spend and treat as local funds up to 20 percent of the $20,000 from FY–2 funds and $20,000 of FY–3 funds (*i.e.*, up to $4,000 for each year). Thus, if its FY–2 funds are not used until FY–3, and the LEA so chooses, it may spend and treat as local funds during FY–3 a total of up to $8,000 in section 611(g) funds (*i.e.*, $4,000 from FY–2 and $4,000 from FY–3), provided those funds are obligated by the end of FY–3.

• *Example 2:* An LEA from one fiscal year (FY–1) receives $100,000 in section 611(g) funds and $20,000 in SEA discretionary funds under section 611(f) of the Act; and from the following year (FY–2) receives $120,000 in section 611(g) funds, but does not receive any funds under section 611(f). The LEA may spend and treat up to 20 percent of the $20,000 in section 611(g) funds it receives from FY–2 (i.e. up to $4,000), since $20,000 is the amount of section 611(g) funds that exceeds the amount it received from FY–1.

• *Example 3:* An LEA had all of its section 611(g) funds ($100,000) withheld from one fiscal year (FY–1); but in the next fiscal year (FY–2), the LEA received a total of $220,000 in section 611(g) funds (*i.e.*, $100,000 from FY–1, plus $120,000 from FY–2). Because the LEA would have been entitled to $100,000 in FY–1, the LEA may spend and treat as local funds up to 20 percent of the $20,000 from FY–2 that exceeded the FY–1 allotment (*i.e.*, up to $4,000).

• *Example 4:* An LEA received $100,000 under section 611(g) from one fiscal year (FY–1), and would have received $120,000 in section 611(g) funds for the next fiscal year (FY–2); but the LEA has had all of its section 611(g) funds withheld in FY–2 because of a finding of noncompliance under § 300.197 or § 300.587. The LEA would have no section 611(g) funds that could be spent or treated as local funds until those funds are released.

• *Example 4–A:* In example 4, the SEA subsequently determines that the LEA is in compliance, and releases the FY–2 funds to the LEA later in that fiscal year. The LEA could then spend and treat as local funds up to 20 percent of the $20,000 that exceeds the amount it received in FY–1 (i.e., up to $4,000). Those funds could be used by the LEA for the remainder of FY–2 and through the end of the carry-over period for FY–2 funding.

2. Auditing for Compliance with § 300.231 and the 20 percent rule in § 300.233

The following provides guidance for use by auditors in determining if LEAs are in compliance with the maintenance of effort requirement in § 300.231 and the 20 percent rule in § 300.233:

a. *Meeting the Maintenance of Effort Requirement.* In order to be eligible to receive an IDEA-Part B subgrant in any particular fiscal year, an LEA is required to demonstrate that it has budgeted an amount of State and local funds, or just local funds, to be spent on special education and related services that equals or exceeds (on either an aggregate or per capita basis) the amount of those funds spent by the LEA for those purposes in the prior fiscal year, or in the most recent prior fiscal year for which information is available. 34 CFR 300.231.

b. *Auditing Compliance with § 300.231.* Auditors, in determining if an LEA has complied with § 300.231 in any particular fiscal year, review the actual level of expenditures of State and local funds, or just local funds, on special education and related services for the year in question and the prior year. For example, consider an LEA that, in the LEA's FY–1, spent a total of $1,000,000 of local funds on special education and related services to serve 100 students with disabilities. (For this discussion, assume that the LEA does not receive any State funds for any year for special education and related services.) An auditor, in trying to determine if the LEA, in its FY–2, had complied with § 300.231, would review the LEA's expenditure of local funds on special education and related services. If, in the LEA's FY–2, the LEA served 100 students with disabilities and spent $1,000,000 or more in local funds on special education and related services, it would have met the requirements of § 300.231 for FY–2.

c. *Application of the 20 percent rule to § 300.231.* If the LEA in the preceding example had spent only $996,000 of local funds on special education and related services for its 100 students with disabilities in its FY–2 (not counting any section 611(g) subgrant funds that could be considered local funds under the 20 percent rule), then it would have failed to meet its obligation under § 300.231, and an auditor would question $4,000 of the LEA's IDEA-Part B subgrant expenditures in that year.

This questioned cost, however, could be avoided, if the LEA had available, and spent, $4,000 of Federal funds under the 20 percent rule during its FY–2. These funds may be available from a variety of sources (see Examples in paragraph 1). If, as described in

Example 1 of paragraph 1 the LEA had received from the Federal FY–2 appropriation, a section 611(g) subgrant that was $20,000 greater than the subgrant it received from the Federal FY–1 appropriation, then up to $4,000 of that subgrant could be treated as local funds. The LEA, however, would have to spend at least $4,000 of its Federal FY–2 section 611(g) subgrant during its FY–2 in order for those funds to count as part of its local expenditures for that year for purposes of §300.231.

In this example, if the LEA had carried over all of its Federal FY–2 section 611(g) subgrant to the LEA's FY–3 (and thus did not spend any of those funds during its FY–2), then none of the section 611(g) subgrant funds subject to the 20 percent rule could be considered as local funds for purposes of determining compliance with §300.231. (The reason for this is that auditors, in determining an LEA's compliance with §300.231, examine State and local, or local funds the LEA actually spent on special education and related services, and *not* those funds that the LEA could, but did not, spend for those purposes.)

If the LEA, in its FY–2, spent $4,000 of its Federal FY–2 section 611(g) subgrant, then the LEA could count those expenditures and bring itself into compliance with §300.231 (i.e., $996,000 of the LEA's own local funds spent on special education and related services plus the $4,000 of Federal FY–2 section 611(g) funds that can be counted as local funds equals a total of $1,000,000 of local expenditures on special education in its FY–2—the amount of local expenditures needed to comply with §300.231). However, if the LEA elected to take this step, it could not count any of the Federal FY–2 section 611(g) subgrant funds that it will spend in its FY–3 as local funds.

If the LEA, in its FY–2, spent only $3,000 of its Federal FY–2 section 611(g) subgrant funds, then those funds could be counted by the LEA as local funds in calculating its compliance with §300.231 for its FY–2. If the remaining $1,000 of Federal FY–2 funds available to be considered local funds were spent in the LEA's FY–3, those funds could be considered in determining the LEA's compliance with §300.231 for its FY–3. (Note, However, that if in its FY–2 the LEA had only spent $996,000 of local funds and $3,000 of its Federal funds, it would not have met the requirements of §300.231. In this case the auditor would have $1,000 of questioned costs ($1,000,000 − [$996,000 + $3,000] = $1,000) for FY–2).

[66 FR 1476, Jan. 8, 2001]

PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

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Subpart A—General

§301.1 Purpose of the Preschool Grants for Children With Disabilities program.

The purpose of the Preschool Grants for Children With Disabilities program (Preschool Grants program) is to provide grants to States to assist them in providing special education and related services—

(a) To children with disabilities aged three through five years; and